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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 385 of 2007****(Arising out of judgment/order dated 02.05.2007 in S.T. No.65/2007
of the learned Sessions Judge, Raipur)**

- Manoj Verma S/o Shri Ghasi Ram Verma, aged about 31 years, Occupation Driver, Resident of Gaushalapara, Raigarh, District Raigarh (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Police Station, Civil Line Raipur, District Raipur (C.G.)

---- Respondent**And****CRA No. 696 of 2007**

- Rohit S/o Shri Kapil Ghura, aged about 36 years, Occupation - Mistri, R/o Salhebhata, District Balangir (Orissa)

---- Appellant**Vs**

- State of Chhattisgarh Through - Police Station - Civil Line Raipur, District Raipur (C.G.)

---- Respondent

For Appellants	:	Shri Malay Kumar Bhaduri, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****04/09/2017**

As these two appeals arise out of the common judgment dated 02.05.2007 passed by Sessions Judge, Raipur (C.G.), in S.T. No.65/2007 convicting the accused/appellants under Sections 302/34 IPC & sentencing them to undergo imprisonment for life with fine of

Rs.1,000/- each, in default of payment of fine amount to further undergo R.I. for six months, they are being disposed of by this common judgment.

02. As per the prosecution case, deceased Santosh Kumar Sahu was residing in the house of Ashok Wajre (PW/1) as a tenant. Deceased Santosh could not be seen prior to 2-3 days of 22.11.2005 and then a foul smell started coming from his room. Thereafter, intimation thereof was given to police by Ashok Wajre (PW/1), on the basis of which, merg intimation (Ex.P/1) was recorded on 22.11.2005 and police reached to house of PW/1, broke open the lock and found the body of deceased inside the room. Inquest on the body of deceased was prepared on 22.11.2005 and the body was sent for postmortem examination to Dr. B.R. Ambedkar Memorial Hospital, Raipur vide Ex.P/10-A where Dr. Vikas Kumar Dhruv (PW/5) conducted postmortem on the body of deceased on 23.11.2005 vide Ex.P/10 and opined that the cause of death remains open. The police could not get any clue about the murder of the deceased and on 22.05.2006 and 06.07.2006, written complaints Ex.P/8 and Ex.P/9 were made by Savitri Sahu (PW/4), wife of the deceased, mentioning therein that her husband might have been killed because he had invested some amount in the liquor business. Upon merg inquiry, FIR (Ex.P/11) was registered against an unknown person on 11.10.2006 under Section 302 IPC. On the basis of suspicion, accused persons were arrested and memorandum of accused/appellant Manoj Verma in Cr.A.No.385/2007 was recorded on 17.10.2006 vide Ex.P/6, based on which, one DVD player of the deceased was seized vide Ex.P/7.

Memorandum of accused/appellant Rohit in Cr.A.No.696/2007 was also recorded on 17.10.2006 vide Ex.P/6, based on which, one motorcycle of the deceased was seized vide Ex.P/5. After filing of the charge sheet, the trial Court framed charge under Section 302/34 IPC against the appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 07 witnesses. Statements of the accused/appellants 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 has convicted and sentenced them as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellants submits :-

(i) That the appellants have been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for their conviction.

(ii) That only piece of evidence against the accused/appellants is their disclosure statements Ex.P/4, P/6 and seizure of motorcycle (Ex.P/5) and DVD player (Ex.P/7) of the deceased. It has been argued that even if the entire prosecution case is taken as it is, on the basis of evidence adduced by the prosecution, the accused/appellants cannot be convicted under Section 302/34 IPC.

06. On the other hand, supporting the impugned judgment it has been

argued by learned counsel for the State that the conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

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

08. Ashok Wajare (PW/1) is landlord of the deceased. He has stated that deceased could not be seen prior to 2-3 days of 22.11.2005 and then he noticed foul smell coming from his room. Thereafter, the matter was reported to police, who came to his house, broke open the lock and body of deceased was found inside the room. He is also a witness to inquest (Ex.P/3). Banty Verma (PW/2) and Vinit Kumar Sahu are the witnesses to memorandum (Ex.P/4) of appellant Rohit and seizure of motorcycle vide Ex.P/5. They are also witnesses to memorandum (Ex.P/6) of appellant Manoj and seizure of DVD player vide Ex.P/7. Savitri Sahu (PW/4) is wife of the deceased. She has stated that she was living separately prior to 4-5 years of the death of deceased. She has further stated that on 22.11.2005, Salikram came to her house and informed about the death of her husband. Her husband died in odd condition and after his death, motorcycle and DVD player were missing from his room. She has also stated that she had moved applications (Ex.P/8 and P/9) for detailed investigation and recovery of theft articles. Dr. Vikas Kumar Dhruv (PW/5) conducted the postmortem on the body of deceased vide Ex.P/10 and found following injuries:-

(i) All clothes were smudged with decomposed fluid. Face bloated, eye ball bulged out, tongue was protruded, peeling of epidermis present all over body, greenish discoloration present all over body.

- (ii) Abdomen, penis and scrotum distended with gas.
- (iii) Both lower limbs were semi flexed at knee, upper limb semi flexed at elbow, left upper limb straight and wrist was opened.
- (iv) Decomposed fluid oozed out from mouth, ear and nostril.
- (v) Postmortem blisters present on the body at various places.

The autopsy surgeon opined that the body was in moderate stage of decomposition. Cause of death remains opened. Viscera preserved, sealed and handed over to P.C. concerned for chemical analysis. Duration of death was within 2 to 4 days since postmortem examination.

09. Ravindra Kumar Upadhyay (PW/6) is the Inspector who recorded FIR (Ex.P/11). J.P. Thakur (PW/7) is the Investigating Officer who has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the appellants in commission of offence. The appellants have been convicted solely on the basis of their disclosure statements (Ex.P/4 and P/6), based on which motorcycle and DVD player were seized vide Ex.P/5 and P/7 respectively. Appellants have been arrested on the basis of suspicion and upon interrogation they made disclosure statements to the effect that under intoxication some money dispute took place between them in which they killed the deceased by strangulation and took the motorcycle and DVD player of the deceased.

11. In the case of **Govindaraju @ Govinda Vs. State and another, (2012) 4 SCC 722**, the Supreme Court held as under:-

51. Now, we will come to the recoveries which are stated to

have been made in the present case, particularly the weapon of crime. Firstly, these recoveries were made not in conformity with the provisions of Section 27 of the Indian Evidence Act, 1872. The memos do not bear the signatures of the accused upon their disclosure statements. First of all, this is a defect in the recovery of weapons and secondly, all the recovery witnesses have turned hostile, thus creating a serious doubt in the said recovery. According to PW4 and PW5, nothing was recovered from the appellant Govindaraju. According to PW6 and PW8, nothing was recovered from or at the behest of the accused, Goverdhan.

52. Ex.Mo1 was the knife recovered from Govindaraju while Mo2 and Mo3 were the knife and the blood-stained shirt recovered from the accused, Goverdhan. Ex.Mo1, the weapon of offence, did not contain any blood stain. Ex.Mo2, the knife that was recovered from the conservancy at the behest of the accused, Goverdhan was blood-stained. Ex.P15, the report of the FSL, shows that item no.7 'one chaku' was blood-stained. However, the prosecution has taken no steps to prove whether it was human blood, and if so, then was it of the same blood group as the deceased or not. Certainly, we should not be understood to have stated that a police officer by himself cannot prove a recovery, which he has effected during the course of an investigation and in accordance with law. However, it is to be noted that in such cases, the statement of the investigating officer has to be reliable and so trustworthy that even if the attesting witnesses to the seizure turns hostile, the same can still be relied upon, more so, when it is otherwise corroborated by the prosecution evidence, which is certainly not there in the present case."

12. In the present case, though PW/2 and PW/3, witnesses to memorandum of the appellants Ex.P/4 and Ex.P/6 and seizure thereof

made under Ex.P/5 and Ex.P/7, have supported the same but J.P. Thakur (PW/7) - Investigating Officer, in para 17, has categorically stated that he recovered the motorcycle of the deceased from one Mishra which was mortgaged by appellant Rohit, but neither signature nor receipt thereof was obtained from mortgagee. Further, in para 19, PW/7 has categorically stated that the DVD player which has been seized from appellant Manoj can easily be made available from the market. He has further clarified that no identification of the seized articles was carried out by him and no receipts thereof what so ever was obtained from wife of the deceased to establish the fact that those articles belong to the deceased. As such, this circumstance of seizure of motorcycle and DVD player loses its significance. That apart, the Doctor PW/5 conducting autopsy on the body of deceased has not given any opinion regarding the cause of death. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused in the crime in question and for that the benefit of doubt has to go to the accused persons. So also the Court below has fallen in a serious error in appreciating the evidence of the witnesses and in holding the accused guilty for murdering the deceased.

13. In view of what has been discussed above, the findings recorded by the Court below cannot be sustained in the eye of law and are liable to be set aside. The appeal is thus allowed, judgment impugned is set aside and the accused/appellants stand acquitted of the charges levelled against them. As per record, bail granted to the appellant Manoj in Cr.A.No.385/2007 and appellant Rohit in Cr.A.No.696/2007 were cancelled vide order dated 24.08.2011 and 29.11.2011 respectively. If

the appellants are still in jail, they be set at liberty forthwith if not required in any other case.

14. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Vijay