

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 30 of 2012**

1. Jugal Singh aged about 61 years, S/o Bhura Binjwar, R/o village Korai, Bankimongra, District Korba, Chhattisgarh.
2. Dhan Singh, aged about 38 years, S/o Amrsai Binjwar, R/o village Sarbhoka, District Korba, Chhattisgarh

---- Appellants**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station Bankimongra, District Korba, Chhattisgarh

---- Respondent

For Appellants.	:	Shri Dheerendra Pandey, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. G.A.

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

Judgment On Board**By Pritinker Diwaker, J****27/07/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 20.10.2011 passed by Additional Sessions Judge, Katghora, District Korba in S.T. No.28/2010 convicting the accused/appellants under Sections 302, 201 IPC (on two counts) and sentencing them to undergo imprisonment for life with fine of Rs.500/-, R.I. for three years with fine of Rs.200/-, plus default stipulations.

02. In the present case, there are two deceased namely Gopal Singh Binjwar and Narendra Singh Thakur. As per the

prosecution case, on 25.10.2009 at about 4.30 pm, a telephonic information was received at Police Station, Bankimongra from an unknown person that human skeletons were lying near Kholar river. Said information was reduced to writing and police party went to the spot where some skeletons were found. Police from the local police station - Dipka was called and after obtaining permission from SDM, the skeletons were exhumed in presence of the Executive Magistrate and skeletons identified to be those of Gopal Singh Binjhar and Narendra Singh Thakur by Purnima Das (PW/1) and Girja Bai (PW/5) on the basis of clothes found thereon vide Ex.P/1 and P/2. On the basis of information given by Girja Bai (PW/5), dehati mergs Ex.P/89 and P/90 were recorded followed by merg intimation Ex.P/57 and P/58. Thereupon, FIR Ex.P/62 was registered at Police Station, Dipka under Sections 147, 148, 149, 302 and 201 IPC against 13 accused persons including the appellants. On 28.10.2009, memorandum of accused/appellant No.1-Jugul Singh was recorded vide Ex.P/10, based on which one lathi, spade and bamboo stick were seized vide Ex.P/11 whereas memorandum of accused/appellant No.2-Dhan Singh was recorded on 31.10.2009 vide Ex.P/28, based on which one lathi was seized vide Ex.P/29. However, there is no FSL and serological report on record. Further case of the prosecution is that on 07.09.2009 i.e. about 49 days prior to identification of the skeletons, there was some dispute between the deceased

persons and the appellants over the key of motorcycle and it is said that the appellants with the help of other accused persons have committed murder of two deceased and then buried their bodies near Kolar river. Inquest on the skeletons of Narendra Singh Thakur and Gopal Singh Binjhar was conducted on 26.10.2009 vide Ex.P/3 and P/6 respectively. Skeletons were thereafter sent for postmortem examination to Primary Health Center, Bankimongra vide Ex.P/55-A and P/56-A which was conducted by Dr. R.S. Kanwar (PW/13) vide reports Ex.P/55 and P/56. The doctor however has stated that the cause of death was not known.

03. After filing of the charge sheet, the trial Court framed charges against accused/appellants Jugul Singh and Dhan Singh under Sections 147, 148, 302/149, 302/149 and 201 IPC respectively.

04. So as to hold the accused persons guilty, the prosecution examined as many as 17 witnesses. Statements of the accused persons 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record while acquitting 11 accused persons has convicted and sentenced the appellants as mentioned in para-1 of this judgment.

Hence, this appeal.

06. Learned counsel for the appellants submits as under:

- That there is no eye-witness to the incident and the accused/appellants have been convicted solely on the basis of circumstantial evidence but the nature of such evidence is so weak which cannot be made basis for their conviction.
- That motive has not been proved by the prosecution.
- That there is unexplained inordinate delay of about 50 days in recording the statements of Purnima Das (PW/1) and Girja Bai (PW/5), who are so-called witness of last seen.
- That diary statement of so called eye-witness Anju Yadav (PW/10) was recorded about two months after the incident and she too has not given any plausible explanation for the same.
- That when two deceased persons went missing on 07.09.2009, in normal course, a report to this effect ought to have been lodged by the relatives of deceased persons, but in this case nothing like that has been done and to cover up this point, a false story has been cooked up by the prosecution that relatives of two deceased persons were running from pillar to post for lodging the FIR but the same was not registered.
- That the skeletons of deceased have been identified by

the witnesses on the basis of their clothes whereas the nature of said clothes are very common and prosecution was under obligation to conduct DNA test.

- That as on the basis of same set of evidence other accused persons have been acquitted, the appellants who are in jail for about 8 years, also deserve the same relief.
- That though on the memorandum of accused/appellants certain seizure have been made but there is no FSL or serological report on record and therefore the seizure of lathi, club and spade are of no consequence.

07. On the other hand, supporting the impugned judgment learned counsel for the State argued that conviction of the accused/appellants 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. Purnima Das (PW/1) has been examined by the prosecution as a witness to last seen. He has stated that the probable date of incident was 7th or 8th of August, 2009 and at the relevant time, he was working as driver with Harsh Kumar Gupta and had dropped two deceased persons at village Korai. He has further stated that some hot talk took place between accused/appellant Dhan Singh (A-2) and two deceased over key of motorcycle and that Dhan Singh (A-2) was slapped by

two deceased persons, thereafter, he (this witness) returned and he is not aware as to what had happened thereafter. This witness has also stated that about a week thereafter Girja Bai (PW/5) -wife of deceased Narendra Singh came to him and inquired about her husband but he informed her that he is not aware about whereabouts him. This witness is also a witness to identification of dead bodies Ex.P/1 and Ex.P/2 and has stated that these bodies were identified by him on the basis of clothes worn by them. He, however, has not supported various seizure and statements made by the accused persons.

10. Nandu Ram (PW/2), Sahettar Singh Binjwar (PW/3), Dalsai (PW/4) and Anju Yadav (PW/10) have turned hostile. Girja Bai (PW/5) is the wife of deceased who has stated that on 07.07.2009 her husband Narendra Singh accompanied the deceased Gopal Singh Binjwar to village Korai and thereafter he did not return. She has also stated that she had given description of clothes worn by her husband Narendra while leaving the village. This witness has further stated that she had made an attempt to lodge the report at P.S. Banki but from there she was sent to P.S. Dipka then to P.S. Banki and as such the report could not be registered. She has identified the body of her husband Narendra Singh vide Ex.P/1 on the basis of clothes.

11. Sanjay Kumar (PW/7) - village Kotwar is the witness to dead bodies identification panchanama. Ravindra Kumar

Jaiswal (PW/8) is the Patwari who prepared spot map Ex.P/36. Smt. B. Ekka (PW/11) conducted identification of mobile of deceased persons. Rajnarayan Singh (PW/12) -constable helped in the investigation. Dr. R.S. Kanwar (PW/13) conducted the postmortem on the skeletons of two deceased namely Narendra Singh Thakur and Gopal Binjhwari vide Ex.P/55 and P/56 respectively and found bones scattered, hairs of head with skin peeled-off and opined the cause of death to be unknown. Manjulata Rathore (PW/16) is the Investigating Officer who has duly supported the prosecution case. Vijay Painkra (PW/17) - Inspector assisted in the investigation.

12. We have seen the entire evidence collected by the prosecution during the course of investigation with great deal of industry. However, we could not lay hand even on a single piece of evidence connecting the accused/appellants with the commission of crime in question. Though PW/1 claims to have seen the accused/appellants and the deceased quarreling at village Korai where he had taken them in a vehicle as a driver having certain altercation prior to a considerable period of about 50 days yet his conduct in keeping mum during this long period does not appear to be of any help to the case of prosecution. The testimony of PW/5 - the so-called witness to the last seen of the deceased persons and the accused/appellants together cannot be attached much

significance for the reason that there was a considerable time gap in between after her husband went missing. Had she been cautious a little, probably the situation would have been different and the police might have swung in to action in the nick of time. Ironically, in this case the police started investigation only after receiving the information through an unknown person regarding coming across the scattered pieces of two skeletons terrestrially embedded in the jungle. The said informant, if available, to the police could also have handed certain clues but unfortunately this did not happen. Even the prosecution did not make any constructive effort to send the mortal remains for chemical examination which is another setback to the case of the prosecution. Though wife of deceased Narendra Singh Thakur PW/5 claims to have identified the body on the basis of clothes worn by him, in the absence of any forensic test such identification cannot be a piece of evidence worth reliance. Even otherwise the clothes described by that witness are the articles which could be commonly available everywhere. What is more surprisingly is that after the body went missing no effort appears to have been made by anyone to take a legal recourse to find out his whereabouts till a considerable period of 50 days and only after the recovery of the skeletons the criminal law was set in motion. Though wife of deceased Narendra Singh makes a statement that she and her relatives had been to the police station time and again to give information about her husband

going missing, there is not even a single piece of paper which could have endorsed her tell tale. Even the seizure of certain articles made by the police are not significant to the case of the prosecution because the same were not subjected to the chemical examination, either the forensic test or serological test. Since the skeletons were unearthed after a period of about 50 days, they could not yield any definite cause of death and perhaps for that the doctor conducting autopsy has expressed his inability to tell the exact cause of death.

13. Thus, according to the considered opinion of this Court, the present appears to be a case of no evidence. Even the circumstances relied upon by the prosecution do not form a complete chain. Being so, the findings recorded by the Court below holding the accused/appellants guilty under Section 302 IPC do not deserve affirmation. Likewise, in the absence of any cogent evidence regarding disappearance of the body of the deceased by the accused/appellants, their conviction under Section 201 IPC has also to go. They are accordingly set aside entailing the acquittal of the accused of both the charges.

14. Appeal is allowed. Judgment impugned is hereby set aside and the accused/appellants are acquitted of the charges levelled against them. The accused/appellants are reported to be in jail, they be set at liberty forthwith if not required in any other case

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE