

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 432 of 2008**

- Prem Kumar s/o. Sahas Ram Satnami, aged about 28 years, r/o. Sajapati, Police Station Akaitara, District Janjgir-Champa (CG).

---- Appellant.**Versus**

- State of Chhattisgarh the Police Station Akaitara, District Janjgir-Champa (CG).

---- Respondent

For Appellant : Mr. Malay Kumar. Bhaduri, Advocate.
 For Respondent/State : Mr. Bhaskar Payasi, Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J**11-09-2017**

This appeal arises out of the judgment of conviction and order of sentence dated 24-1-2008 passed by the Sessions Judge, Janjgir-Champa (CG) in Sessions Trial No. 187 of 2007 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/-, with default stipulations.

2) In the present case, name of the deceased is Manjulata, wife of the appellant. As per prosecution case, on 10-7-2007 in the agricultural

field, the accused/appellant and deceased had some quarrel and it is said that the accused/appellant caused some injury to deceased by small wooden stick and on the same day at about 3.00 pm deceased died in her house on account of asphyxia, however, there is no medical report that the death was homicidal or not and even the cause of asphyxia has not been given. Merg intimation was recorded on 10-7-2007 vide Ex.P/12, inquest on the dead body was conducted on 11-7-2007 vide Ex.P/8 and the dead body of the deceased was sent for postmortem which was conducted on 11-7-2007 by Dr. C.P. Singh (PW/5) vide Ex.P/3 and found the following injuries:

(i)	Right leg upper 1/3 austerity 5 x 4 cm bruise
(ii)	Bruise over right thigh lower end at lateral aspect 6x3/12 cm
(iii)	Bruise on perpetual fosses 6 x 4 cm
(iv)	Bruise over back of right leg lower oblique 5 x 2 1/2cm
(v)	Bruise on left leg posterior medial 10 x 4 cm
(vi)	Bruise anterior lateral aspect of left leg at middle 7x4 cm
(vii)	Abrasion over right great toe 2.5x1.5 and and toe 2.5x1cm and right foot & toe blood stained.

According to autopsy surgeon, cause of death of the deceased is asphyxia. Viscera of the deceased was sent for chemical examination to FSL, Raipur, but there is no FSL report. On the basis of merg enquiry, first information report (Ex.P/5) was registered on 6-8-2007 under Section 302 of the IPC against the appellant. On 7-8-2007

memorandum of the accused/appellant (Ex.P/9) was recorded, based on which seizure of bamboo stick was made vide Ex.P/10. However, there is no FSL or Serological report on record. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

3) So as to hold the accused/appellant guilty, the prosecution examined 11 witnesses in all. DW/1 Ganesh Ram has also been examined by defence to substantiate its case. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

4) The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

5) Learned counsel for the appellant submits as under:

- i) that the accused/appellant has been convicted solely on the basis of circumstantial evidence, but the circumstances do not connect the appellant with the crime,
- ii) that the cause of death has not been proved by the prosecution and in absence of proof of homicidal date, the appellant cannot be convicted.
- iii) That once the prosecution has utterly failed to prove that the death was homicidal in nature, merely on the basis of medical evidence adduced by the prosecution, the appellant cannot be convicted under

Section 302 of IPC.

He placed reliance on **Satish Niramkari vs. State of Rajasthan, reported in AIR 2017 SC 3051, C.K. Raveendran vs. State of Kerala, reported in AIR 2000 SC 369, State of Punjab vs. Bhajan Singh and others, reported in 1975 (4) SCC 472 and Madho Singh vs. State of Rajasthan , reported in 2003(1) Supreme 473.**

6) On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

7) Heard counsel for the respective parties and perused the material on record.

8) PW-1 Smt. Vimla Bai, who is mother of the deceased has stated that the marriage of the deceased was solemnized with the accused/appellant about 5 -6 years back, out of the wedlock they had two male issues, both husband and wife used to quarrel between them, but it was like a normal quarrel between husband and wife. She has further stated that the accused/appellant gave her 3-4 slaps and also caused injury to her by a club. She has further stated that confession was also made by the appellant in presence of Police.

9) PW/2, Viram Singh, brother of the deceased has stated that after 15-20 days, it was informed to him by the police that the deceased had not died because of poison, and that her neck was pressed and then upon asking the Police, he made the statement before the Police.

PW/3 Pradeep Kumar and PW/4 Ganga Bai, mother of the appellant have turned hostile. PW/5 Dr. C.P. Singh conducted postmortem on the body of the deceased and found the injuries as mentioned above and opined that cause of death of the deceased is asphyxia. PW/7 Vimal Chand Anand is a witness of inquest. PW/8 Chhotelal and PW/9 Kishore Upadhyay are the witnesses of memorandum and seizure. PW/10 K.P. Mishra, is a witness who initially helped in investigation. PW/11 A.K. Khan, is the Investigating Officer. DW/1 Ganesh Ram has not stated anything specifically.

10) Close scrutiny of the evidence makes it clear that there is no legally admissible or clinching evidence showing the complicity of the accused/appellant in commission of the offence. It is settled position of law that in a case based on circumstantial evidence, prosecution is required to prove each and every circumstance appearing against the accused.

11) Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence.

12) In the matter of ***Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210***; the Supreme Court while dealing with circumstantial evidence observed in paras 11, 12, 13 & 26 as under:

“11. In *Hanumant Govind Nargundkar v. State of M.P.* [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:

“10. It is well to remember that in cases where the

evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

12. [In Padala Veera Reddy v. State of A.P.](#) [(1989) Supp (2) SCC 706], this court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.[]

13. [In Sharad Birdhichand Sarda v. State of Maharashtra](#) [(1984) 4 SCC 116], it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused

cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.□

13) It is further settled position of law that the prosecution is required to prove the death of the deceased to be homicidal. In the case of **The State of Punjab vs. Bhajan Singh and others**, reported in 1975 (4) SCC 472, it has been held by the Apex Court that the accused person cannot be made to suffer on the basis of insufficient

evidence holding that death of deceased was homicidal. Similar view has been taken by the Apex Court in the case of **Madho Singh vs. State of Rajasthan, reported in 2003 (1) Supreme 473** wherein it was held that in absence of proof of homicidal death, the accused cannot be convicted merely on the basis of theory of last seen. It was further held that the conviction cannot be maintained merely on suspicion, howsoever, strong it may be.

14) In the matter of **C.K. Raveendran vs. State of Kerala, reported in AIR 2000 SC 369**, Hon'ble the Supreme Court has held in para 4 which reads as under:

“4. It is contended on behalf of appellant Raveendran that the circumstances relied upon by the High Court not only have not been established by the prosecution beyond reasonable doubt, but also even if all the circumstances can be said to have been established, all of them taken together do not complete the chain and they do not unequivocally point to the guilt of the accused and exclude any hypothesis consistence with his innocence. It is not necessary for us to discuss in detail the law relating to the circumstantial evidence, suffice it to say that prosecution must prove each of the circumstances, having a definite tendency pointing towards the guilt of the accused and though each of the circumstances by itself may not be conclusive but the cumulative effect of proved circumstances must be so complete that it would exclude every other hypothesis and unequivocally point to the guilt of the accused. When we examine the circumstances said to have been established in the light of the aforesaid principle, We find sufficient force in the contention of the learned counsel for the appellant that the circumstances thus proved, do not point but unerringly to the guilt of the accused; It is in this context, the most important question is the medical evidence. The dead body of Yeshoda was found on 30th of March, 1988 and the post-mortem was

conducted on 1.4.1988. The doctor PW 19, who conducted the autopsy, while issuing the post-mortem certificate Exh. P10, categorically stated that the exact cause of death cannot be ascribed and reserved his opinion, pending the result of chemical analysis. On getting the report of the Assistant Chemical Examiner Exh. P11, the said doctor PW19 gave a final report as per Exh. P12, which indicated that the deceased sustained head injury, which if ante-mortem, could result in death and the injury, if ante-mortem, could be caused by hitting with stones like M.Os.11 or 12. The said report further revealed that nobody could say that there was violence on the neck of the deceased or not. When the doctor itself has not been able to give a definite opinion as to the injuries found on the dead body, whether could be ante-mortem or post-mortem and the dead body itself was found on 30th of March, 1988 and Yeshoda alleged to have been seen in the company of accused last on 3.3.88, it is difficult for us to sustain the conclusion of the High Court that the death of Yeshoda can only be homicidal. There is not an iota of material from which the High Court could have jumped to the aforesaid conclusion and we, therefore, have no hesitation to hold that the conclusion of the High Court that Yeshoda met a homicidal death is wholly erroneous. The extra-judicial confession as deposed by PW15 has not been relied upon by the learned Sessions Judge and High Court also came to the conclusion that it is difficult to rely upon the same, as the exact words or even the words as nearly as possible have not been reproduced by PW15. That apart, as has been stated earlier, even the evidence; of PW15 indicates that Raveendran and he went to arrack shop and consumed liquor, where-after Raveendran disclosed the entire incident and therefore, such statement cannot be said to be a voluntary and truthful one and on the other hand it is the outcome of the consumption of liquor, both by the witness as well as the accused, if at all he can be said to have made the statement. In this view of the matter, the so-called extra-judicial confession has to be excluded from the purview of consideration for bringing home the charge. The most important circumstance which can be said to have been established by the evidence of PWs 7 and 8 is that they saw Raveendran with Yeshoda on 3rd of March, 1988 in a jeep and that jeep was found to be moving around on different places on

the same day, While analysing the different witnesses who deposed about seeing the jeep on 3rd of March, 1988 at different places at different point of time, the High Court itself has noticed that the witnesses do not agree with each other. so far as the time factor is concerned. That apart, the so-called evidence of PWs 10 and 11 who had deposed that at 5 P.M. on the same day, some : people came in a jeep and took tea from the Grant Hotel, is of no consequence and cannot be held to be incriminating in nature, as they never knew accused Raveendran nor had there been any earlier test identification parade and, therefore, the said evidence cannot be utilised to bring home the charge against accused Raveendran. Necessarily, therefore, the only evidence of PWs 7 and 8 is to the effect that on 3rd of March, 1988 at 9.30 A.M., Yeshoda was seen with Raveendran in the jeep. So far as the motive is concerned, the prosecution case is rather hazy and the High Court itself has brushed aside the same on the ground that the motive is not an essential ingredient of an offence. It is no doubt true that through some witnesses, the prosecution wanted to establish that on an earlier occasion, Raveendran made an attempt to kill Yeshoda by hitting her with jeep but could not succeed and Yeshoda escaped, but that circumstance also is through the evidence of PW15, who had testified the so-called extra-judicial confession and has not been relied upon and it would be highly unsafe to rely upon the testimony, even for the alleged conduct of accused Raveendran. PW23 who was living in an adjacent house of Yeshoda at Kappad, in his evidence, made a statement that mother of Raveendran had once offered Raveendran that she would purchase a van for him, if he agrees to divorce Yeshoda but that by itself can hardly be said to be establishing a motive on the part of accused Raveendran. In our opinion, therefore, on the materials on record, the prosecution has not been able to establish any motive on the part of the accused Raveendran for committing the crime. In this state of affair, the so-called recovery of the wrist watch of the deceased, on the basis of statement made by accused Raveendran can hardly be said to be a clinching circumstance for coming to the conclusion that the prosecution case has been proved beyond reasonable doubt In view of our conclusion, as aforesaid, we have no hesitation to come to the

conclusion that the prosecution case has not been proved beyond reasonable doubt as against accused Raveendran and, therefore, the conviction of Raveendran of the charge under [Section 302](#) as well 201 [IPC](#), cannot be sustained. We accordingly, set aside the conviction and sentence of accused Raveendran and acquit him of the charges levelled against him. He be set at liberty forthwith, unless required in any other case.”

15) In the case on hand, even PW/1 Vimla Bai, mother of the deceased has stated that the quarrel between the couple which used to take place, was normal quarrel between husband and wife and if the statement of mother of the deceased is taken as a whole, it is apparent that there is no serious allegation against the appellant.

16) Considering the cumulative effect of the evidence, we are of the view that the prosecution has utterly failed in proving the case against the accused/appellant beyond any shadow of doubt and he deserves to be acquitted of the charges leveled against him.

17) In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 302 of IPC by extending him benefit of doubt. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge