

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 442 of 2006

- Sukhsai Gound, age 35 years, s/o Mangalsai Gound, R/o Village Singhhat, P.S. Khargawan, Distt. Korea (CG)

---- Appellant

Versus

- State Of Chhattisgarh through the Police Station – Khargawan, Distt. Korea (CG)

---- Respondent

For Appellant	:	Mr. J.A.Lohani, Advocate.
For Respondent/State	:	Mr. Sangharsh Pandey, P.L.

And

CRA No. 496 Of 2006

- Arjun Das Panika @ Guddu, S/o Heera Dhan Das, aged about 21 years, R/o Village Vandana, P.S. Sitapur, Distt. Sarguja (CG), present R/o Bargad Dafai, Bodhripara, PS Chirmiri, Distt. Koriya (CG)

---- Appellant

Vs

- State Of Chhattisgarh through Station House Officer, Khadgawan, PS Khadgawan, Distt. Koriya (CG)

---- Respondent

For Appellant	:	Ms. Sharmila Singhai, Advocate.
For Respondent/State	:	Mr. Sangharsh Pandey, P.L.

And

CRA No. 652 Of 2006

- Gopal Mandal @ Bobby, age 30 years, S/o Sohan Lal Mandal, R/o Village Bargad Dafaie, Goudripara, Chirmiri, PS Chirmiri,

Distt. Korea (CG)

---- Appellant

Vs

- State Of Chhattisgarh through the Police Station Khargawa, Distt. Korea (CG)

---- Respondent

For Appellant	:	Mr. J.A.Lohani, Advocate.
For Respondent/State	:	Mr. Sangharsh Pandey, P.L.

And

CRA No. 1033 Of 2017

- Pappi @ Raj Kumar Mandal S/o Sohan Lal Mandal, Aged About 35 Years R/o Baragad Dafaee Godripara, Police Station Chirmiri, District Korea, Chhattisgarh.

---- Petitioner

Vs

- State Of Chhattisgarh Through Police Station Khadgavan, Civil & Revenue District Korea, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Singh, Advocate.
For Respondent/State	:	Mr. Sangharsh Pandey, P.L.

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

Judgment On Board By Justice Pritinker Diwaker

02/11/2017:

All these four appeals arise out of the same incident dated 7.6.2002 wherein it is alleged that one Sumit Jaiswal was murdered by the appellants. Initially, Challan was filed against accused Gopal, Arjun Das and Sukhsai Gond, showing accused Pappi @ Rajkumar and

Dharampal absconding and accordingly, ST No.470/2002 was decided by the trial Judge vide judgment and order dated 29.4.2006 convicting these appellants under Sections 302/34 & 201/34 of IPC and sentencing them to undergo life imprisonment, to pay a fine of Rs.1000/- and to undergo RI for five years & to pay a fine of Rs. 500/- with default stipulations respectively.

After the above judgment, accused Pappi @ Rajkumar Mandal was arrested on 16.3.2009 and put to trial i.e. ST No.34/2010 wherein he was convicted vide judgment dated 29.11.2016 on the basis of almost the same evidence. Hence all these appeals are being decided by this common judgment.

02. In the present case, name of the deceased is Sumit Jaiswal. It is alleged that on 7.6.2002 accused Arjun Das made telephonic call to Sumit Jaiswal and called him at his house. Thereafter all the accused persons along with PW-8 Ramprasad went for picnic outside their village and there it is said that accused Gopal @ Bobby first caused injury on the vital part of the deceased by a burning wood and then accused Dharampal also caused him injury. It is further alleged that accused Dharampal and Gopal @ Bobby after tying the neck of the Sumit Jaiswal with a *gamchha*, put his head inside the water for about 10 minutes as a result of which he died. As the deceased did not return to his house, on 8.6.2002 a missing report was lodged by Ratan Kumar Jaiswal (PW-18), father of the deceased. On 20.6.2002 body of the deceased was found near Sendri brook by PW-3 Hemlal. Dehati merg intimation (Ex.P/2) was lodged by him and thereafter regular merg (Ex.P/2A) was registered on 21.6.2002. Inquest over the dead body

was conducted on 21.6.2002 vide Ex.P/4 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-13 Dr. RP Singh vide Ex.P/22 who found the body in putrefied condition. In his opinion, the cause of death was asphyxia due to fracture of larynx and trachea and that the death was homicidal in nature.

03. On 11.7.2002 (alleged date) written report Ex.P/17 was made by PW-8 Ramprasad, so-called eyewitness to the incident, alleging in it that he saw the accused persons committing murder of the deceased, however, as he was threatened by the accused persons, he kept quiet so far. Based on this written report, FIR (Ex.P/17A) was registered against the appellants herein and accused Dharampal under Sections 302, 201, 34 of IPC.

04. On 11.7.2002 and 14.7.2002 memorandum statements of accused/appellant Gopal @ Bobby were recorded vide Ex.P/6 & P/7, based on which recovery of motorcycle of the deceased, burnt clothes, belt, shoes and club was made vide Ex.P/18 & P/15. On 11.7.2002 & 14.7.2002 memorandum statements of accused/appellant Sukhsai were recorded vide Ex.P/8 & P/9 which led to seizure of gamchha and a club vide Ex.P/12 & P/13. Likewise, on the memorandum statements of accused/appellant Arjun Das recorded on 11.7.2002 & 14.7.2002 vide Ex.P/11 & P/10, one motorcycle allegedly used in commission of the crime and club & handkerchief were seized vide Ex.P/19 & P/14 respectively. However, there is no FSL report in respect of the seized articles. This apart, as per Ex.P/1 one steel *Kada* was seized on 25.6.2002 on being produced by Police Constable Nandkumar and it is

alleged that the said *Kada* was of the deceased. Further case of the prosecution is that the body was found in highly decomposed condition, almost in skeleton form and was beyond recognition. However, it was ultimately identified by PW-18 Ratan Kumar Jaiswal on the basis of teeth of the deceased and further he said that the *Kada* seized was of the deceased.

05. The main piece of evidence, according to the prosecution case, against the appellants is the statement of PW-8 Ramprasad, eyewitness to the incident, last seen by PW-2 Shyambai and PW-7 Bhaiyalal and the alleged extrajudicial confession made by appellant Arjun Das before PW-19 Ambikeshwar Singh. After filing of charge sheet in ST No.470/2002, charges were framed against the appellants Gopal @ Bobby, Arjun Das and Sukhsai Gond under Sections 302, alternatively 302/34, and 201 of IPC. Likewise, in ST No.34/2010 charges were framed against accused Rajkumar @ Pappi Kumar Mandal under Sections 302/34 and 201/34 of IPC.

06. So as to hold the accused persons guilty, the prosecution examined 24 witnesses in all in both the trials. 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.

07. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment dated 29.4.2006 convicted and sentenced the accused/appellants Gopal Mandal @ Bobby, Arjun Das and Sukhsai as mentioned above. Vide judgment dated 29.11.2016 passed in ST

No.34/2010 accused Pappi @ Rajkumar Mandal was convicted under Sections 302/34 & 201/34 of IPC and sentenced to undergo imprisonment for life, pay a fine of Rs.1000/- and RI for five years & pay a fine of Rs.500/- with default stipulations respectively.

08. Counsel for the appellants submit as under:

(i) that main piece of evidence against the appellants is the statement of so-called eyewitness PW-8 Ramprasad, however, this witness kept quiet till 11.7.2002 when for the first time his diary statement was recorded and he lodged FIR but no plausible explanation has been offered by the prosecution for such an inordinate delay.

(ii) that as regards the other piece of evidence i.e. statements of PW-2 Shyambai & PW-7 Bhaiyalal on the point of last seen, a bare look of their evidence would reveal that the same is not conclusive. The time gap between their seeing the appellants and recovery of the dead body is so long that it cannot be made basis for conviction of the appellants.

(iii) that the witness of extrajudicial confession PW-19 Ambikeshwar Singh is also not reliable and his statement does not inspire confidence of the Court.

(iv) that identification of the dead body itself is doubtful. It was found in highly decomposed condition. Almost in all the documents i.e. Dehati merg (Ex.P/2), dead body identification panchanama (Ex.P/3), inquest (Ex.P/4), last rites panchanama (Ex.P/5) it was mentioned that the body was not identifiable.

(v) that the body is said to have been identified by PW-18 Ratan

Kumar Jaiswal on the basis of teeth of the deceased but in the evidence it has come that at the first occasion even PW-18 failed to identify the body and there is evidence on record to show that teeth of the deceased were taken out by the doctor and there is no report of DNA or other scientific expert in this regard.

(vi) so far as identification of the dead body on the basis of *Kada* allegedly found in the hand of the deceased is concerned, it is not clear as to from where this *Kada* has been seized and where it was lying for four days. There is no evidence to that effect and further, *Kada* is one of the common articles worn by the villagers and this fact has also been admitted by the witnesses.

(vii) that the witnesses of dead body identification (Ex.D/2) namely Bharat Jaiswal and Girja Jaiswal have not been examined by the prosecution.

(viii) that no motive has been attributed to the appellants for commission of the crime.

(ix) that accused Gopal @ Bobby has remained in jail for more than 14 years, accused Arjun Das and Sukhsai for more than fifteen years and accused Pappi @ Rajkumar for more than eight years.

09. On the other hand, State counsel supporting the impugned judgment submits that eyewitness PW-8 is a reliable witness and there is no reason for this Court to disbelieve his evidence. Further, the evidence of last seen by PW-2 & PW-7 also proves complicity of the appellants in crime in question. This apart, there is extrajudicial confession made by appellant Arjun before PW-19. Thus, considering all these things, the trial Court was fully justified in holding the

appellants guilty under Sections 302 & 201 read with 34 of IPC and as such, no interference is called for in the well reasoned findings recorded by the trial Court.

10. Heard learned counsel for the parties and perused the material available on record.

11. PW-8 Ramprasad is the sole eyewitness to the incident. He has stated that on the date of incident i.e. 7.6.2002 when he was working in his house at about 10 am accused Bobby @ Gopal and Dharampal (absconded accused) came to his house and offered him to join them for picnic. He states that at the first instance he refused to join them but later accused Pappi, Arjun, deceased Sumit and accused Sukhsai also came there and then upon their insistence he also joined the picnic party. He has stated that the accused persons were having liquor and chicken and all of them had gone to jungle in a brook outside the village. There accused Dharampal cooked chicken and after consuming liquor everybody had the same. He states that thereafter some altercation took place where accused Bobby and Pappi made allegations against deceased Sumit and then Bobby picked up a wooden log and caused four injuries on the neck of the deceased as a result of which he fell down. It is said that thereafter accused Bobby and Dharampal tied up a gamchha around the neck of the deceased and started beating him again. He states that he asked accused/appellants not to do so but he was threatened for dire consequences and then the accused persons dipped the head of deceased in water for about 10 minutes as a result of which he died. He has further stated that dead body was taken to a little far off place

near the brook and the same was thrown there after removing the clothes of the deceased. The ring worn by the deceased was taken out by accused Dharampal and was kept by Bobby. He has further stated that the clothes worn by the deceased were burnt by the accused persons whereas certain documents found in it were kept. He states that he was again threatened by the accused persons that if he discloses the incident to anyone he will face dire consequences. When the dead body of the deceased was recovered from the brook he thought it proper to disclose about the incident and then went to Sarpanch Banasram (PW-17) and then reported the matter to police vide Ex.P/17 through written report.

In cross-examination he admits that the written report was not written by him and it was written by Sarpanch. However, he is not aware as to on what date the same was written. He states that at the time of identification of the dead body he disclosed the fact that the same was of the deceased. When he was confronted with the written report there appears to be material contradictions. In para-36 he states that the written report was drafted by Sarpanch but he had not signed the same in the house of Sarpanch and signed the same in the police station where Sarpanch was already present. He admits that he had not gone to police station along with Sarpanch and reached there after Sarpanch and that the written report was handed over to the police by Sarpanch and not by him. As the said written report was kept in the police station, the police had asked him to sign same and accordingly he signed. He states that neither in the written report he disclosed the date and month of the incident nor did he inform the police about the same. He has categorically admitted the fact that when he was taken

near the dead body, it was not identifiable as it was eaten by the wild animals and the body was not identified by any person. He has further clarified that the body was nothing but skeleton and it was buried. He further states that the dead body was recovered after about 15 days of lodging written report. He has further admitted that at the time of inquest he was present but could not identify the dead body.

12. PW-2 Shyambai, wife of PW-8 Ramprasad, has stated that on the date of incident including Pappi and Bobby about 7 persons came to her house and took her husband Ramprasad along with them for picnic. She states that only six persons returned and about a month after the incident her husband informed her that one person has been made missing. However, in cross-examination she has stated that at the time when 6-7 persons had come to her house, she was inside the house and could not see as to who had come. Yet another important witness of the prosecution is PW-7 Bhaiyalal who is a witness of last seen. He has stated that on the date of incident at about 10-11 am accused Pappi, Bobby, Dharampal, Arjun and a tall person whose name he does not know, had come to his house on two motorcycles, parked their motorcycles in his house, informed him that they are going for picnic and on return will pick their vehicles. He states that after picnic, Ramprasad, accused Sukhsai, Bobby, Pappi, Dharampal and Arjun returned but other tall person was not there. It is relevant to note here that perhaps this witness is saying that said tall person was the deceased but there is no identification to this effect and on what basis he is calling the deceased to be a tall person is not clear from his evidence. Further, in para-17 he has stated that the person whom he is referring to was seen by him from backside and he had not seen his

face. He further admits that he saw the said person from some distance and the said person had not come to his house.

13. PW-19 Ambikeshwar Singh is a witness to extrajudicial confession of accused Arjun. He has stated that after about 10-15 days of the incident he met Arjun who informed him that the deceased has been killed by accused Bobby, Pappi, Sukhsai, Dharampal in jungle and he also expressed his desire to inform the said fact to the police. He states that after some days, Arjun again met him and when he enquired from him about the incident he repeated the same and informed him that he wanted to surrender. He states that the accused/appellant Arjun also informed him that he was also accompanying the other accused persons. In cross-examination he, however, has admitted the fact that the body found in the jungle was not identifiable. When he was confronted with his diary statement there are material contradictions from his Court statement. He states that his acquaintance with accused Arjun is not proper, neither he was his friend or relative nor he used to have his company. He further admits that he never had any friendly talk with accused Arjun as he was younger to him. It is relevant to note that this witness was working as journalist who has admitted the fact that he used to go to the house of different persons to collect money.

14. PW-3 Hemlal is a witness to inquest. He has stated that the dead body was not identifiable and before burying the same it was kept for about two days but the same was not identified by anyone. He has further stated that Ratanlal Jaiswal and his wife i.e. father and mother of the deceased along with their kids had also come to identify the

body but after seeing the same they stated that the body is not of the deceased and thereafter it was buried. He has further clarified that hands and legs of the body were not there and it was merely a skeleton.

15. PW-4 Prakash Khatik is a witness to memorandum (Ex.P/6 to P/11) and seizure (Ex.P/12 to P/15). PW-1 Sukhlal and PW-5 Lalu are formal witnesses. PW-6 Swati Jaiswal, sister of the deceased, allegedly received phone call of accused Arjun calling the deceased along with him. PW-9 Devkumar Mishra and PW-10 Nasim Ali are witnesses to seizure memo Ex.P/18. PW-11 Arjun Kumar Jaiswal is also a witness to memorandum and seizure and he has supported the prosecution case. PW-13 Dr. RP Singh conducted postmortem on the body of the deceased on 21.6.2002 vide Ex.P/22 and found the body in putrefied condition. In his opinion, the cause of death was asphyxia due to fracture of larynx and trachea and that the death was homicidal in nature.

16. PW-14 KP Patel, Additional Tehsildar recorded statements of the accused persons vide Ex.P/27, P/28 & P/29. PW-15 Ramanuj is a witness before whom dead body was exhumed and two teeth were seized. PW-16 Ramsai Paikra assisted in the investigation. PW-17 Banasram, Sarpanch who drafted the written report, too has stated that the dead body was not identifiable. According to him after drafting the written report he gave it to PW-8. In para-18 he has admitted the fact that for identifying the body, father of the deceased Ratan Jaiswal also came but he failed to identify the same. He states that when Ratanlal Jaiswal came for identification, no *Kada* on the body of the deceased

was there and at the time of inquest he could not see teeth in the dead body. He has further admitted that at the time of inquest, Ratanlal was present but at that time he had not stated about identification of the body by teeth. PW-18 Ratankumar Jaiswal, father of the deceased has stated that he identified the body on the basis of teeth. He states that his son was not having any enmity with anyone. He admits that for the first time he could not identify the body and according to him, as foul smell was coming out from the body, he was not in a position to accept that the body was of his son. He has admitted lodging of missing report Ex.P/32. PW-20 RM Yadav and PW-24 RA Chhatre assisted in the investigation. PW-21 Anil Kathuriya and PW-23 Harishchand have been examined to prove motive. PW-22 JS Bhadouriya, investigating officer, has supported the prosecution case.

17. Admittedly, there is no direct evidence against the appellants to show their complicity in the crime in question and their conviction rests upon circumstantial evidence, main being the statement of PW-8 Ramprasad, eyewitness to the incident, last seen by PW-2 Shyambai and PW-7 Bhaiyalal and the alleged extrajudicial confession made by appellant Arjun Das before PW-19 Ambikeshwar Singh.

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 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 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.”

20. Keeping in view the aforesaid principles of law relating to circumstantial evidence if we examine the facts and evidence of the present case, it appears that the trial Court has accepted the statement of PW-8 Ramprasad as it is and based on that held the appellants guilty. The trial Court has ignored the most important aspect of the case that if PW-8 had seen the incident on 7.6.2002, then why he kept quiet till 11.7.2002 i.e. for about one month and four days. The only explanation offered by him is that he was threatened by the accused persons. He, however, admits that immediately after coming to know about the dead body he thought it proper to report the matter. It is relevant to note here that the body was found on 20.6.2002 but diary statement of PW-8 was recorded on 11.7.2002. This inordinate delay in recording statement of so-called eyewitness of the incident creates doubt whether he is narrating the truth.

21. The other piece of evidence against the appellants is the so-called witness of last seen PW-2 Shyambai and PW-7 Bhaiyalal. From statements of these witnesses also it is not very clear that they saw the deceased in the company of the accused persons. PW-2, wife of the Ramprasad, has stated that she was inside her house and had not seen the faces of the persons who called her husband. Likewise, PW-7 states that he had not also not seen the face of the deceased and in fact he saw one person from some distance, that too his backside. He also states that the said person was tall. However, there is no evidence on record to show that the deceased was a tall person. Even

otherwise, merely on the basis of shaky statement of this witness it will not be safe for us to hold that deceased was last seen in the company of the accused persons.

22. Yet another important piece of evidence against the accused persons is the so-called extrajudicial confession of accused Arjun before PW-19 Ambikeshwar Singh. This witness has admitted the fact that neither Arjun was friendly to him nor they used to meet frequently. According to him, Arjun was younger to him and their relations were not as such where they used to meet every day. In such a situation, confession by accused Arjun before this witness also appears to be doubtful and does not inspire confidence of the Court. Even from the statement of this witness it appears that the same has been recorded by the police where he talks about surrendering before the police etc. There are material contradictions in the statement of this witness as compared to his diary statement.

23. The most important aspect of the case is the identification of dead body. Almost all the witness have stated that the dead body was highly decomposed and was not identifiable. Even at the first instance father of the deceased PW-18 Ratan Jaiswal failed to identify the same. PW-3 Hemlal who lodged merg intimation has also stated that the dead body was beyond identification and the same could not be identified by parents and children of the deceased. Identification merely on the basis of teeth appears to be doubtful. So far as seizure of *Kada* is concerned, the witnesses have admitted the fact that such *Kada* is easily available in the market and as such, in the facts and circumstances of the case, seizure of this article is of no help to the

prosecution. Likewise, seizure of other articles i.e. burnt clothes, belt, shoes, clubs, *gamchha* and handkerchief is also no consequence because there is no FSL report to establish their nexus with the crime in question.

24. On the basis of aforesaid discussion, we are of the opinion that the prosecution has utterly failed to prove involvement of the accused/appellants in commission of the crime based on the evidence adduced by it beyond the shadow of all reasonable doubt and being so, the findings recorded by the trial Court are liable to be set aside and the appellants deserve to be acquitted of the charges by giving them benefit of doubt.

25. In the result, the appeals are allowed. The impugned judgments are hereby set aside and the appellants are acquitted of all the charges by extending them benefit of doubt. Accused/appellants Arjun, Sukhsai and Gopal Mandal are reported to be behind the bars for the last 14 to 15 years whereas accused/appellant Pappi is inside for more than eight years and therefore, they are directed to be released forthwith if not required to be detained in connection with any other offence.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Arvind Singh Chandel)
Judge