

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 714 of 2009

1. Naresh Kumar, S/o Lakhan Lal, aged about 26 years,
2. Lakhan Lal, S/o Ganpat, aged about 57 years,
3. Miltin Bai, w/o Lakhan Lal, aged about 55 years,

All are R/o Village Khobha, P.S. Bagnadi, Distt. Rajnandgaon (CG)

---- Appellants

Versus

- State Of Chhattisgarh through Police Station – Bagnadi, Distt. Rajnandgaon (CG)

---- Respondent

For Appellants	:	Shri Arvind Dubey, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board By Justice Pritinker Diwaker

15/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 9.9.2009 passed by the Sessions Judge, Rajnandgaon in ST No.98/2008 convicting the appellants under Sections 302/34 & 201 of IPC and sentencing them to undergo imprisonment for life, to pay a fine of Rs.100/- and RI for 1 year, to pay a fine of Rs.100/- with default stipulations respectively.

02. As per prosecution case, deceased Ulfi Bai, wife of PW-1

Dashruram, was having illicit relations with appellant No.1 Naresh Kumar. It is said that on 25.2.2008 Ulfibai went missing and returned on 28.2.2008. On that day itself a village meeting was called in which it was disclosed by the deceased that she is having illicit relation with appellant No.1 for the last three years. On 28.2.2008 deceased again eloped with appellant No.1 at about 12 in the midnight. A missing report (Ex.D/1) was lodged by PW-1 on 2.3.2008 and thereafter another missing report (Ex.P/35) was lodged by some of the villagers on 3.3.2008. On 16.3.2008 upon noticing found smell emanating from a particular place of Katinga jungle and finding a piece of sari, report was made by one Bhaggulal which was entered in the Rojnamchasanha vide Ex.D/8 and then on 17.3.2008 certain pieces of bones as well as some pieces of clothes were found in the jungle. The seized articles were put to identification before PW-1 vide Exs.P/6 & P/7 and he identified those articles to be of his wife on basis of clothes, necklace and bangles. Dehati Nalishi (Ex.P/5) was recorded on 18.3.2008 at 12 noon, thereafter Dehati merg nalishi (Ex.P/3) was recorded at 12.20 noon and merg intimation was recorded at 22.30 hours vide Ex.P/4. Inquest in respect of the seized bones was prepared vide Ex.P/2 on 20.3.2008. As per query report Ex.P/46A given by Dr. SK Ahuja, the bones were sent for chemical examination to FSL. As per FSL report (Ex.P/58), the bones were of female of 30 ± 5 years. On 18.3.2008 FIR (Ex.P/56) was registered against the appellants and others at the instance of PW-1 under Sections 302, 201, 120B of IPC. On 20.3.2008 memorandum of the appellant No.1 was recorded vide Ex.P/39 based on which one human skull, four pieces of tooth, coir rope, necklace, pieces of bones were seized vide

Ex.P/40. On the memorandum of accused/appellant No.2 Lakhan Lal (Ex.P/9), no seizure could be effected. However, memorandum of accused/appellant No.3 Miltinbai (Ex.P/10) led to recovery of axe and spade vide Ex.P/25. Vide Ex.P/23 some hair, bloodstained soil and plain soil were seized from the place of occurrence and vide Ex.P/24 broken bangles were also seized from the spot. As per FSL report Ex.P/57 blood was found on the soil, hair, bag, bracelet, petticoat, sari, axe and spade, however, no blood was found on other articles seized. Further case of the prosecution is that after leaving the house of her husband, the deceased had gone to the house of appellant No.1 Naresh which was not liked by his father and mother (appellants No. 2 & 3 herein) and therefore, all the three committed murder of the deceased. It is said that initially the dead body was buried in the field of the accused persons and thereafter they dig it out and threw the same in the jungle. Apart from the appellants, seven other persons were made accused out of which one is still absconding. After filing of charge sheet, the appellants and six other persons were tried by the trial Court by framing charges under Sections 302, 302/34, 120B and 201 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined 19 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 while acquitting other accused persons, convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that there is no eyewitness account to the incident and the conviction rests on circumstantial evidence but none of the circumstances from which inference of guilt could be drawn against the appellants has been proved beyond reasonable doubt by the prosecution.

(ii) that identification of the dead body is disputed because admittedly few bones of human being were recovered and even assuming that those bones were of female, it cannot be said with certainty that it were of the deceased.

(iii) that identification of the dead body on the basis of so-called seized articles cannot be termed as legal identification because the articles so seized are common in nature and normally all village women wear such articles. Further, the place from where bones were recovered was being normally used by the villagers as cremation ground and thus getting the pieces of bones from such place is not unusual.

(iv) that no DNA test has been conducted in this case to ascertain the identification of the deceased.

(v) merely on the basis of alleged motive where it is said that the appellant No.1 was having illicit relation with the deceased, the appellants cannot be convicted.

(vi) that there is absolutely no evidence against the appellants for hatching any conspiracy and then committing murder of the deceased.

At least, there is no evidence against appellants No. 2 & 3 connecting them with the commission of the offence in any manner.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the impugned judgment warranting interference by this Court. She submits that once the prosecution has proved motive against the appellants, rest of the circumstances point towards the guilt of the appellants, in particular when no plausible explanation has been offered by them in rebuttal of the same.

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

08. PW-1 Dashruram, husband of the deceased, has stated that the deceased was his wife who initially went missing from 25.2.2008 and returned on 27.2.2008. When he enquired from her she informed him that as she was sad she left the house. He has stated that village meeting was called in which also it was disclosed by the deceased that as she was sad she left the house and then he took his wife back. On 28.2.2008 the deceased again went missing by informing him that she is having relation with appellant No.1 Naresh and she cannot live without him. She disclosed to him that she is having relation with appellant No.1 for the last three years. He has stated that the deceased was carrying pregnancy of three months, however, appellant No.1 refused the said pregnancy through him. He states that after about 8-9 days of the incident he found certain clothes of the deceased

and then human bones, necklace were seized, panchanama was prepared and Dehati Nalishi was lodged. He admits that sari which was being worn by the deceased is very common in villages and many women in the village wear such sari and likewise, necklace is also a common article. In para-14 he states that on 16.3.2008 the police personnel had called him for compromising the matter with appellant No.1 and they further informed him that his wife is alive at Karutola. He has further stated that when he got clothes and necklace he did not lodge report and on 17.3.2008 the police had arrested appellant No.1 and they kept him for about two days.

09. PW-2 Devdas Sahu is a witness to memorandum (Ex.P/8, P/9, P/10) and seizure Ex.P/11 to P/27. PW-3 Santosh Vaishnav, PW-5 Nanukram, PW-6 Bhagwatram, PW-7 Heeralal and PW-13 Kevalram have turned hostile. PW-4 Kishun Chandrawanshi is a witness to village panchayat and motive as well as written report Ex.P/35. PW-8 Bhishma Singh is a witness to identification of the seized articles Ex.P/7. PW-9 Basant Lal Tandon, Patwari, prepared the spot map. PW-10 Lakhanlal is a witness to village panchayat and inquest Ex.P/2. PW-11 Siyaram is a witness to memorandum (Ex.P/39) and seizure (Ex.P/40). PW-14 Roshan Kumar Dubey has proved Rojnamchasanha (Ex.D/1) recorded at the instance of PW-1 Dashru. PW-15 Dr. SK Ahuja gave a query report in respect of seized bones which were produced before him and sent the same for chemical examination to FSL. His report is Ex.P/46A. He has stated that identification of the bones can only be made on the basis of DNA test. PW-17 Domar Singh Sahu did initial part of investigation on the missing report. PW-18

Laxman Kumeti, investigating officer, has supported the prosecution case. PW-19 Dr. Rajkumar Singh has proved Ex.P/57 and P/58. According to him, bones seized were of female.

10. Admittedly, there is no direct evidence in this case and the 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. □*

26. The next thing which is to be seen is whether the evidence

relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of "Ganesh Bhuvan" from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of Ganesh Bhuvan is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder."

11. 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 cloths 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.”

12. Here the most important aspect of the case is identification of the dead body. However, from the nature and quality of evidence adduced by the prosecution, the identification of the dead body appears to be doubtful. Admittedly, certain bones were recovered pursuant to information about foul smell emanating from a particular place of Katinga jungle was given by one Bhaggulal on 16.3.2008 and as per medical evidence, these bones were of female aged 30 ± 5 years. The other articles i.e. sari, broken bangles, necklace etc. seized from the spot were put to identification and the same were identified by PW-1 Dashru, husband of the deceased, to be of his wife/deceased. However, this witness has admitted the fact in his evidence that such articles are commonly available in the village and almost every woman

in the village wear such type of sari, necklace and bangles. It has also come in the evidence of PW-15 Dr. SK Ahuja that proper identification of the bones can only be made on the basis of DNA test. However, no DNA test has been conducted by the prosecution in the present case. In these circumstances, it cannot be said with certainty that the dead body so recovered was of the deceased.

13. As regards the other circumstance i.e. motive, though it has come in the evidence that the deceased was having illicit relation with appellant No.1 Naresh for the last about three years and she used to elope with him time and again and this fact was also admitted by her in the village panchayat, but merely on the basis of this illicit relation it would not be safe to hold the appellants perpetrator of the crime because it is a well settled principle of law that fouler is the crime, higher is the degree of proof. It can be an additional link in the chain of circumstances but not the sole basis to convict the appellants.

14. So far as seizure of certain incriminating articles at the instance of the appellants is concerned, though as per FSL report Ex.P/57 blood was found on the soil, hair, bag, bracelet, petticoat, sari, axe and spade, however, no blood was found on other articles seized. Further, there is no serological report to confirm the origin and group of the blood found on the articles. In this view of the matter also, the seizure is not conclusive in nature and as such, loses its efficacy.

15. Thus, in light of the above principles of law, considering the overall facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution, we are of the opinion that the

prosecution has failed to prove involvement of the appellants in commission of the offence beyond reasonable doubt. As such, they are entitled to be acquitted of the charges by giving them benefit of doubt.

16. In the result, the appeal is allowed. The appellants are hereby acquitted of all the charges leveled against them by extending them benefit of doubt. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(Arvind Singh Chandel)
Judge