

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 313 of 2010**

1. Anil Kumar Jangde son of Shri Ghuruwaram Jangde, aged about 25 years, Resident of Village Kachlone, Police Station Simga, District Raipur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Chouki - Khamtarai, Raipur, CG.

---- Respondent

For Appellant	:	Shri Ashok Dubey and Shri Vikas Pandey, Advocates
For Respondent/State	:	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice A.S. Chandel****Judgment on Board by Pritinker Diwaker, J****30/11/2017**

This appeal arises out of the judgment and order dated 26.02.2010 passed by Sessions Judge, Raipur in Sessions Trial No. 223/2009 convicting the accused/appellant under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 500/- u/s 302 and RI for two years with fine of Rs. 200/- under Section 201 IPC, plus default stipulations.

2. Case of the prosecution in brief is that deceased Santosh Dhobi and the accused/appellant were working in a security company and staying in the house of one Ambika Goswami. It is said that whenever mother of the deceased namely Kamla Bai (PW-1) tried to contact her son on his cell phone, it is the accused/appellant who used to pick it up and tell her that the

deceased was at his workplace and he would let him talk with her after a while. It is alleged that when on the occasion of Holi the accused/appellant had been to the village, PW-1 asked him about the deceased but this time also he informed her that he was engaged in the work. Thereafter, on 3.3.2009 some dead-body with completely burnt face was spotted lying in the plot of one Vinod Agrawal near the village pond. At the instance of one Yogendra Solanki *merg* Ex. P-7 was registered on 3.3.2009 against an unknown person followed by Dehati Nalisi Ex. P-6. On that day itself FIR Ex. P-17 was also registered against unknown person for the offence punishable under Sections 302 and 201 IPC. After drawing inquest Ex. P-9, dead-body was sent for postmortem examination which was conducted by Dr. Shiv Narayan Manjhi (PW-6) who gave his report Ex. P-12. It is said that on receiving equivocating answers from the accused mother of the deceased sensed some foul play and lodged a written report Ex. P-1 on 19.5.2009 at Police Station Simga. On 5.9.2009 also a report was made by her which was entered in the *Rojnamcha* Ex. P-18-A. On 15.9.2009 memorandum of the accused/appellant Ex. P-2 was recorded wherein he has stated that he committed the murder of the deceased by causing injuries to him with belt and then burnt his face. Memorandum further states that after committing murder of the deceased, accused/appellant threw the cell phone behind the house of his in-laws. Based on this memorandum, seizure of battery and broken parts of cell phone was made under Ex. P-3 whereas that of belt was made under Ex. P-4. On completion of investigation, charge-sheet was filed against the accused under Sections 302 and 201 IPC followed by framing of charge by the court below accordingly.

3. In order to prove its case the prosecution has examined 10 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above by the judgment impugned.

5. Counsel for the accused/appellant submit as under:

(i) That there is no eyewitness to the incident and the conviction of the accused/appellant is based only on the circumstantial evidence though none of the circumstances is as such on the basis of which he could be held guilty for committing the murder of the deceased.

(ii) That merely on the basis of suspicion raised by PW-1, accused/appellant cannot be convicted.

(ii) That seizure of articles made under Ex. P-3 and P-4 cannot connect the accused with the commission of crime alleged against him because such articles are readily available in the market. Even otherwise, seizure being made from an open place accessible to one and all, is not of much significance to the decision of this case.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence available on record.

8. Kamla Bai (PW-1) – the mother of the deceased has stated that the accused/appellant herein had taken her son to Raipur for earning livelihood. According to her, whenever she rang her son up on his cell phone, all the time it was picked up by the accused but except giving evasive answers in respect of deceased, he never tried to let her talk with him. When the accused/appellant came to his house on Holi festival, she went to meet him and inquire about her son. However, at that time he was not at home and his father told her that her son (deceased) was murdered and thrown away. It is relevant to note here that this part of her statement is an improvement by this witness. She has stated that the police showed her the face of the dead-body but as the face was burnt she could identify him by clothes. It is relevant to note here that in her evidence she has not stated that she lodged any written report on 19.5.2009 and then on 5.9.2009 which was entered in the *Rojnamcha* Ex.P-18-A. In cross examination she however has admitted that she did not identify the deceased by face but she identified him just on the basis of his clothes. She has however stated that such clothes are available in the open market. Santram (PW-2) is the witness to memorandum Ex. P-2 and seizure made under Ex. P-3 and P-4. He has stated that the written report was lodged by PW-1. Yogendra Solanki (PW-3) is the lodger of *merg* Ex. P-7 and also the witness to inquest Ex. P-9 and spot map Ex. P-5. Preetam Kurre (PW-4) has stated that when he met the accused in his village, cell phone of the deceased was with him. Accused is also stated to have informed this witness that the deceased was at his work but his cell phone was with him. Dr. Shivnarayan Manjhi (PW-6) is the witness who conducted postmortem examination on the body of the deceased and gave report Ex. P-12 which shows

number of lacerated and contused injuries thereon including fracture of the skull and burns on chin, neck, shoulders etc. Body is said to be highly decomposed, that cause of death was head injury and mode as homicidal in nature. U.K. Chandravanshi (PW-7) and Diamond Shrivastava (PW-9) are the witnesses who assisted in the investigation. R.N. Yadav (PW-10) is the investigating officer who has duly supported the case of the prosecution.

9. We have gone through the evidence on record carefully. There is no eyewitness to the incident and the entire case of the prosecution is based on the circumstantial evidence such as suspicion growing in her mind after receiving the evasive response from the accused and then seizure of battery and broken parts of the cell phone allegedly belonging to the deceased made under Ex. P-3 and that of the belt made under Ex. P-4. Undisputedly, there is no FSL report on record. Of course, in the written report Ex. P-1 mother of the deceased (PW-1) has expressed her suspicion about the killing of the deceased at the hands of the accused with the connivance of others but mere suspicion howsoever strong it is, is not enough to hold one guilty for a particular act. Dealing with this point in the matter of **Surjit Biswas v. State of Assam AIR 2013 SC 3817** it has been held by the Apex Court as under:

“Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal

proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. V/s. State of M.P., AIR 1952 SC 343; State through CBI V/s. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan V/s. State of U.P., AIR 2012 SC 1979)."

More importantly, the factum of lodging of written reports has not been disclosed by PW-1 while giving evidence in the Court. The other circumstance relied upon by the prosecution is the identification of the dead-body by PW-1 on the basis of clothes worn by the deceased. It has been categorically stated by PW-1 that as the face of the deceased was completely burnt, she identified him only after seeing his clothes. At the same time, she has also stated that such clothes are available in the market. Looking to this statement of PW-1 this Court has no hesitation in holding that she has not properly identified the dead-body shown to her to be of the deceased - her son. Yet another circumstance relied upon by the prosecution is seizure of mobile battery and its

broken cover. Since these articles were seized from an open place having access to one and all and further that such items are easily available with almost every person, they cannot be said to be belonging to the deceased only. Even the FSL report has not been obtained by the prosecution to provide further corroboration of the circumstances relied upon by it. Thus the seizure part of the case also does not stand by the prosecution in its entirety. In the cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should 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. These guidelines have been given by the Apex Court in the matter of **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210.**

10. Here in this case, the prosecution appears to have missed the mark in proving its case beyond all reasonable doubt by proving that in all human probability the act alleged against the accused has in fact been committed by him and none else. In this view of the matter, the accused has to get the benefit of this slackened approach of the prosecution. Court below seems to have gone wrong in holding the accused guilty even in the absence any cogent and clinching material showing his involvement in the crime

in question. Being so the findings so recorded by the Court below cannot be allowed to stand and are hereby set aside. Appeal is accordingly allowed, judgment impugned is set aside and accused/appellant is acquitted of the charges levelled against him. As the appellant is already on bail, bail bonds furnished by him stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(A.S. Chandel)
Judge

Jyotishi