

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 507 of 2010**

- Daya Singh S/o Moti Singh, aged about 45 years, R/o village Tendumada, P.S. Gaurella, District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station : Gaurela, District Bilaspur (C.G.)

---- Respondent

For Appellant : Shri Ravindra Sharma, Advocate.
For Respondent/State: Shri Vaibhav Goverdhan, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****14/11/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 05.07.2010 passed by the Additional Sessions Judge (FTC), Pendra Road, District Bilaspur, in S.T. No.63/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.100/-, in default of payment of fine amount to further undergo R.I. for one month.

02. The prosecution story in brief is that on 01.09.2009, after committing murder of Narayan Singh (deceased), the accused/appellant had gone to Amol Singh (PW/3) and informed him about the commission of offence by him. It is

said that at about 7.30 am, body of deceased was seen by PW/3 at whose instance dehati nalisi (Ex.P/4) was recorded on 01.09.2009 followed by dehati merg (Ex.P/5). On the same day, at 2.30 pm, FIR (Ex.P/16) was registered against the accused/appellant under Section 302 of IPC. Numbered merg (Ex.P/15) was recorded and thereafter inquest on the body of deceased was conducted on 01.09.2009 and the body was sent for postmortem examination to Community Health Center, Gaurela where Dr. K.K. Soni (PW/2) conducted postmortem examination on the body of deceased and gave his report Ex.P/2 noticing following injuries:-

- (i) Lacerated wound of 8cm x 4cm x 2cm over right side of neck.
- (ii) Lacerated wound of 4cm x 2cm on right side of chin.
- (iii) Lacerated wound of 5cm x 1cm below right eye.
- (iv) Abrasion of 11cm x 2cm over left shoulder. Scratch on right shoulder. Margin of all injuries were stained with blood. Neck injury was so deep.

The Autopsy Surgeon opined the cause of death of deceased to be hemorrhagic shock due to several injuries over neck, chin & mode of was cardiac respiratory failure and death was homicidal in nature.

03. On 01.09.2009 itself, disclosure statement of the accused/appellant was recorded vide Ex.P/7, based on which, axe was seized vide Ex.P/8, however, there is no FSL report on

record to confirm the presence of blood thereon. After filing of charge sheet, the trial Court framed charge under Section 302 IPC against the appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant 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.

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 eye-witness account to the occurrence and the conviction of the appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and, therefore, there can be no inference that it was the appellant who committed the murder.
- That the most important witness of the prosecution Amol Singh (PW/3) has turned hostile.
- That Shanti Bai Gond (PW/10) has been examined by the trial judge as eye-witness to the incident but from her statement it is apparent that she has exaggerated while

deposing in the Court and even her diary statement has not been recorded. It has been argued that PW/10 was never cited as witness and of her own she presented herself in the Court and got herself examined. She has categorically stated that she was brought in the Court by Amar Singh, brother of the deceased.

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. Amol Singh (PW/3), lodger of dehati nalisi (Ex.P/4) and witness to extra-judicial confession, has not supported the prosecution case and turned hostile.

10. Shyam Lal (PW/1) is the witness to inquest (Ex.P/1).

11. Dr. K.K. Soni (PW/2) conducted postmortem examination on the body of deceased and gave his report Ex.P/2 opining the cause of death of deceased to be haemorrhagic shock due to several injuries over neck, chin & mode of was cardiac respiratory failure and death was homicidal in nature.

12. Shivratan (PW/4) - village Kotwar is witness to memorandum of the accused/appellant (Ex.P/7) and seizure (Ex.P/8). He is also witness to spot map (Ex.P/10).

13. Ram Singh (PW/5) witness to memorandum of the

appellant (Ex.P/7) and seizure (PW/8) has turned hostile.

14. Rajnisha Tripathi (PW/6) - Constable and Bhanwar Sen (PW/8) - Head Constable assisted in the investigation.

15. Onkar Prasad Gujar (PW/7) is witness to inquest (Ex.P/1).

16. Shanti Bai Gond (PW/10) who was projected to be eye-witness to the incident, herself appeared in the Court and got her statement recorded. According to her, she saw the accused/appellant committing murder of the deceased but she admits that she was brought in the Court by the brother of the deceased and that after seeing the murder she kept quiet for about one month. Bare reading of the evidence of this witness would reveal that she has exaggerated while deposing in the Court and according to her, as many as 4 persons have committed the murder of the deceased by causing several injuries on his body by crowbar.

17. Admittedly, there is no legally admissible evidence showing the involvement of the accused/appellant and his conviction rests upon circumstantial evidence.

18. 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.

19. 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 clothes 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.

20. In the instant case, the main piece of evidence against the appellant adduced by the prosecution is the evidence of

Amol Singh (PW/3). According to him, on the date of incident, the appellant informed him about the murder of the deceased. This witness in his entire evidence has not stated that the accused/appellant had made extra-judicial confession before him but in cross examination he has stated that the police has recorded the same thing in Dehati Nalisi (Ex.P/4) and Dehati Merg (Ex.P/5) as disclosed by him. Considering the above discrepancy and inconsistency on material point, the evidence of this witness does not inspire confidence of this Court and cannot be made basis for appellant's conviction. That apart, on the memorandum of the accused/appellant (Ex.P/7), axe was seized vide Ex.P/8 but there is no FSL or Serological report on record to show presence of blood thereon and confirming origin of the same. Thus, in absence of any such report, the seizure of axe cannot be connected with the commission of crime. The other piece of evidence is the statement of Shanti Bai (PW/10), so called eye-witness to the incident, who for the first time deposed in the Court against the accused/appellant and prior to that even her diary statement has not been recorded. This witness has admitted the fact that she kept quiet for about a month. Further, while deposing in the Court she has exaggerated and according to her as many as 4 persons had killed the deceased by causing injuries by crowbar and that she was brought to the Court by brother of the deceased.

21. Thus having examined the evidence in the present case in light of the aforesaid principles of law, we are unable to hold the appellant guilty of the crime in question. None of the circumstances relied upon by the trial Court has been proved by the prosecution 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. Being so, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

22. 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 IPC by extending him benefit of doubt. The appellant is reported to on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Arvind Singh Chandel)
JUDGE