

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 653 of 2008

- Gambhir Singh Gond S/o Govind Singh Gond, aged about 32 years, R/o Village- Dongariya, P.S.- Pendra, Distt.- Bilaspur (Cg)

---- Appellant

Versus

- State Of Chhattisgarh through District Magistrate, Bilaspur, Distt. Bilaspur (CG)

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Shri V. Goverdhan, P.L.

And

CRA No. 747 Of 2008

- Shivkumar @ Shiva Gond S/o Umra Singh Gond, aged about 32 years, R/o Village- Piplamar, P.S.- Pendra, Distt.- Bilaspur (Cg)

---- Appellant

Vs

- State Of Chhattisgarh through District Magistrate, Bilaspur, Distt. Bilaspur (CG)

---- Respondent

For Appellant	:	Shri Pragalbh Sharma, Advocate.
For Respondent/State	:	Shri V. Goverdhan, P.L.

And

CRA No. 931 Of 2008

1. Lavkesh Kumar Gond, S/o Trilok Singh, aged about 22 years, R/o Village-Sonsai, Navagaon, Police Chowki-Belgahana, Thana-Kota, Distt. Bilaspur (CG)

2. Kishan Singh Raj S/o Shri Ramcharan Raj Gond, aged about 22 years, R/o Vill.-Sonsai Navagaon, Police Chowki-Belgahana, Thana-Kota, Distt.-Bilaspur (CG)

---- Appellants

Vs

- State Of Chhattisgarh through Station House Officer, Police Station – Kota, Distt. Bilaspur (CG)

---- Respondent

For Appellant	:	Shri Ravi Bhagat, Advocate.
For Respondent/State	:	Shri V. Goverdhan, P.L.

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

Judgment On Board By Justice Pritinker Diwaker

10/10/2017

As all these three appeals arise out of a common judgment of conviction and order of sentence dated 19th June, 2008 passed by the Additional Sessions Judge, Bilaspur in ST No.228/2007, they are being disposed of by this common judgment. By the said judgment, the accused/appellants Gambhir Singh Gond & Shiv Kumar @ Shiva Gond have been convicted under Section 411 of IPC and sentenced to undergo RI for one year and fine of Rs.100/- with default stipulation whereas accused/appellants Lavkesh Kumar Gond & Kishan Singh Raj have been convicted under Sections 302, 302/201 & 397 of IPC and sentenced to undergo life imprisonment, fine of Rs.100/-; RI for 7 years, fine of Rs.100/- and RI for 7 years, fine of Rs.100/- with default stipulations respectively.

02. In the present case, name of the deceased is Maheshram Panka, father of PW-4 Trilochan Prasad. It is said that a new

motorcycle (Bajaj CT-100) was purchased by the deceased and on 18.9.2006 he along with PW-4 Trilochan Prasad and one friend of PW-4 had gone to Pendra. However, after dropping PW-4 and his friend when the deceased was returning on motorcycle he met with an accident near the railway crossing and was lying near the road in injured condition. Injured Maheshram and his motorcycle were noticed by accused No.2 Kishan Singh who was passing through the same place along with accused No.1 Lavkesh Kumar Gond and his friend. Accused Nos. 1 & 2 returned to the place of occurrence and decided to take the vehicle along with them. While they were doing so, it was objected by injured Mahesh Ram, who was lying injured, and then accused Nos. 1 & 2 gave a blow of stick on his head as a result of which he died and thereafter they took the said vehicle with them, gave it to accused No.3 Shiv Kumar, who in turn pledged the same with accused No.4 Gambir Singh.

After death of Maheshram, unnumbered merg (Ex.P/18) and numbered merg (Ex.P/22) were recorded on 18.9.2006 and thereafter FIR (Ex.P/35) was also registered against unknown person under Section 302 of IPC on 20.9.2006. In the meanwhile, inquest over the dead body was conducted on 18.9.2006 vide Ex.P/12 and thereafter postmortem was conducted on the dead body on 19.9.2006 by PW-11 Dr. Nandraj Kanwar vide Ex.P/23 and he noticed stab injuries on left eyebrow and on the chin, there was fracture on left side frontal bone of skull, larynx and trachea were congested. In his opinion, the cause of death was multiple stab injuries to vital organ, mode of death was hemorrhagic shock and it appeared to be homicide in nature.

Despite investigation as the police could not get any clue about death of Maheshram, a closure report was submitted on 29.4.2007, however, after receiving certain secret information, on 21.8.2007 permission to re-investigate the case was sought vide Ex.P/27 and accordingly, the police conducted re-investigation in the matter. The accused persons were arrested and on 1.9.2007 memorandum of accused No.2 Kishan Singh (Ex.P/3) was recorded which led to recovery of club vide Ex.P/8, memorandum of accused No.1 Lavkesh Kumar (Ex.P/4) also led to recovery of club vide Ex.P/7 whereas pursuant to memorandum of accused No.3 Shivkumar, side mirror of the motorcycle was seized vide Ex.P/9. Vide Ex.P/6 motorcycle of the deceased was seized from accused No.4 Gambhir Singh on the basis of memorandum of accused No.3 and the same was identified to be that of deceased on the basis of chassis and engine number and the relevant documents vide Ex.P/17. After filing of charge sheet, the trial Court framed charges under Section 302, 302/201, 397 and 411 of IPC against accused No. 1 & 2 whereas accused No. 3 & 4 were charged under Sections 302/201 and 411 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 14 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. 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 appellants as mentioned above.

05. Counsel for the accused/appellants Lavkesh Kumar and Kishan Singh submits that these appellants have been convicted on the basis of circumstantial evidence which is very weak in nature and therefore, the appellants are entitled for acquittal by giving them benefit of doubt. It is further argued that but for the memorandum of the accused persons there is absolutely no evidence on record to connect them with the crime in question.

06. In respect of appellants Shiv Kumar and Gambir Singh it has been argued that they have been convicted only under Section 411 of IPC. Even if their conviction is upheld under Section 411 of IPC, considering the fact that accused No.3 Shivkumar has already remained in jail for more than eight months and accused No.4 Gambir Singh for about three months and four days and further considering that offence under Section 411 of IPC is punishable with jail sentence or fine or with both, they may be sentenced to the period already undergone by them.

07. On the other hand, State counsel supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

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

09. PW-1 Maniram and PW-2 Parmeshwar Gond have not supported the prosecution case and have been declared hostile. PW-3 Bhuvan Prasad is a witness to memorandum Ex.P/3, P/4, P/5 and seizure P/6,

P/7, P/8, P/9, P/10 & P/11. He has duly supported the prosecution case. PW-4 Trilochan Prasad, son of the deceased, is a witness to seizure of documents of vehicle Ex.P/17 and has supported the prosecution case but has not made any allegation against the accused persons. PW-5 Shatrighan Singh, Sarpanch, is the person who lodged merger intimation Ex.P/18. PW-6 Phoolleshwar is a motor mechanic who gave certificate in respect of fitness of the vehicle vide Ex.P/20. PW-7 Mohd. Azhar Khan is the person who first saw deceased Mahesh lying on the road in injured condition near the motorcycle and later he went to take help from other people but nobody helped him and then he proceeded to his home. He has not stated anything against the accused/appellants. PW-8 Sheikh Noorbaksh who also saw deceased Mahesh Ram in injured condition has not stated anything against the accused/appellants. PW-9 Shatrughan Shankar Singh has turned hostile. PW-10 Shivprasad, Head Constable, assisted in the investigation. PW-11 Dr. Nandraj Kanwar conducted postmortem on the body of the deceased on 19.9.2006 and noticed stab injuries on left eyebrow and on the chin, there was fracture on left side frontal bone of skull, larynx and trachea were congested. In his opinion, the cause of death was multiple stab injuries to vital organ, mode of death was hemorrhagic shock and it appeared to be homicide in nature. In cross-examination the doctor has admitted the suggestion that from the injuries suffered by the deceased it could be a case of accidental death also. PW-12 Heeralal is a witness of seizure of document of the motorcycle Ex.P/17 and has supported the prosecution case. PW-13 RK Sahu, investigating officer, has supported the prosecution case. PW-14 TR Sidar did initial part of investigation.

10. Close scrutiny of the evidence makes it clear that on 18.9.2006 deceased Mahesh Ram was found lying in injured condition near the railway crossing on the road and upon receiving information to this effect, merg (Ex.P/18) was registered by the police and investigation commenced and an FIR was registered against unknown person under Section 302 of IPC. Since the police could not get any clue about death of Maheshram, a closure report was submitted on 29.4.2007, however, after receiving certain secret information, on 21.8.2007 permission to re-investigate the case was sought and after obtaining permission, the case was reopened and the police proceeded for further investigation into the case. It is in this process that the accused/appellants were arrested and their memorandums were recorded, pursuant to which clubs were seized at the instance of accused/appellants Lavkesh Kumar and Kishan Singh and side mirror of the motorcycle belonging to the deceased was seized at the instance of accused/appellant Shiv Kumar and the said motorcycle was seized from the possession of appellant Gambir Singh.

11. Admittedly, there is no direct evidence against the accused/appellants showing their complicity in the crime in question and their conviction rests upon circumstantial evidence. 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 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. □*

12. As regards conviction of appellants Lavkesh Kumar and Kishan Singh, they are alleged to have assaulted the deceased by club while committing robbery of his motorcycle and thereby caused his death. But for the memorandum of these appellants pursuant to which clubs have been seized, there is no evidence on record to connect them with the crime in question. No blood stains has been found on these clubs and the autopsy surgeon in his cross-examination has admitted the fact that since he was not sure as to whether the injuries found on the person of the deceased could be caused by the seized clubs, he had advised for chemical examination, however, no report of the chemical analyst is there on record. Even the medical evidence does not lend full support to the prosecution case. According to the autopsy surgeon, the death of the deceased could also be accidental one and the injuries

suffered by him could be caused due to fall on rough surface strewn with sharp stones. Though the evidence collected by the prosecution raises suspicion against them, but law is well settled in this regard that suspicion howsoever strong cannot take the place of proof and the degree of proof gets higher when the offence is fouler i.e. murder & robbery in this case. Thus, considering the nature and quality of overall evidence on record, we are of the opinion that the prosecution has failed to prove complicity of these appellants in commission of the offence in any manner and being so they deserve to be acquitted of the charges by giving them benefit of doubt.

13. However, so far as conviction of appellants Shivkumar and Gambhir Singh under Section 411 of IPC is concerned, on the memorandum of appellant Shivkumar, side mirror of the motorcycle belonging to the deceased and the motorcycle from the possession of appellant Gambhir Singh were seized. The motorcycle has been duly identified by the witnesses to be of the deceased. The appellants failed to offer any reasonable explanation for possession of these articles. Thus, considering the evidence, oral and documentary on record, we are of the view that the prosecution has successfully proved guilt of these appellants under Section 411 of IPC. Being so, their conviction under Section 411 of IPC appears to be based on proper appreciation of the evidence and as such cannot be faulted with.

14. As regards sentence under Section 411 of IPC, considering the fact that the incident is of the year 2006, accused No.3 Shivkumar has already remained in jail for more than eight months whereas accused No.4 Gambir Singh for about three months and four days, we are of the

opinion that no useful purpose would be served in sending them back to jail at this stage and the ends of justice would meet if their sentenced is reduced to the period already suffered by them. Ordered accordingly.

15. In the result,

- Cr.A.No.931/2008 preferred by appellants Lavkesh Kumar Gond and Kishan Singh Raj is allowed. They are acquitted of the charges under Sections 302, 302/201 and 397 of IPC by extending them benefit of doubt.
- Cr.A.No.653/2008 preferred by Gambhir Singh Gond and Cr.A.747/2008 by Shivkumar @ Shiva Gond are allowed in part. While maintaining their conviction under Section 411 of IPC, they are sentenced to the period already undergone by them.

If the appellants are already on bail, their bail bonds would stand discharged and they need not surrender. However, if they are still behind the bars, they be set free forthwith if not required to be detained in connection with any other offence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge