

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 454 of 2010

- Anil Singh Rajput S/o Keju Singh Rajput, aged about 28 years, R/o Khapri, PS Berla, Pre. Add. Dhamdha, Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Police Station – Dhamdha, Distt. Durg (CG)

---- Respondent

For Appellant	:	Smt. Fouzia Mirza, Advocate.
For Respondent/State	:	Shri Sangharsh Pandey, Dy. G.A.

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

Judgment On Board By Justice Pritinker Diwaker

08/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 26.3.2010 passed by the 8th Additional Sessions Judge (FTC), Durg in ST No.4/2008 convicting the appellant under Sections 302, 460 & 201 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.5000/-; RI for seven years, pay a fine of Rs.500/-; and RI for three years, fine of Rs.300/- with default stipulations respectively.

02. As per prosecution case, in the night intervening 10/11.9.2007 deceased Vijay Kerketta, who at the relevant time was posted as Station House Officer, Dhamdha, stayed in a government rest house in Room No.2 and on 11.9.2007 when he did not wake up, PW-11

Kamaldas Manikpuri entered his room and found him lying unconscious in a pool of blood. The incident was informed to Assistant Sub Inspector KC Das (PW-29) and the entry was made in the Rojnamchasanha. PW-29 immediately rushed to the spot and took injured Vijay Kerketta to Govt. Hospital, Dhamdha, from where he was shifted to Sector-9 Hospital, Bhilai where he succumbed to his injuries on 25.9.2007. In the meanwhile, on 11.9.2007 at 9.3 am Dehati Nalishi Ex.P/50 was recorded by PW-20. FIR (Ex.P/37) was also registered on 11.9.2007 at 11.30 am at the instance of PW-24 Neelkanth, Head Constable, under Section 302 of IPC against unknown person. Injured Vijay Kerketta was medically examined vide Ex.P/11 on 11.9.2007 by PW-6 Dr. Narendra Kumar who noticed lacerated wounds on right frontal region, incised wound on left fronto parietal region, incised wound on left fronto temporal region and lacerated wound on left parietal region. After the death of Vijay Kerketta, unnumbered merg intimation Ex.P/9 was recorded on 26.9.2007 and thereafter numbered merg Ex.P/38 was also recorded on the same day. Inquest over the dead body was conducted vide Ex.P/6 on 26.9.2007 and thereafter body was sent for postmortem which was conducted on the same day by PW-27 Dr. Akhilesh Yadav who noticed incised and lacerated wounds over left and right fronto parietal region, fracture of right temporal bone. In his opinion, the cause of death was shock due to extensive antemortem head injury. Bed head tickets of the deceased are Ex.P/8 showing the treatment provided to him.

On 22.9.2007 memorandum of the appellant was recorded vide Ex.P/42 and in pursuance thereof one bloodstained axe was seized

vide Ex.P/45. Likewise, memorandum of co-accused Rajesh Ex.P/40 led to recovery of purse vide Ex.P/44 and memorandum of accused Avinash Mishra (Ex.P/41) led to recovery of cell phone, watch and golden ring. As per FSL report (Ex.P/65), blood has been found on the axe seized from the appellant, however, as per serological report Ex.P/66 origin of the blood could not be ascertained due to its disintegration. After filing of charge sheet, the trial Court framed charges against appellant and acquitted accused Rajesh Kumar Yadav under Section 302, alternatively 302/34, 460, 392, 394/397, 201 of IPC whereas against acquitted accused Avinash Mishra under Sections 414 and 201 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 30 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 of all the charges, convicted and sentenced the accused/appellant as mentioned above.

05. Counsel for the appellant submits as under:

- (i) that as senior police officer was murdered, when the police could not get the real culprit, they have falsely implicated the present appellant.
- (ii) that in the evidence it has come that the police was detaining the

villagers one after another and on protest being made by the villagers, they used to release such persons.

(iii) that there is absolutely no legally admissible evidence on record to show involvement of the appellant in the crime in question.

(iv) though on the memorandum of the appellant, one axe has been seized and the FSL report is also positive, but as per serological report origin of the blood found on it could not be ascertained and as such, this seizure of axe is of no consequence.

(v) that conviction of the appellant is based mainly on his memorandum as has been video-graphed (Article D) by PW-30 Prabhat Kumar Verma. However, merely on the basis of said evidence the appellant could not have been convicted for such a heinous offence.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the accused/appellant is strictly in accordance with law. He further submits that axe seized at the instance of the appellant has been used in commission of the offence and FSL report is also positive in respect thereof. He submits that as per query report (Ex.P/12) injuries sustained by the deceased could have been caused by the said weapon.

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

08. PW-1 Smt. Sunita Kerketta, wife of the deceased, after describing the death of her husband in hospital, states that cell phone, golden ring, purse and watch of her husband were looted by the

person who had killed him and that those articles were identified by her vide Ex.P/2.

09. PW-2 Chhannulal has stated that he knew the deceased who used to have his food in his hotel. He has stated that upon search being made, from the village pond mobile phones, watch, ring and purse were seized with the help of fishermen. PW-3 Budharu is a fisherman who helped other fishermen in effecting seizure from the village pond. PW-4 Dr. K. Thakur has proved the bed head tickets Ex.P/8 of the deceased at Sector-9 Hospital, Bhilai. PW-5 Dr. RK Shrivastava informed the police about death of the deceased at Sector-9 Hospital. PW-6 Dr. Narendra Kumar Bokade did medical examination of injured Vijay Kerketta vide Ex.P/11 on 11.9.2007 and noticed lacerated wounds on right frontal region, incised wound on left fronto parietal region, incised wound on left fronto temporal region and lacerated wound on left parietal region. In his opinion, the injuries suffered by the deceased were grievous in nature and some of them were caused by hard and blunt object and some by hard and sharp edged object.

10. PW-7 Upendra Kumar Sahu, PW-8 Nathuram Nishad & PW-9 Neelima Tirky, assisted in the investigation. PW-10 GR Nagesh, Naib Tehsildar, conducted test identification of the articles and stated that wife of the deceased Smt. Sunita Kerketta identified two mobile phones, watch, golden ring and purse as articles belonging to her husband. PW-11 Kamaldas Manikpuri first saw the deceased in injured condition in his room and then passed on the information to police authorities. PW-12 Gopinath Rawat has turned hostile. PW-13 Manoj,

PW-14 Gulab, PW-15 Naresh, PW-16 Ramadhar and PW-18 Ganeshram Dhimar are fishermen who helped in taking out articles from the village pond. PW-17 Sanatkumar Soni is the jeweller who weighed the golden ring. PW-19 Kamlesh Singh Rajput, Patwari, prepared the spot map Ex.P/4. PW-20 Dwarika Prasad and PW-21 are formal witnesses. PW-22 Dr. Lata Dewangan, Radiologist, did not notice any fracture on the person of deceased. PW-23 Rajendra Singh Rajput, Police Constable, assisted in the investigation. PW-24 Neelkanth, Head Constable, assisted in the investigation. PW-25 SK Jain, Finger Print Expert, has not stated anything specific against the appellant. PW-26 Chhannulal is a witness to memorandum and seizure. PW-27 Dr. Akhilesh Yadav conducted postmortem on the body of the deceased on 26.9.2007 vide Ex.P/17 and noticed incised and lacerated wounds over left and right fronto parietal region, and fracture of right temporal bone. In his opinion, the cause of death was shock due to extensive antemortem head injury. PW-28 Khamhanlal, Sarpanch of the village, is a witness to memorandum and seizure. In para-9 he has stated that the murder of the deceased was very famous and news items used to be there every day. However, when for number of days the police could not catch the real culprit, on account of there being pressure upon them, they used to detain the villagers randomly and upon protest being made by the villagers, they used to release them. PW-29 KC Das, investigating officer, has supported the prosecution case. PW-30 Prabhat Kumar Verma is the photographer who video-graphed memorandum proceedings and seizure.

11. Admittedly, there is no direct evidence against the appellant to

show his complicity in the crime in question and his conviction rests upon circumstantial evidence, main being the recovery of bloodstained axe at his instance.

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. Keeping in view the aforesaid principles of law relating to circumstantial evidence if we examine the facts and evidence of the present case, it emerges that there is no legally admissible evidence against the appellant connecting him with the crime in question. So far as recovery of incriminating article i.e. axe at the instance of the appellant is concerned, it is of no consequence for the reason that though FSL report in respect of the said article is positive but the serological report fails to confirm origin of blood found on it. As such, this circumstance has not been proved to the hilt by the prosecution. Apart from this, there is no other evidence pointing towards guilt of the appellant. Moreover, on the basis of same set of evidence, the other two co-accused persons have been acquitted by the trial Court and after close scrutiny of the evidence we find no justifiable reason to differentiate the case of the appellant from that of the acquitted co-

accused persons.

15. Thus considering the overall facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution in light of the aforesaid principles of law, we are of the opinion that the prosecution has failed to prove guilt of the appellant to the hilt so as to exclude the possibility of any person other than the appellant being the perpetrator of the crime beyond the shadow of all reasonable doubt. This being the position, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charges leveled against him.

16. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment, insofar as it relates to the appellant, is hereby set aside and the appellant is acquitted of the charges leveled against him by giving him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Arvind Singh Chandel)
Judge