

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 442 of 2010**

1. Shivprasad @ Thuru Paikera S/o Dilsai @ Tuichu, aged about 25 years
2. Dilsai @ Tuichu S/o Bandhu Kwar, aged about 50 years

Both R/o Village Karmi, Kawartoli, PS Kusmi, District Sarguja, CG

---- Appellant**Versus**

1. State of Chhattisgarh through PS Shankergarh, District Sarguja, CG

---- Respondent**AND****CRA No. 523 of 2010**

1. Lakhanram Paikra @ Bhutkul S/o Dilsay @ Tuiechu, aged about 20 years, R/o Village Karmi, Kawartoli, PS Kusmi, District Sarguja, CG

---- Appellant**Versus**

1. State of Chhattisgarh through PS Shankergarh, District Sarguja, CG

---- Respondent

For Appellants : Shri Jitendra Shrivastava, Advocate
 For Respondent/State: Smt. Smitha Ghai, PL

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

Judgment on Board by Pritinker Diwaker, J

13/11/2017

As the aforesaid two Criminal Appeals arise out of the

same judgment dated 28.06.2010 passed by Additional Sessions Judge (FTC) Ambikapur, District Sarguja, in Sessions Trial No. 274/2009 convicting and sentencing the accused/appellants as described below, they are disposed of by this common judgment:

Accused	Conviction U/s	Sentence
Lakhanram Paikra	302 IPC	Imprisonment for life with fine of Rs. 1000/- plus default stipulation
	201/34 IPC	RI for two years with fine of Rs. 1000/- plus default stipulation
Shivprasad	201/34 IPC	RI for two years with fine of Rs. 1000/- plus default stipulation
Dilsai	201/34 IPC	RI for two years with fine of Rs. 1000/- plus default stipulation

2. Deceased Panmeshwar alias Karam Sai Gond was a rickshaw puller and his cell phone worth Rs. 3000/- was stolen by accused/appellant Lakhanram Paikra - another rickshaw puller. As per the case of prosecution, 5-10 days prior to 19.04.2010 the deceased had gone to village Chanchi where he expressed his desire of gowing to accused/appellant Lakhanram Paikra and taking back his cell phone, to his parents namely Phul Kunwar (PW-6) and Siyaram (PW-7). Though PW-6 and PW-7 asked the deceased not to go there but left the home saying that he was going to Ambikapur for paddling rickshaw. On 19.4.2009 one dead-body was seen by some villager on the bank of river and he in turn informed the same to Ramesh Kumar (PW-1) - the village Sarpanch.

Thereafter, *merg* Ex. P-2 came to be recorded followed by inquest being drawn vide Ex. P-4 and the postmortem report on the dead-body which was conducted by PW-9 on 19.4.2009 itself vide report Ex. P-29. On receipt of postmortem report, FIR Ex. P-21 was registered on 29.4.2009 against an unknown person for the offence punishable under Section 302 IPC. On the basis of recovery of T-shirt and full pant, the dead-body was identified by Siyaram (PW-7) – the father of the deceased, to be of the deceased vide identification memo dated 1.5.2009 marked as Ex. P-20. On the memorandum of accused Lakhanram Paikra (Ex.P-9) dated 30.4.2009, seizure of axe and spade was made under Ex. P-12; on the even dated memorandum of accused Dilsai (Ex. P-10), seizure of Idea SIM and mobile was made under Ex. P-14 and on the memorandum of accused Shiv Prasad Ex. P-11, seizure of wooden rafter was made under Ex. P-13. FSL report is however not the part of record. Court below framed the charge against accused Lakhanram u/s 302 and 201/34 IPC whereas against accused Shivprasad and Dilsai it is under Section 201/34 IPC.

3. In order to prove its case the prosecution has examined 10 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellants as mentioned above in

paragraph No.1 of this judgment.

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

(i) That there is no eyewitness to the incident and conviction of the accused/appellants is based on the circumstantial evidence though none of the circumstances relied upon by the prosecution stands against them to draw an inference of their involvement in the commission of crime in question.

(ii) That even if the statement of PW-6 and PW-7 - the parents of the deceased is taken as it is, it is apparent that the deceased first showed the desire to go to the deceased for collecting his cell phone but on being resisted by them he went to Ambikapur for paddling rickshaw instead of going to the deceased.

(iii) That identification of the dead-body by PW-7 is doubtful as it was done merely on the basis of clothes allegedly belonging to the deceased which is commonly available everywhere.

(iv) That as per the inquest, body recovered on 19.4.2009 was of a man aged 30-40 years whereas as per the statement of PW-7 the age of his son was 15-16 years whereas as per the postmortem report the age of the deceased was 25 years, and for that also the identification of the dead-body is not of much significance.

(v) That the so-called eyewitness namely Subhani (PW-5) is though stated to have seen someone assaulting the other with

them, but she has not stated anything about the dead-body being thrown away.

(vi) That though on the memorandum of the accused/appellants certain seizures have been made but in the absence of FSL report the same is not of much significance.

(vii) That there is no evidence to show that the cell phone seized from accused Dil Sai belonged to the deceased as its ownership has not been proved by the prosecution.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants as detailed above 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. Smt. Subhani (PW-5) has stated that about a year back when she was keeping watch on the crop, two persons came there and assaulted the one along with them with club. All this took place on the other bank of the river. Thereafter, she stated that only two persons including the deceased were there. According to this witness, on seeing the assault, she got scared and ran away without identifying those persons properly. She did not disclose the incident to anyone on account of fear, and later came to know that one dead-body was lying on the bank of river. Phool Kunwar (PW-6) - the

mother of the deceased has stated that the deceased - her son was a rickshaw puller at Ambikapur and that before the incident he had come to her at village Chanchi and told that accused Lakhan had stolen his cell phone and so he would go to him for taking back the same and that when she asked him not to go there, he disclosed to her that he was going to Ambikapur for paddling rickshaw. Thereafter, according to this witness, she went to Ambikapur to find out the whereabouts of the deceased, it was told to her by the owner of the garage that her son had not come there for so many days. About a month thereafter the police came to her and enquired as to who Paneshwar was, on which she disclosed that he was her son. Thereafter, her husband went to police station where he saw the clothes of the deceased and it is only then she came to know that accused Lakhanram had killed the deceased.

Siyaram (PW-7) - the father of the deceased has stated that his son (deceased) used to ply rickshaw at Ambikapur and at the time of incident his age was about 15-16 years. According to this witness, prior to the incident the deceased had once come to him and informed that the mobile purchased by him was stolen by accused Lakhanram Paikra which he was going to collect from him but he (this witness) told him not to go there alone. Thereafter, according to this witness, the deceased proceeded for Ambikapur and when he did not return for so many days, he went to Ambikapur to find him out but could not come to know his whereabouts. About 15-20 days thereafter the police came to him and enquired about

the name of the deceased and then on suspicion being grown, he went to Shankargarh police station where he saw the shawl, T-shirt and full pant of the deceased and identified all that to be belonging to the deceased and then came to know about the deceased being killed. Ramesh Kumar (PW-1) - the lodger of the *merg* Ex.P-2 is also the witness to inquest Ex. P-4. He being the Sarpanch of the village had received the dead-body on *Supurdginama* Ex. P-5 for being buried. This witness however has been declared hostile. Gupteshwar (PW-2) - the witness to memorandum and seizure has also not supported the case of the prosecution and has been declared hostile. Prem Sai (PW-3) is also the witness to inquest Ex. P-3, seizure of clothes made by the police under Ex. P-6 and the dead-body *supurdginama* Ex. P-5. Brijnath Sai Paikra (PW-8) is the investigating officer who has duly supported the case of the prosecution. Dr. Joseph Lakda (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-29 stating that there was putrefaction of the whole body; depressed bone fracture present on the left side of occipital region; lacerated wound present on the left occipital region and about 12-15 per cent burn was there on the face. Cause of death, according to this witness, was shock due to head injury (subdural haemorrhage - excessive blood loss from left side of ear region. Death was homicidal in nature. Suman Sai (PW-10) is the Patwari who prepared spot map Ex. P-7.

9. We have gone through the entire evidence of the

witnesses and other material available on record but the chain of circumstances does not seem to be complete enough as required under the law for holding one guilty for a particular offence. Even PW-6 and PW-7 – the parents of the deceased have stated in their statements that prior to the incident the deceased had come to them and expressed his desire of going to accused Lakhanram Paikra for taking back his cell phone which was stolen by him but on being prohibited by them, he went to Ambikapur for plying his rickshaw as usual. Thus from the statements of these two witnesses, it is apparent that instead of going to accused Lakhanram the deceased went to Ambikapur. Evidence of PW-6 and PW-7 further shows that after about a month when the police came to enquire about the deceased, they grew suspicion in their mind, went to police station and identified the clothes shown to them to be of the deceased. Needless to say that such identification based on the clothes is in fact no identification in the eye of law because such articles are commonly available. It is more particularly when none of the witnesses has stated that the deceased had worn the same clothes on the fateful day too. Furthermore, as per the inquest, body recovered on 19.4.2009 was of a man aged 30-40 years whereas as per the statement of PW-7 the age of his son was 15-16 years whereas as per the postmortem report the age of the deceased was 25 years. This variation in age also makes the identification doubtful. Even the cell phone seized from accused Dil Sai is of no help to the case of the prosecution because its ownership with the

deceased has not been proved by it. Prosecution has not even bothered to collect FSL report to provide some clue connecting the seizure with the crime in question allegedly committed by the accused/appellants. Even the so-called eyewitness (PW-5) has stated on seeing the assault across the river, she got scared and ran away without identifying those persons properly. Having thus seen the evidence on record, this Court has no hesitation to say that the circumstances relied upon by the prosecution do not complete the chain to arrive at the conclusion of guilt of the accused/appellants as is required under the law. 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. Thus in view of the aforesaid discussion, factual and legal, this Court is of the considered opinion that the

prosecution has not been able to prove its case beyond all reasonable doubt. Court below also appears to have gone wrong in appreciating the evidence of the witnesses and arriving at the conclusion of guilt of the accused/appellants, by the judgment under challenge. Findings so recorded are wholly erroneous and therefore liable to be set aside. It is done accordingly.

11. Appeals are thus allowed and the accused/appellants are acquitted of the charges levelled against them. Bail bonds furnished by them stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(A.S. Chandel)
Judge

Jyotishi