

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 218 of 2005

1. Tijram S/o Batulal, aged about 36 years,
2. Rajni Bai, W/o Tijram, aged about 31 years,

Both R/o Kamreed, P.S. Pamgarh, Distt. Janjgir-Champa (CG)

---- Appellants

Versus

1. State Of Chhattisgarh through P.S. Pamgarh, Distt. Janjgir-Champa (CG)

---- Respondent

For Appellants	:	Shri Gurudev I. Sharan, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker,
Hon'ble Shri Justice Ram Prasanna Sharma,

Judgment On Board By Justice Pritinker Diwaker

17/08/2017

This appeal arises out of the judgment of conviction and order of sentence dated 4.3.2005 passed by the Additional Sessions Judge, Janjgir, Bilaspur in ST No.193/2004 convicting appellant No.1 under Section 302 & 201 of IPC and appellant No.2 under Section 302/34 & 201 of IPC and sentencing each of them to undergo imprisonment for life, to pay a fine of Rs.500/- and to undergo RI for two years and pay a fine of Rs.200/- with default stipulations respectively.

02. As per prosecution case, deceased Lalaram, Sarpanch of the

village, was having illicit relation with appellant No.2 Rajni Bai. From 21.3.2004 deceased Lalaram went missing and his dead body was found in the field by PW-2 Jagatram on 24.3.2004. On the very date at about 9.30 am merged intimation Ex.P/1 was lodged by PW-1 Ramsanehi. Inquest over the dead body was conducted on 24.3.2004 itself vide Ex.P/3 and thereafter it was sent for postmortem which was conducted on the same day by PW-14 Dr. DC Choudhary vide Ex.P/27 who noticed as many as ten incised wounds on neck, skull, temporal region, back, face, occipital region and chin. In his opinion, the cause of death was shock (hemorrhagic and neurogenic) due to multiple wounds over scalp and neck and that the death was homicidal in nature. On 24.3.2004 only Dehati Nalishi (Ex.P/30) was registered at 1 pm. Based on merged enquiry and Dehati Nalishi, FIR (Ex.P/31) was registered on 24.3.2004 under Sections 302, 201, 34 of IPC against appellant No.1. On 24.3.2004 itself memorandum of appellant No.1 was recorded vide Ex.P/6, pursuant to which one carpenter axe was seized vide Ex.P/7. Likewise, memorandum of appellant No.2 vide Ex.P/5 led to seizure of burnt pieces of clothes and one petticoat vide Ex.P/8. From the spot one knife was seized vide Ex.P/14. As per FSL report (Ex.P/35) blood was found on the seized carpenter's axe (Article A), underwear of appellant No.1 (Article B), polythene (Article C) and sack (Article D) and clothes of appellant No.2 (Article F), however, there is no serological report confirming the origin and group of the blood. After investigation charge sheet was filed and the trial Court framed charges under Section 302, in the alternative, 302/34 and 201 of IPC against the appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 17 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. In their defence they examined three witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that there is no eyewitness account to the incident and the appellants have been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for their conviction.

(ii) that though recovery of alleged weapon of offence knife and clothes of the appellants have been made and the FSL report is positive in respect of the same, but there is no serological report to establish that the blood found on the said articles was human blood and that too, of group of the deceased.

(iii) that according to the prosecution, appellant No.2 was having illicit relations with the deceased and this was the motive for commission of the offence, however, merely on that basis the appellants cannot be convicted for offence under Section 302 of IPC.

(iv) that the other piece of evidence relied upon by the trial Court is the query report Ex.P/28 given by the doctor according to which the injuries suffered by the deceased could have been caused by the

carpenter's axe. However, there are many weapons like carpenter's axe which can cause the same injuries as have been noticed on the person of the deceased and therefore, merely on the basis of query report of the doctor, it cannot be presumed that it is the appellants who committed the crime.

(v) that the deceased was Sarpanch of the village who went missing from 21.3.2004 and surprisingly, no missing report was lodged by anyone till 24.3.2004 when his dead body was recovered.

Reliance has been placed on the judgments in the matters of ***Raghunath Vs. State of Haryana, 2003 CrLJ 401 (SC)*** and ***Nehru and another Vs. State of CG, 2004(1) CGLJ 340***.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

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

08. PW-1 Ramsanehi is the informant who lodged merger intimation. He has stated that the deceased went missing three days prior to 24th March, 2004 and his dead body was first seen by Jagatram (PW-2) lying in the field and then PW-2 informed him and thereafter he lodged merger intimation (Ex.P/1). He is also a witness to inquest Ex.P/3. He has further stated that there was rumour in the village that the deceased was having illicit relation with appellant No.2. He has expressed his suspicion against the appellants. PW-2 Jagatram has

turned hostile and PW-3 Lahuraman Prasad Sahu and PW-4 Ratanlal Sahu, witnesses to memorandum and seizure, have also turned hostile. PW-5 Bodhiram is a witness of seizure of motorcycle and knife from the spot vide Ex.P/13 & P/14. PW-6 Tukaram Yadav, Patwari, prepared the spot map Ex.P/15. PW-7 Ishwarilal Sahu is a witness to seizure of articles from the spot. PW-8 Bhimsen Rathore, Police Constable, PW-13 B.L. Pandey, Sub Inspector and PW-15 Lakhan Singh, Head Constable, assisted in the investigation. PW-9 Dinesh Kumar Yadav, Panchayat Secretary, PW-10 Chamrinbai, wife of the deceased, PW-11 Mohanlal and PW-12 Manoj Kumar have not stated anything specific against the appellants. PW-16 KL Yadav, investigating officer, has supported the prosecution case. PW-17 Nand Kumar has turned hostile.

09. PW-14 Dr. DC Choudhary conducted postmortem on the body of the deceased and noticed as many as 10 incised wounds on neck, left parietal region, occipital region, right mastoid region, left ear, back, right ear and chin. In his opinion, the cause of death was shock (hemorrhagic and neurogenic) due to multiple wounds over scalp and neck and that the death was homicidal in nature. He also examined the alleged weapon of offence carpenter's axe and vide his query report (Ex.P/28) opined that the injuries sustained by the deceased could have been caused by the said weapon.

10. DW-1 Shambhu Prasad Satnami, son of the appellants, has stated that the police after beating his father/appellant No.1 took him with them in connection with murder of the deceased. DW-2 and DW-3 have not stated anything specific in favour of the appellants.

11. 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 evidence of recovery of certain bloodstained incriminating articles at the instance of the appellants coupled with the query report (Ex.P/28) of the doctor and the motive.

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 appellants connecting them with the crime in question. So far as recovery of incriminating articles at the instance of the appellants is concerned, it is of no consequence for the reasons that the witnesses to the memorandum and seizure have not supported the prosecution case on this point and have been declared hostile and even if the statement of the investigating officer is resorted to, then also the said circumstance loses its efficacy because though there is FSL report confirming presence of blood on the articles so seized but in absence of any serological report proving the said blood to be of

human beings and that too of the group of the deceased, it cannot be said with certainty that the articles so seized were having any nexus with the crime in question.

15. As regards the other circumstances that the deceased was having illicit relation with appellant No.2 and as such, it was the motive for the appellants to eliminate him, in the evidence of the witnesses it has come that there was rumour in the village that the deceased was having illicit relation with appellant No.2 and on that count, the appellant No.1 also had quarrel with the deceased. This undoubtedly raises suspicion against the appellants and can be a motive for commission of the offence, but the law is well settled that suspicion howsoever strong cannot take the place of proof and the prosecution has to prove its case beyond all reasonable doubt by leading cogent and reliable evidence and the motive can be taken as an additional link in the chain of circumstantial evidence but cannot alone form the basis of conviction.

16. The next circumstance relied upon by the trial Court is the query report Ex.P/28 given by the autopsy surgeon according to which the injuries suffered by the deceased could have been caused by the carpenter's axe seized from appellant No.1. This circumstance also does not appear to be conclusive in nature because considering the nature of injuries suffered by the deceased, it cannot be said that such injuries could have been caused only by carpenter's axe and rather it appears that such injuries could be caused by any other weapon having edge like carpenter's axe. For this reason, the aforesaid circumstance also fails to prove guilt of the appellants beyond

reasonable doubt.

17. Thus having examined the evidence in the present case in light of the aforesaid principles of law, we are unable to hold the appellants guilty of the crime in question. None of the circumstances relied upon by the trial Court has been proved to the hilt by the prosecution so as to exclude the possibility of any person other than the appellants being the perpetrator of the crime beyond the shadow of all reasonable doubt. Being so, the benefit of doubt must be credited to the appellants and they deserve to be acquitted of the charges leveled against them.

18. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charges leveled against them by extending them benefit of doubt. The appellants are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.P. Sharma)
Judge