

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 976 of 2014

- Sanjay Rathore S/o Chimanlal Rathore Aged About 48 Years
Occupation - Service Resident Of Naharpara, Near Old
Deshbandhu Press, P.S. Ganj & P.O. Raipur Distt. Raipur CG.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Chawni, Durg C.G.

---- Respondent

For Appellant	:	Shri Vivek Chopda, Advocate.
For Respondent/State	:	Smt. Smitha Ghai, P.L.

And

CRA No. 1308 Of 2014

- Murli Prasad Mishra S/o Bala Prasad Mishra Aged About 40
Years occupation labourer R/o. Ghasidas Nagar, Bhilai, P.S.
Jamul, Civil & Rev. Distt. Durg (C.G.)

---- Appellant

Vs

- State Of Chhattisgarh Through: SHO P.S. Chhawani, Distt. Durg
(C.G.)

---- Respondent

For Appellant	:	Shri Atanu Ghosh, Advocate.
For Respondent/State	:	Smt. Smitha Ghai, P.L.

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

Judgment On Board By Justice Pritinker Diwaker

24/08/2017

As these two appeals arise out of the common judgment of conviction and order of sentence dated 24.9.2014 passed by the Additional Sessions Judge, Durg in ST No.78/2009, they are being disposed of by this common judgment. By the said judgment, the appellant Sanjay Rathore has convicted under Section 414 of IPC and sentenced to undergo rigorous imprisonment for three years plus fine of Rs.10,000/- with default stipulation whereas appellant Murli Prasad Mishra has been convicted under Section 302 of IPC and sentenced to life imprisonment plus fine of Rs.1000/- with default stipulation.

02. Brief facts of the case are that on 4.2.2009 one unknown dead body was found at Village-Dhaur, Police Station-Jamul, Distt. Durg in a pit of muroom quarry. Dehati Merg Intimation (Ex.P/4) was recorded on 4.2.2009. Thereafter, numbered merg intimation was recorded on 4.2.2009 vide Ex.P/55. Inquest over the dead body was conducted vide Ex.P/7 on 4.2.2009. The body was duly identified by PW-2 Badrinath, father of the deceased, to be of his son Mordhwaj vide Ex.P/2. Thereafter the body was sent for postmortem which was conducted on 5.2.2009 by PW-12 Dr. Akhilesh Yadav vide Ex.P/16 who noticed a cut wound on the front of neck of size 12 x 4 x 4 ½ cm, abrasion on the left shoulder and the neck. On internal examination he found that windpipe and foodpipe were cut. In his opinion the cause of death was shock and hemorrhage due to anti-mortem injuries to vital organ neck and that the death was homicidal in nature. On 5.2.2009 FIR (Ex.P/9) was lodged by one Manjit Singh (PW-5), truck owner of truck bearing registration No.CG-07-C-0305 mentioning therein that he is the proprietor of Badwal Transport Company. On 3.2.2009 driver of his truck Dulesh Kumar Sahu had loaded about 32.500 tons of sponge iron

in the said truck to be transported to Jalna (Maharashtra) and helper of the truck was Mordhwaj (deceased). On 4.2.2009 he was informed by driver of the truck that the driver had parked the truck near the pond and when he returned he found the truck missing along with the helper Mordhwaj. On the basis of above report, offence under Section 379 of IPC has been registered against unknown person. On 6.2.2009 the said truck was found at Ring Road of Raipur and seized vide seizure memo Ex.P/11 which has been proved by PW-7. In the meanwhile, on the basis of merg, enquiry was conducted and FIR (Ex.P/56) was registered on 7.2.2009 under Sections 302 and 201 of IPC against unknown person. During investigation, memorandum of appellant Murli Prasad Mishra was recorded vide Ex.P/48 on 17.2.2009 and in pursuance thereof a bloodstained chopper was seized vide Ex.P/49 and his clothes were seized vide Ex.P/50. On the memorandum of appellant Sanjay Rathore (Ex.P/32) seizure of cash of Rs.8600/- (Ex.P/33) and Rs.15,000/- (Ex.P/37) was made. Likewise, on the memorandum of the other co-accused persons certain seizure have been effected. As per FSL report (Ex.P/69) blood was found in Article D i.e. chopper, however, there is no report including that of serological report to prove that it was human blood and that too of the group of the deceased. After filing of charge sheet against the appellants and other accused persons namely Shantilal, Omprakash Sahu, KK Saimuddin, Asfar, Swaroop Sen Gupta, Mohd. Salim, the trial Court framed charges against the accused persons. Appellant Murli Prasad Mishra and accused Omprakash Sahu were charged under Sections 120B, 394/397, 394/398, 302, 201, 414, accused Shantilal Jangde was charged under Sections 120B, 394/397, 302, 201, 414 of IPC whereas

accused Afsar, KK Saimuddin, Mohd. Salim, appellant Sanjay Rathore and Swaroop Sen Gupta were charged under Sections 120B and 414 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 26 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 co-accused persons of all the charges, convicted and sentenced the appellants as mentioned above.

05. Counsel for appellant Sanjay Rathore (in Cr.A.No.976/2014) submit as under:

(i) that the basic ingredients of Section 414 of IPC have not been proved by the prosecution. There is no evidence that the appellant voluntarily assisted in concealing or disposing or making away with the stolen property. There is also no evidence that the appellant knew or has the reason to believe that the property in question was stolen one. Unless all these ingredients are proved, the appellant could not have been convicted under Section 414 of IPC.

(ii) that according to prosecution case, the appellant received stolen property from Swaroop Sen Gupta and sold the same to Manish Dhuppad (PW-17) but no such link has been connected by the prosecution and most importantly, said Swaroop Sen Gupta has

already been acquitted by the trial Court and thus, the role attributed to the appellant becomes doubtful and it can easily be said that the chain of circumstantial evidence has not been proved by the prosecution as required under the law.

(iii) that most of the important witnesses who have been examined to prove the case against the appellant Sanjay Rathore have either turned hostile or not fully supported the prosecution case.

(iv) as regards seizure of total cash amount of Rs.21,600/- vide Ex.P/33 and P/37, the said amount has been seized from the house of the appellant who is a businessman and therefore, seizure of this small amount of Rs.21,600/- from the possession of the appellant cannot be taken as an incriminating circumstance against him.

06. Counsel for appellant Murli Prasad Mishra (in Cr.A.No.1308/2014) submit that appellant Murli Prasad has been convicted mainly on the basis of seizure of chopper. Though seizure witnesses have supported the prosecution case but merely on that basis he could not have been convicted. He submits that though FSL report is positive in respect of the said chopper but in absence of serological report confirming the origin and group of the blood, the said circumstance cannot be used against the appellant and it cannot be said with certainty that the chopper so seized was used in commission of the offence by this appellant.

07. On the other hand, State counsel supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

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

09. PW-5 Manjit Singh, owner of the truck, has stated that Dilesh Kumar was driver of the said truck whereas deceased Mordhwaj was the helper. In January, 2009 sponge iron was loaded in his truck which was to be transported to Jalna, however, after leaving the helper in the truck, the driver had gone to sleep in his house and on the second day, he came and informed him (PW-5) that the vehicle and helper Mordhwaj are missing and then he lodged report of theft Ex.P/9.

10. PW-1 Vidyaprasad has turned hostile. PW-2 Badrinath, father of the deceased, identified the dead body to be that of his son Mordhwaj. PW-3 Dharamdas recorded Dehati Merg Intimation Ex.P/4. He is also a witness to spot map Ex.P/5 and inquest Ex.P/7. PW-4 YSS Narayan, Patwari, prepared the spot map Ex.P/8 from where dead body was recovered. PW-6 Mahesh Bhardwaj witness to inquest and seizure Ex.P/10 has turned hostile. PW-7 Harjinder Singh is a witness to recovery panchanama of the truck Ex.P/11 and seizure of documents related therewith Ex.P/12. PW-10 Kriparam Sahu has turned hostile. PW-11 Bhavani Patel has stated that the vehicle in question had entered CG Ferro Trade, Urla Plant, Raipur on 4.2.2009. PW-12 Dr. Akhilesh Yadav conducted postmortem on the body of the deceased on 5.2.2009 vide Ex.P/16 and noticed a cut wound on the front of neck of size 12 x 4 x 4 ½ cm and abrasion on the left shoulder and the neck. On internal examination he found that windpipe and foodpipe were cut. In his opinion the cause of death was shock and hemorrhage due to anti-mortem injuries to vital organ neck and that the death was

homicidal in nature.

11. PW-13 Mohd. Taufique and PW-14 Sanjay Kumar Bharti are witnesses to the memorandum of the acquitted accused and seizure effect in pursuance thereof. PW-15 Rajendra Kumar Sahu, Constable, assisted in the investigation. PW-16 Vasudev, a blacksmith, who is alleged to have made chopper in question and sold the same to appellant Murli Prasad. He has not fully supported the prosecution case. PW-17 Manish Dhuppad is the person to whom the alleged stolen property was sold. PW-18 Balvinder Singh is a witness from whom appellant Murli had taken some amount on credit and after the incident had returned the said amount. PW-19 Anil Soni has been examined in relation to acquitted accused Swaroop Sen Gupta. PW-20 Narendra @ Bittu has turned hostile. PW-21 Gurudeep Singh is a witness to memorandum and seizure of chopper (Ex.P/48 & P/49) in respect of appellant Murli Prasad, has duly supported the prosecution case. PW-22 Arun Kumar Rajak has turned hostile. PW-23 VD Nand did main part of the investigation. PW-24 DC Tiwari also did part of investigation. PW-25 Amrik Singh has turned hostile. PW-26 Ashish Ganguli is the Manager of CG Ferro Trade of which Manish Dhuppad was the owner. He has stated that Manish Dhuppad had asked him to unload the iron brought by Sanjay Rathore and after unloading the same at the rate agreed by Manish Dhuppad, he gave Rs.4.21 lakhs to Sanjay Rathore. In cross-examination he admits that he had no talk whatsoever with appellant Sanjay Rathore nor any receipt was given by Sanjay Rathore.

12. Close scrutiny of the evidence makes it clear that there is no

legally admissible evidence showing the involvement of the appellants in commission of the offence. Though on the memorandum of appellant Murli Prasad (Ex.P/48), seizure of chopper was made (Ex.P/49), witnesses to these proceedings have supported the prosecution case and the FSL report (Ex.P/69) also shows presence of blood on it, but this evidence is not conclusive in nature. There is no serological report proving the origin of the blood found on the chopper and further proving that it was of the blood group of the deceased.

13. 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.”

Thus, in a case based on circumstantial evidence, mere recovery of bloodstained articles at the instance of the accused is not sufficient enough to hold him guilty. It has to be proved to the hilt by producing relevant reports as observed above, otherwise such circumstance

would lose its efficacy. Had there been other legally admissible evidence against the appellant, this circumstance, though not proved to the hilt, could have been taken as an additional link in the chain of circumstantial evidence but in the present case, apart from the above circumstance of recovery of bloodstained articles at the instance of appellant Murli Prasad, there is no other evidence whatsoever against him to prove his complicity in the crime in question. The prosecution has failed to prove its case against this appellant beyond the shadow of all reasonable doubt.

14. 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."

15. Keeping in view the aforesaid principles of law relating to circumstantial evidence if we examine the facts and evidence of the present case, we are of the opinion that the prosecution has not been able to prove guilt of appellant Murli Prasad Mishra on the basis of evidence adduced against him and being so, he is entitled to be acquitted of the charge u/s 302 of IPC by giving him benefit of doubt.

16. As regards appellant Sanjay Rathore, he has been convicted under Section 414 of IPC. In order to bring home this charge against the accused, the prosecution is required to prove that the accused voluntarily assisted in concealment or disposal of or making away with the property, which he knew or had the reason to believe to be stolen one. From perusal of the evidence of the prosecution witnesses it does not transpire that the appellant Sanjay Rathore voluntarily assisted in concealment or disposal of the stolen property or that he knew or had the reason to believe the property to be stolen property. All the important witnesses of the prosecution examined to prove involvement of the appellant Sanjay Rathore have either turned hostile or not fully supported the prosecution case. So far as seizure of total cash amount of Rs.21,600/- vide Ex.P/33 and P/37 is concerned, admittedly the appellant was a businessman and the said amount has been seized from his house, therefore, considering the occupation of the appellant, recovery of aforesaid amount cannot be termed as an incriminating circumstance against the appellant. In these circumstances, appellant

Sanjay Rathore is also entitled to be acquitted of the charge under Section 414 of IPC by giving him benefit of doubt as the prosecution has failed to prove the basic ingredients of that charge against him.

17. For the reasons stated above, we are of the opinion the prosecution has utterly failed to prove guilt of appellant Sanjay Rathore under Section 414 of IPC and that of appellant Murli Prasad under Section 302 of IPC as required to be proved in a case based on circumstantial evidence. Being so, both the appellants deserved to be acquitted of these charges by extending them benefit of doubt.

18. In the result, both the appeals are allowed and the appellants are acquitted of their respective charges under Sections 414 and 302 of IPC by giving them benefit of doubt. Appellant Sanjay Rathore is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender. However, appellant Murli Prasad is reported to be in jail, therefore, he be set free forthwith if not required in connection with any other offence.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.P. Sharma)
Judge