

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 119 of 2008

- Shiv Prasad Baghel, S/o Pakala Baghel, aged about 28 years, Occupation – Labour, R/o Village – Samaniya, Dipapara, Thana – Kapoo, District – Raigarh (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through: Station House Officer, Thana-Kapoo, Distt.-Raigarh, C.G.

---- Respondent

For Appellant	:	Shri Ajit Kumar, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

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

Per P. Diwaker, J

17/08/2017

This appeal arises out of the judgment of conviction and order of sentence dated 29.12.2007 passed by the III Additional Sessions Judge (FTC), Raigarh in ST No.89/2007 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- with default stipulation.

02. In the present case, name of the deceased is Lalita, wife of the accused/appellant. As per prosecution case Lalita was living with the appellant, her daughter aged 1 ½ years and mother-in-law. On 24.5.2007 at around 12 noon Bhajanbai Satnami (PW-4), mother of the appellant, returned to her house and found Lalita lying on the floor in the pool of blood and then information was passed on to relatives of

Lalita that Lalita is serious. Having received such information PW-1 Kiritram Navrangi, brother-in-law of the deceased, reached the house of the deceased and found that she had expired. At his instance merger intimation Ex.P/2 was registered on 24.5.2007 at 7.30 pm. Immediately thereafter FIR (Ex.P/1) was registered at 7.35 pm against the appellant under Section 302 of IPC. Inquest over the dead body was prepared vide Ex.P/7 on 25.5.2007. The dead body was sent for postmortem, which was conducted on 26.5.2007 by PW-23 Dr. B.L. Bhagat vide Ex.P/14A who noticed incised wounds on upper part of occipital region of scalp and upper part of left side of face just below left eye and opined the cause of death to be a result of head injury caused by hard and sharp edged object and that the death was homicidal in nature. On the memorandum of the appellant Ex.P/21, seizure of axe was effected vide Ex.P/22. Though the weapon was sent for chemical examination to FSL but there is no FSL report on record. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 23 witnesses in all. Statement of the accused 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.

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 appellant as mentioned above.

05. Counsel for the appellant submits as under:

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

(ii) that the main piece of evidence relied upon by the trial Court against the appellant is seizure of axe pursuant to disclosure statement of the appellant. However, in absence of FSL and serological report, the said seizure loses its significance and merely on that basis conviction cannot be based.

(iii) though the appellant has not been convicted on the basis of house murder theory, however, from the evidence it is clear that in the house in question apart from the appellant and the deceased, his mother, who first saw the deceased in the noon at 12 lying in the pool of blood, was also residing with them. This apart, in his statement under Section 313 of Cr.P.C. the appellant has taken a specific defence that on the date of incident he had gone to the house of his maternal uncle in other village and there only he received information about death of Lalita and then returned to his house.

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 Kiritram Navrangi, brother-in-law of the deceased, who is lodger of merged intimation and FIR has stated that upon receiving

information when he went to the house of the deceased along with his mother-in-law Mehatarinbai, he found Lalita dead with injury on her head and then lodged report at the police station. He has stated that in the house in question apart from the appellant and the deceased, mother of the appellant was also residing. He states that he was informed by the villagers that the appellant had killed the deceased. However, subsequently this witness was declared hostile. He has admitted the fact that relations between the appellant and the deceased were cordial. PW-2 Tiharan Satnami, father of the deceased, is a hearsay witness, he has stated that relations between the appellant and the deceased were cordial and there was no dispute or quarrel between them and he has never seen the appellant committing marpeet with the deceased. PW-3 Mehtarinbai Satnami, mother of the deceased, has also admitted the fact that relations between the appellant and the deceased were cordial, there was no quarrel or dispute between them and her daughter/deceased never informed her about commission of marpeet by the appellant with her. All these witnesses have stated that when they reached the house of the appellant, only deceased was there lying in the pool of blood on the floor and that the appellant as well as his mother (PW-4) were not there.

09. PW-4 Bhajanbai Satnami, mother of the appellant, has stated that she was residing with the appellant, the deceased and their 1 ½ years daughter in the same house, on the date of incident she had taken the daughter of the appellant and the deceased with her to other colony where her another son Pardeshi resided and at around 12 noon when she returned she found Lalita lying in the pool of blood on the

floor. She then called the people of the vicinity. However, this witness has been declared hostile. She too has admitted that at that time the appellant was not in the house and had gone out and that relations between the appellant and the deceased were cordial. PW-5 Dhaniram Satnami has also stated that when he reached the house of the appellant after receiving information about death of Lalita, the appellant was not there. This witness has been declared hostile. PW-6 Nankibai Satnami has also stated that when she reached the house of the appellant, she found Lalita lying dead with injuries on her head and that the appellant was not there. PW-7 Pardesi Baghel and PW-8 Kunwarsai Satnami, brothers of the appellant, have been declared hostile. In cross-examination they have stated that on the day when Lalita died the appellant had gone to his maternal uncle since morning and on being informed about the death of Lalita, he returned next morning. They have also admitted the fact that relations between the two were cordial. PW-9 Jethuram and PW-10 Manglu Satnami have also turned hostile.

10. PW-11 Amrit Bhosle, PW-12 Ashish Shrivastava, PW-13 Sasturam Bhagat and PW-14 Gajendra Prasad Paikra, police personnel, helped in the investigation. PW-15 Smt. Meerabai and PW-16 Smt. Mankibai have turned hostile. PW-17 Jangiram is a witness to inquest Ex.P/19 and seizure Ex.P/20 of bloodstained and plain soil from the spot. PW-18 Chherbharam Lahre and PW-19 Heeralal Jade, witnesses to memorandum and seizure, have supported the prosecution case. PW-20 Udairam Modi is a witness to inquest. PW-21 Chintamani Tripathi, investigating officer, has supported the prosecution case. PW-22 Rajkumar Rathiya, Patwari, prepared the

spot map Ex.P/30. PW-23 Dr. BL Bhagat conducted postmortem on the body of the deceased on 26.5.2007 vide Ex.P/14A and noticed incised wounds on upper part of occipital region of scalp and upper part of left side of face just below left eye and opined the cause of death to be a result of head injury caused by hard and sharp edged object and that the death was homicidal in nature. He has also examined the weapon of offence axe and in his opinion the injuries suffered by the deceased could be caused by the said weapon.

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 certain incriminating articles (bloodstained axe and lungi of the appellant) and 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 articles i.e. axe and lungi at the instance of the appellant is concerned, it is of no consequence for the reasons that the prosecution has failed to prove that these articles had any nexus with the crime in question. Neither there is report from FSL to show that it contained blood nor is there any report from serologist that the blood found on it was of human being and that too of the group of the deceased. Though the witnesses to the memorandum and seizure have supported the prosecution case, but that alone is not sufficient to draw an adverse inference against the appellant, particularly when the case rests solely upon this circumstantial evidence and in such a case, it had to be proved to the hilt leaving no room for any doubt consistent with the innocence of the appellant. However, that has not been done in this case. More so, though the dead body has been found inside the house, but present is not the case of house murder as admittedly in the house in question apart from the appellant and the deceased, mother of the appellant was also residing. In his statement under Section 313 of Cr.P.C. the appellant has taken a specific defence that on the date and time of incident he was not present in the house and had gone to his maternal uncle's house in some other village where he got information about death of his wife/deceased and then returned the next morning. The said defence of the appellant also finds support from the evidence of the prosecution witnesses (PWs No.1 to 8) who have stated that after coming to know about the death of Lalita when they reached the house of the appellant, only deceased was there. Furthermore, the prosecution witnesses (PWs-1, 2, 3, 4, 7 & 8), including the father and mother of the deceased, have admitted the fact that relations between the appellant and the deceased were

cordial, they have never seen both of them quarreling or the appellant beating the deceased and that the deceased also never complained about any ill-treatment by the appellant.

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 charge leveled against him.

16. 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 of IPC 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/

(R.P. Sharma)
Judge