

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 979 of 2011

- Bishnuram S/o Chamruram Yadav, aged about 25 years, resident of Village Mainkheda, Thana Charama, District Kanker Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh through Police Station Charama, District Kanker Chhattisgarh

---- Respondent

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For Respondent/State	:	Shri Vinod Kumar Tekam, P.L.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Chandra Bhushan Bajpai, JJ

Per P. Diwaker, J

23/09/2017

This appeal arises out of the judgment of conviction and order of sentence dated 02-09-2011 passed by the Sessions Judge, District North Bastar Kanker in ST No.20/2011 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.5000/- with default stipulation.

02. In the present case there are three deceased namely Chamru Yadav, father of the accused/appellant, Rajbati, maternal grand mother of the accused/appellant and Chandrika, step mother of the accused/appellant. It is stated that on 13-01-2011 the accused/appellant returned to his house after grazing the cattle and at about 9.00 p.m. when he was about to take his meals he was abused by deceased

Chamru Yadav, as a result of which he got annoyed with him and caused club injuries to Chamru, Rajbati and Chandrika. Chamru and Rajbati immediately succumbed to their injuries, whereas, Chandrika expired when she was on way to hospital. The FIR (Ex.-P/2) was lodged by Amritlal (PW-1) on 14-01-2011 at about 09.00 a.m. against the appellant under Section 302, 307 of the IPC. Merg intimation Ex.P/1 regarding deceased Chamru, Ex.-P/3 regarding Rajbati and Ex.-P/22 regarding Chandrika were registered. Inquest over the dead bodies of Chamru, Rajbati and Chandrika were conducted vide Ex.P/8, Ex.-P/10 and Ex.-P/6. The dead bodies of deceased were sent for postmortem. Postmortem over the dead body of deceased Chamru was conducted on 14-01-2011 by PW-7 Dr. Sanjay Naval vide Ex.P/13 who noticed (1) lacerated wound over left side of just above to TM joint, approximate size 3" x 1" x deep to brain matter, (2) lacerated wound over left side of temporal region with communicate fracture of temporal bone, approximate size 14" x 3" x deep to brain matter. All injuries are antemortem in nature. PW-7 Dr. Sanjay Naval opined the cause of death to be head injury and its complication and that the death was homicidal in nature. On 14-01-2011 PW-7 Dr. Sanjay Naval also conducted postmortem over the dead body of Chandrika vide Ex.-P/15 and noticed (1) lacerated wound present between both parietal bone, size 5" x 1" x 0.5" (deep to bone), (2) lacerated wound present over right cheek, size about 2" x 0.5" x 0.5" and opined the cause of death to be head injury and its complication and that the death was homicidal in nature. Postmortem over the dead body of Rajbati was conducted vide Ex.-P/17 by PW-8 Dr. P.S. Pradhan on 14-01-2011 and

noticed (1) lacerated wound present between parietal bone region, size approximately 5" x 1" x deep to bone, which is antemortem in nature and opined the cause of death to be head injury and its complication and that the death was homicidal in nature. On the memorandum of the appellant Ex.P/11, seizure of club was effected vide Ex.P/12. Vide Ex.-P/29, FSL report, blood over the seized club was found, however there is no serological report. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 13 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits that there is no any eyewitness and the appellant is convicted solely on the basis of circumstantial evidence. It has been submitted that nature of the circumstantial evidence collected by the prosecution is very weak and therefore the appellant deserves to be acquitted. Though as per the FSL report, blood has been found in the seized club, but there is no serological report to prove the origin of the blood or blood group. Therefore, in absence of serological report, the said seizure loses its significance

and merely on that basis conviction cannot be based. It has been submitted that the appellant is in jail for the last more than 6 years and therefore, he may be acquitted forthwith.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

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

08. PW-1 Amritlal is lodger of FIR and merg intimation. He has stated that on 14-01-2011 he was informed by Devnath that the house of Chamru (deceased) is not yet open and nobody is awake. He states that thereafter he along with other villagers went to the house of Chamru and found Chamru, Rajbati and Chandrika lying in a pool of blood. He further states that thereafter he lodged the FIR and merg intimation. PW-2 Parmanand Andhare reached the place of occurrence after the incident and took Chandrika to hospital. PW-3 Kousal Kumar is witness of inquest Ex.-P/8, P/10 and memorandum Ex.-P/11 and seizure Ex.-P/12. PW-4 Rukmani Bai is formal witness. PW-5 Ramsai has stated that before police the appellant confessed that he killed the deceased. PW-6 Pannalal is village Kotwar who for the first time in the Court has deposed that the appellant informed him about killing of the deceased. PW-7 Dr. Sanjay Naval on 14-01-2011 conducted postmortem over the dead body of Chamru vide Ex.P/13 and noticed

(1) lacerated wound over left side of just above to TM joint, approximate size 3" x 1" x deep to brain matter, (2) lacerated wound over left side of temporal region with communicate fracture of temporal bone, approximate size 14" x 3" x deep to brain matter. All injuries are antemortem in nature. PW-7 Dr. Sanjay Naval opined the cause of death to be head injury and its complication and that the death was homicidal in nature. On the same day he also conducted postmortem over the dead body of Chandrika vide Ex.-P/15 and noticed (1) lacerated wound present between both parietal bone, size 5" x 1" x 0.5" (deep to bone), (2) lacerated wound present over right cheek, size about 2" x 0.5" x 0.5" and opined the cause of death to be head injury and its complication and that the death was homicidal in nature. PW-8 Dr. P.S. Pradhan on 14-01-2011 conducted the postmortem over the dead body of Rajbati vide Ex.-P/17 and noticed (1) lacerated wound present between parietal bone region, size approximately 5" x 1" x deep to bone, which is antemortem in nature and opined the cause of death to be head injury and its complication and that the death was homicidal in nature. PW-9 Bisahuram Gora, Sarpanch turned hostile. He further states that before police the accused/appellant confessed the commission of offence. PW-10 Rajkumar Gour, ASI assisted in the investigation. PW-11 D.P.Thakur Inspector is Investigating Officer. PW-12 Devnath Singh Dhruv, Patwari prepared the spot map. PW-13 Sanjay Singh, Constable assisted in the investigation.

09. On the memorandum statement of the accused/appellant Ex.-P/11, seizure of club Ex.P/12 was made and FSL report in respect thereof is positive. However, there is no report from serologist that the

blood found on it was of human being and that too of the group of the deceased.

10. Admittedly, there is no eye-witness account to the incident showing complicity of the appellant in commission of the offence. His conviction is based upon the circumstantial evidence main being the so called extra judicial confession before PW-3 Kousal Kumar, PW-5 Ramsai, PW-6 Pannalal as also recovery of blood stained club on his memorandum.

11. True it is, that three family members of the appellant have been killed and the suspicion is on the appellant, but it is settled proposition of law that suspicion howsoever grave it may be, cannot take place of a proof.

12. 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.”

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.”

14. As regards extra judicial confession, from perusal of the

statement of PW-3 Kousal Kumar and PW-4 Rukmani Bai, it is crystal clear that no such confessional statement was made by the appellant before these witnesses and they came to know about such statement through other villagers. Being so, they are hearsay witnesses and as such their evidence is not admissible in law. So far as PW-6 Pannalal is concerned, though in his examination-in-chief he has stated that the appellant told him about commission of murder of the deceased persons, but in cross-examination he admitted that no such fact was disclosed by him while recording his diary statement and he is stating so for the first time in the Court. In these circumstances, the evidence of aforesaid witnesses examined by the prosecution on the point of so called extra judicial confession by the appellant does not inspire confidence.

15. Other circumstance heavily relied upon by the trial Court to hold the appellant guilty is recovery of club at his instance which was subsequently found to be stained with blood, as per the FSL report. True it is that the club was seized pursuant to the disclosure statement of the appellant and on chemical examination it was found to be stained with blood. However, mere presence of blood on the article seized on the disclosure statement of the accused is not sufficient enough to hold him guilty particularly for a heinous offence like murder. In such a case the prosecution is required to prove this circumstance to the hilt by securing the report from serologist to prove that the blood so found was of human being and further of the blood group of the deceased, however, in the present case there is no serologist report.

16. So far as non-explanation of the incriminating circumstances by

the appellant in his statement under Section 313 of the Cr.P.C. is concerned, law in this regard is well settled that it is duty of the prosecution to first prove its case beyond all reasonable doubt and then seek explanation from the appellant in respect of those proved circumstances or facts. In this case, the prosecution has miserably failed to establish a complete chain of circumstances, be it the extra judicial confession or the recovery of the incriminating article. In such a situation, there creates reasonable doubt on the prosecution case, benefit of which must go to the accused/appellant.

17. Thus 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 guilt of the appellant. This being the position, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

18. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 302 of IPC by giving him benefit of doubt. He is reported to be in jail, therefore, he be released forthwith if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge