

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 374 of 2010**

(Arising out of judgment/order dated 29.03.2010 in S.T. No. 82/2009 of the learned IX Additional Sessions Judge (F.T.C.), Durg)

- Smt. Shanti Bai W/o Ravindra Kumar Ganda, aged about 36 years, R/o Kailash Nagar, Dhamdha Naka, Police Station - Mohan Nagar, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station - Mohan Nagar, Durg, District Durg (C G)

---- Respondent

For Appellant : Smt Fouzia Mirza, Advocate.
For Respondent/State: Smt Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board**By Pritinker Diwaker, J****24/10/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 29.03.2010 passed by XI Additional Sessions Judge (F.T.C.), Durg, in S.T. No.82/2009 convicting the accused/appellant under Section 302/34 IPC and sentencing her to undergo imprisonment for life with fine of Rs.3,000/-, in default of payment of fine amount to further undergo R.I. for six months.

02. As per the prosecution case, on 29.01.2009 at about 10.15 am, deceased Ravindra Kumar, husband of the

appellant, came in drunken condition to his house, thereafter, some altercation took place between the appellant and deceased and it is said that when the deceased was assaulting the appellant, she saved herself by holding the hands of the deceased and in the meanwhile, juvenile accused Lokesh Kumar, son of the appellant and deceased, gave two club blows on the head of the deceased. Injured Ravindra Kumar was immediately taken to hospital where he was declared dead. At the instance of Ramesh Meshram (PW/7), unnumbered merg (Ex.P/10) was recorded followed by numbered merg vide Ex.P/11. Inquest on the body of deceased was conducted on 29.01.2009 vide Ex.P/2 and body was sent for postmortem examination to Govt. Hospital, Durg where Dr. Akhilesh Yadav (PW/11) conducted postmortem on the body of deceased and gave his report Ex.P/23 noticing following injuries:-

- (i) Contusion in the size of 3 x 2 cm over left temporal region.
- (ii) Contusion in the size of 5 x 4 cm over left elbow.
- (iii) Swelling over right eye, injury over left eye with conjunctival chemosis with sub conjunctival hemorrhage. Hematoma over left lateral canthel area of 1 cm x .5 x .5 cm.
- (iv) On internal examination, fracture over left temporo parietal area having oval shape in the size of 5 x 3 cm.

The Doctor has opined that the cause of death was shock due to antemortem head injury.

03. On 05.03.2009, memorandum of the appellant was

recorded under Ex.P/4, however, no seizure has been made on the basis of said memorandum. On the memorandum of juvenile accused Lokesh Kumar (Ex.P/5), one club was seized under Ex.P/6 and as per FSL report (Ex.P/20), blood was found on the said club. After filing of the charge sheet, the trial Court framed charge under Section 302/34 IPC against the accused/appellant. However, juvenile accused Lokesh Kumar has been tried separately by the Juvenile Justice Board.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her 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 has convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits:

- That there is no legally admissible evidence showing the involvement of the appellant in commission of offence.
- That the prosecution case itself is that when the deceased tried to assault the appellant, she caught hold of his hand and in the meanwhile, juvenile accused Lokesh Kumar gave two club blows on the head of the deceased.

- It has been argued that no overt-act has been attributed to the appellant and if she caught hold of the hands of the deceased to protect herself, she can not be faulted with.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant 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. Pravin Kumar Chakradhari (PW/1), brother of the deceased, is witness to inquest (Ex.P/2) has turned hostile. Ganpat Kumar (PW/2), nephew of the deceased, has not stated anything specific against the appellant. Uttam Kumar Gaada (PW/3), brother of the deceased, has not stated anything specific against the appellant. Palan Kumar (PW/4) and Satish Kumar (PW/6), brothers of the deceased, have turned hostile. Prakash Sona (PW/5) turned hostile. Ramesh Meshram (PW/7) is Ward Boy at whose instance merger intimation Ex.P/10 was recorded. R.C. Sahu (PW/8) - Head Constable, assisted in the investigation. Shiv Kumar Sahu (PW/9) is a Patwari who prepared spot map vide Ex.P/3. Vinod Kumar Singh (PW/10)-Investigating Officer has duly supported the prosecution case. Dr. Akhilesh Yadav (PW/11) conducted postmortem examination on the body of deceased and gave his report Ex.P/23 opining the cause of death of deceased to

be shock due to antemortem head injury. The autopsy surgeon has further stated that the injuries sustained by the deceased could not have been caused due to fall from cot.

10. Admittedly, there is no direct evidence against the appellant to show her complicity in the crime in question and her conviction rests upon circumstantial evidence, main being the evidence of autopsy surgeon PW/11, postmortem report (Ex.P/23), query report (Ex.P/13-A) and memorandum of the juvenile accused made under Ex.P/5, based on which, one club was seized vide Ex.P/6.

11. 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 in paras 11, 12 & 13 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.

12. There is no legally admissible evidence showing the

involvement of the accused/appellant in the commission of offence. The trial Court, based on the autopsy report (Ex.P/23), query report (Ex.P/13-A) and memorandum (Ex.P/5) of the juvenile accused, inferred that it is the accused/appellant who has committed murder of the deceased.

13. In the present case, on the memorandum of juvenile accused (Ex.P/5), one club was seized vide Ex.P/6, which according to FSL report (Ex.P/20) was found to be stained with blood, but the fact remains that on the memorandum of accused/appellant (Ex.P/4), no seizure has been effected. Thus, the memorandum of the juvenile accused cannot be used against the present appellant.

14. That apart, in the postmortem report (Ex.P/23), two contusions of different size over left temporal region, left elbow and fracture over left temporo parietal area having oval shape were noticed and according to query report (Ex.P/13-A), injuries on posterior side of skull could be possible due to fall and injuries on anterior side could not come due to fall. In response to a query raised by the police whether injuries sustained by the deceased could have been caused due to assault, the Autopsy Surgeon has answered the same in affirmative. The evidence of Autopsy Surgeon and his subsequent reports (postmortem and query report) make it crystal clear that at one point of time he has stated that the

injuries sustained by the deceased were assaulted one and, on the other hand, he states that injuries sustained by the deceased over posterior side could be possible due to fall and on anterior side could not be possible due to fall. Thus, the finding of the Court below based on such evidence of Autopsy Surgeon appears to be erroneous.

15. The nature and binding value of a medical witness has been highlighted by the Supreme Court in **Madan Gopal Kakkad v. Naval Dubey and Another**¹, wherein the following has been held in paras 34, 35 & 36 :

34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court.

35. Nariman, J. in Queen v. Ahmed Ally while expressing his view on medical evidence has observed as follows:

“The evidence of a medical man or other skilled witnesses, however, eminent, as to what he thinks may or may not have taken

1 (1992) 3 SCC 204

place under particular combination of circumstances, however, confidently, he may speak, is ordinarily a matter of mere opinion.”

36. Fazal Ali, J. in *Pratap Misra v. State of Orissa* has stated thus:

“... [I]t is well settled that the medical jurisprudence is not an exact science and it is indeed difficult for any Doctor to say with precision and exactitude as to when a particular injury was caused ... as to the exact time when the appellants may have had sexual intercourse with the prosecutrix.”

16. From the discussion made above it is apparent that none of the circumstances relied upon by the prosecution have been established in this case beyond reasonable doubt. In fact, the chain of circumstantial evidence is so incomplete that it cannot justify the conviction of the appellant at all. Being so, the benefit of doubt must be credited to the appellant and she deserves to be acquitted of the charge leveled against her.

17. 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 302/34 of IPC by extending her benefit of doubt. The appellant is reported to on bail. Her bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Arvind Singh Chandel)
JUDGE