

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 372 of 2009**

- Poshan Lal Nishad S/o Mannu Nishad, aged about 30 years, Occupation Labour, R/o village Limtara, Police Station : Kumhari, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station : Urla, District Raipur (C.G.)

---- Respondent

For Appellant : Shri C.R. Sahu, Advocate.
For Respondent/State: Smt. Madhunisha Singh, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****31/08/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 31.03.2009 passed by Sessions Judge, Raipur, in S.T. No.150/2008 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.1,000/-, in default of payment of fine amount to further undergo R.I. for six months.

02. In the present case, name of the deceased is Anandpuri Goswami. It is said that the deceased was having a small hotel where he mainly used to sell tea and stay in a hut

temporarily constructed near the complex where construction work was going on. Further case of the prosecution is that on 14.05.2008 at about 10.00 am, deceased and the appellant slept on roof of the building and on 15.05.2008 when Narsingh (PW/2) had gone to wake him up, he found him to be dead. On 15.05.2008 at 10.00 am, dehati merg (Ex.P/1) was lodged by Ram Kumar Dubey (PW/1). Thereafter, numbered merg (Ex.P/8) was recorded at 7.20 pm and on the same day at 7.30 pm FIR (Ex.P/7) was registered under Section 302 IPC against an unknown person. Inquest on the body of deceased was conducted on 15.05.2008 vide Ex.P/3 and body was sent for postmortem examination to Ambedkar Hospital, Raipur where Dr. Shivnarayan Manjhi (PW/5) conducted postmortem on the body of deceased and gave his report Ex.P/13 opining the cause of death of deceased to be asphyxia as a result of strangulation and death was homicidal in nature. On 07.06.2008, disclosure statement of the accused/appellant was recorded vide Ex.P/4, based on which, axe was seized vide Ex.P/5 and as per FSL report Ex.P/14, blood has been found on it i.e. article 'G'. From the spot, lungi, gamcha and bed sheet of the deceased were seized vide Ex.P/6 and as per serological report (Ex.P/16), human blood of "B" group was found on Gamchha and Shirt, however, serological report in respect of bed sheet (Kathri) was inconclusive and in respect of Lungi, Cotton and Axe no opinion could be given on account of blood on these articles being disintegrated. After filing of

charge sheet, the trial Court framed charge under Section 302 IPC against the appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 05 witnesses. Statement of the accused/appellant 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits:

- That the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction.
- That on the disclosure statement (Ex.P/4) of the accused/appellant, axe has been seized vide Ex.P/5 and as per FSL report (Ex.P/14), blood has been found on the said axe but origin of blood and blood group has not been proved in serological report Ex.P/16.
- That from the spot, lungi, gamcha and bed sheet of the deceased were seized vide Ex.P/6 and as deceased was murdered when he was in deep sleep, naturally the human

blood was found on these articles.

- That the other piece of evidence against the accused/appellant is so called statement of last seen by Ram Kumar Dubey (PW/1), however, the said evidence is not reliable and merely on the basis of said statement, the accused/appellant cannot be convicted.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Ram Kumar Dubey (PW/1) has stated that he had betel shop near the complex where the construction was going on and two small huts were constructed, in which appellant and deceased resided separately. He has further stated that on the date of incident at night, both appellant and the deceased slept on the roof of complex and in the morning of 15.05.2008, Narsingh (PW/2) came there and inquired about the deceased, on which he told him that he might be in his shop or slept on the roof. He has also stated that thereafter PW/2 went to see the deceased, found him dead and upon receiving an information from him, he (this witness) too had gone there and found the deceased dead and lodged dehati merg Ex.P/1. This witness has also stated that on the previous

night of the incident, he himself had not seen the appellant and the deceased sleeping together and as they used to sleep together, he thought that on that day also they might have slept on the roof of his house. He is also a witness to memorandum Ex.P/4 and seizure Ex.P/5.

10. Narsingh (PW/2) is the witness who first saw the body of the deceased and then he passed on the said information to PW/1. B.S. Jagrut (PW/3) - Inspector, recorded the FIR (Ex.P/7) and did initial part of investigation. S.L. Kashyap (PW/4)- Investigating Officer, has duly supported the prosecution case. Dr. Shivnarayan Manjhi (PW/5) has conducted postmortem examination on the body of deceased vide Ex.P/13 and found following injuries :-

- (i) Contusion abrasion of 9.5 x 5 cm over umbilical region.
- (ii) Contusion abrasion of 5 x 4.5 cm on epigastric region.
- (iii) Contusion abrasion of 5 x 4 cm over left hypochondrial region.
- (iv) Contusion abrasion on left angle of mouth in the size of 2 x 1 cm.
- (v) Contusion abrasion of 3 x 2 cm over lateral aspect of right neck.
- (vi) Red colour echymosis present on right side of mandible region. Fracture of mandible and there was echymosis all around mid part.
- (vii) Red colour echymosis present on upper part of thyroid cartilage in the size of 3 x 2 cm. Fracture of hyoid bone, thyroid cartilage and trachea cartilage.
- (viii) Red colour echymosis of 5 cm was present on occipital region.
- (ix) Red colour echymosis of 10 x 5 cm present on right side of temporal parietal region. Abdominal cavity contain about 500 ml blood.

The Doctor has opined that the cause of death of deceased was asphyxia due to strangulation and death was homicidal in nature.

11. Based on the memorandum of the accused/appellant vide Ex.P/4, axe was seized vide Ex.P/5, whereas from the spot Lungi, Gamcha and bed sheet were seized vide Ex.P/6 which were found to be stained with blood as per FSL report (Ex.P/14). However, in the serological report (Ex.P/16), blood on Gamcha and shirt of the deceased was found to be of 'B' group whereas serological report in respect of bed-sheet was inconclusive and in respect of Lungi, Cotton and Axe no opinion could be given on account of blood on these articles being disintegrated.

12. 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, main being the evidence of last seen by Ram Kumar Dubey (PW/1) and memorandum (Ex.P/4) of the appellant and seizure of axe made under Ex.P/5.

13. 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 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.

14. In **Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507**, while dealing with recovery of bloodstained articles the Supreme Court held as under:-

“11. As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.

15. In the instant case, the main piece of evidence against

the appellant adduced by the prosecution is the evidence of last seen by Ram Kumar Dubey (PW/1). According to him, on the previous night of incident, the appellant and the deceased slept together on the roof of his complex. This witness, in para 16 of his cross-examination, has specifically stated that he made this statement as the appellant and the deceased used to sleep together on the roof of his complex and on the previous night of incident, they might have slept together as they usually used to. This witness has also stated that he had not seen the appellant and the deceased sleeping together. Thus, the evidence of this witness, especially para 16, makes it clear that on the previous night of incident actually he had not seen the appellant and the deceased together sleeping and it is merely his guesswork. Considering the above discrepancy and inconsistency on material point, the evidence of this witness do not inspire confidence of this Court.

16. The other piece of evidence brought forward by the prosecution against the appellant is his memorandum (Ex.P/4), based on which axe was seized vide Ex.P/5 & Lungi, Gamcha and Kathri of the deceased vide seizure memo Ex.P/6. The above articles were sent for chemical examination to FSL Raipur. As per FSL report Ex.P/14, blood has been found on the seized articles and as per serological report (Ex.P/16), blood found on Gamchha and Shirt of the deceased was 'B' group blood, however, the blood group of the stains on the Kathri (bed-sheet), Lungi, Cotton and Axe could not be

determined being disintegrated. As such, this circumstance of seizure of articles also loses its efficacy.

17. Thus having examined the evidence in the present case in light of the aforesaid principles of law, we are unable to hold the appellant guilty of the crime in question. None of the circumstances relied upon by the trial Court has been proved to the hilt by the prosecution so as to exclude the possibility of any person other than the appellant being the perpetrator of the crime beyond the shadow of all reasonable doubt. Being so, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

18. 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 IPC by extending him benefit of doubt. The appellant is reported to on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE