

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 867 of 2005

1. Smt. Shanti Devi W/o Nunmun Mandan, aged about 50 years,
2. Nunmun Mandal S/o Late Ugar Mandal, aged about 59 years,

Both R/o village Birna Dabur, Police Station – Jamua, District Girridih, Jharkhand.

At present R/o 1-C 38 SECL Colony, Bishrampur, District Sarguja, CG

---- Appellants

Versus

1. State of Chhattisgarh through Station House Officer, PS Bishrampur, District Sarguja, CG

---- Respondent

AND

CRA No. 943 of 2005

1. Narayan Mandal, S/o Nunmun Mandal, aged about 24 years,
2. Manoj Mandal, S/o Nunmun Mandal, aged about 23 years,

Both R/o village Birna Dabur, Police Station – Jamua, District Girridih, Jharkhand.

At present R/o 1-C 38 SECL Colony, Bishrampur, District Sarguja, CG

---- Appellant

Versus

1. State of Chhattisgarh through Station House Officer, PS Vishrampur, District Sarguja, CG

---- Respondent

For Appellants : Shri Ashok Kumar Shukla, Advocate
For Respdtd/State : Shri Adhiraj Surana, Dy. GA
For Objector : Shri A.K. Prasad, Advocate

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri R.P. Sharma**

Judgment on Board by Pritinker Diwaker, J

14/09/2017

As the aforesaid two Criminal Appeals arise out of the same judgment dated 24.11.2005 passed by Additional Sessions Judge (FTC) Surajpur, District Sarguja in Sessions Trial No. 530/2004 convicting accused/appellants Narayan Mandal and Manoj Mandal under Sections 302/34 and 201 IPC and sentencing each of them to undergo imprisonment for life and pay fine of Rs. 2000/- u/s 302/34 and RI for four years with fine of Rs. 2000/- u/s 201 whereas convicting accused Smt. Shanti Devi and Nunmun Mandal u/s 201 IPC and sentencing each of them to undergo RI for four years with fine of Rs. 2000/-, plus default stipulations, they are disposed of by this common judgment.

2. Name of the deceased in the present case is Ramesh Sahu. As per the case of prosecution, in the intervening night of 25/26.7.2004 deceased went to the house of accused Nunmun Mandal and asked for the drugs from accused Manoj Mandal. On refusal by Manoj Mandal, some dispute arose between him and the deceased where accused Manoj Mandal is said to have assaulted the deceased with a wooden leg of the table. When the dispute between the two did not subside, all the accused/appellants assaulted him with axe and threw his body by the side of the road. On 26.7.2004 at 7.15 AM FIR Ex. P-2 was lodged by Suresh Kumar Sahu (PW-2) - brother of the deceased against the accused/appellants for the offences under sections 302,201,34 IPC. Immediately thereafter, *merg* Ex. P-27 was recorded at 7.20 AM at the instance of (PW-2). Inquest was drawn on the same day vide Ex. P-1 and thereafter the dead-body was sent for postmortem examination which was conducted by Dr. Kamlesh Kumar Tamrakar (PW-17) who gave his report Ex. P-23. After investigation, the police filed challan against all the accused/appellants under sections 302,

201, 34 IPC followed by charge framed by the Court below u/s 302/34 and 201 IPC.

3. In order to prove its case the prosecution has examined 21 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case. One defence witness namely Ram Naresh Gupta (DW-1) has also been examined by the defence.

4. After hearing the parties the Court below, by the judgment impugned, has convicted and sentenced the accused/appellants as mentioned in paragraph No.1.

5. Counsel for the accused/appellants submit as under:

(i) That the conviction of the accused/appellants is based on the circumstantial evidence but from the record it is apparent that the chain of the circumstances relied upon itself is not complete.

(ii) That main piece of evidence relied upon by the Court below is the memorandum of accused Narayan Mandal and Manoj Mandal vide Ex. P-4 and P-1 respectively based on which seizure of jute bag, full pant, full shirt and wooden leg of a table was made under Ex. P-5 and P-11.

(iii) That though as per the un-exhibited FSL report blood was found on certain articles but in the absence of serological report, such seizure loses its significance.

(iv) That the so called blood marks found on the road going to the place where the body was found from the house of the accused/appellants is of no importance because there is no

evidence on record to show that the said blood was of human origin.

(v) That though one cap has been seized from the house of the accused/appellants but it has not been proved by the prosecution that it was of the deceased and that on the fateful day he wore the same.

6. On the other hand counsel for the respondent/State as also counsel for the objector support the judgment impugned and submit that the findings recorded by the Court below convicting and sentencing the accused/appellants as described above are strictly in accordance with law and there is no infirmity in the same.

7. Rajesh Kumar Malviya (PW-1) is the witness to inquest Ex. P-1. Suresh Kumar Sahu (PW-2) - the brother of the deceased and lodger of FIR Ex. P-2 and *merg has* stated that after receiving information about the death of deceased he went to the spot and found the body lying with number of injuries on neck, thigh, calf, palm etc. He is also stated to have seen the blood trail in between the place where the body was lying and the house of the accused/appellants and that their house and courtyard was washed. According to this witness, he also saw cap of the deceased lying in the garbage and that on seeing the marks of dragging and that of blood he suspected that the accused/appellants might have killed the deceased. He has stated that the deceased used to visit the house of the accused/appellants and the relations between them were intimate. He has further stated that on the fateful night the deceased and one Sandip Sori (PW-3) had come to his house in drunken condition and as it was late in the night he had asked them to go to their houses and sleep. Thereafter, Sandip Sori moved

away on his motorcycle whereas the deceased left his house by taking the bicycle of this witness. In cross-examination he has admitted that the deceased was completely drunk and that is why he asked him to sleep in his house but he did not listen to him. He has further admitted that the cap seized by the police being a common article is available in the market. Sandip Sori (PW-3) - the witness with whom he had consumed liquor with the deceased on the fateful night has stated that the deceased was with him for the whole day till 12-01 AM. According to him, after taking dinner he went to drop the deceased in the house of his brother (PW-2) at about 1 AM and after he got inside, he (this witness) returned to his house and on the next morning he came to know through one Titu Sharma that Ramesh Sahu was murdered. Thereafter, he went to the spot and found the body of the deceased lying there with injuries on his head and legs. He is also stated to have seen the trail of blood from the place where the body of the deceased was lying to the house of the accused/appellants. He also saw the cap of the deceased lying behind the house of the accused/appellants but he has stated that such caps are available in the market. Further admission by this witness is that the road where the dead-body was lying is a busy road and public movement is always there. Sarfraz Ahmed Khan (PW-4) is the witness to memorandum of accused/appellant Narayan Mandal Ex. P-4 and seizure made under Ex. P-5 and P-6. He has admitted that he was not aware as to who gave axe to the police but it was in the hand of police people and at that time accused Narayan Mandal was with them. Vinay Tiwari (PW-5) - the witness of memorandum Ex. P-4 and seizure made under Ex. P-5 has been declared hostile. Mohd. Majhar (PW-6) - the witness to memorandum of accused Manoj and seizure made under

Ex. P-11 has not supported the case of the prosecution and has been declared hostile. Kalinder Ram (PW-7), Dharmpal (PW-11), Jayant Kumar Mandal (PW-12), Upendra Kumar Verma (PW-13), Rajendra Kumar Singh (PW-14) and Achhe Singh Rai (PW-15) have not supported the case of the prosecution and have been declared hostile. Ram Bachan Ram (PW-8), Raja Ram (PW-9), Bhubeshwar Ram (PW-10) and Maan Singh Rathia (PW-19) are the witnesses who assisted in the investigation. Dr. Snehlata Tirki (PW-16) is the witness who medically examined accused Narayan Mandal and gave her report Ex. P-20. She has stated that he was a drug addict. She medically examined accused/appellant Manoj Mandal also and gave her report Ex. P-21 stating that he was suffering from fever, cold and cough and was complaining pain. Dr. Kamlesh Kumar Tamrakar (PW-17) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-23 stating that he noticed following injuries:

- (i) Incised wound situated above ear transversely placed. 6 cm x 1 cm muscles cut size 6 x 1 x 5 cm red in colour.
- (ii) Six incised wounds situated in left ear up to occipital region – size 5 x 5 x 4 cm, 5 x 1 x 1 cm, 5 x 3 x 2 cm, 4 x ½ x 1 cm, 8 x 4 x 5 cm, 5 x 1 x 1 cm, red in colour.
- (iii) 3 incised wounds situated on the left side of neck – 3 x ½ x ½ cm, 2 ½ x 1 ½ x 1 ½ cm
- (iv) 2 incised wounds 3 x ½ x 1 cm red in colour, blood present.
- (v) 5 incised wounds situated on the right leg.
- (vi) Incised wound over right ankle.
- (vii) Stitched incised wound over heel – 5 cm in length.
- (viii) Contusion on vertex
- (ix) Incised wound on right foot.

Cause of death, according to this witness is shock due to head injury and its mode was homicidal in nature.

Maheshwar Singh (PW-18) is the investigating officer who has duly supported the case of the prosecution. Daya Shankar Sinha (PW-20) is the Patwari who prepared spot map Ex. P-39. Raj Kishore Ram (PW-21) is the witness to inquest Ex. P-1. Ram Naresh Gupta (DW-1) has been examined to prove the criminal record of the deceased and according to him more than 10 criminal cases were registered against him.

8. We have perused the evidence of the witnesses and other material on record with great diligence. Admittedly, there is no eyewitness to the incident and the case of the prosecution rests on the circumstantial evidence as a whole. From the evidence of Suresh Kumar Sahu (PW-2) – the lodger of FIR Ex. P-2 it is clear that after being informed about the incident when he went to the place of occurrence, body of the deceased was lying with number of injuries thereon; trail of blood led to the house of the accused/appellants and the cap of the deceased was lying in the garbage. Dragging marks and blood present on the road are stated to have made this witness suspect the accused/appellants to be the crime-doers. Though this witness is stated to have seen the blood trailing up to the house of the accused/appellants yet there is no serological report on record to establish that the said blood was of human origin and that too of the blood group of the deceased. Even the FSL report as to the presence of blood on some of the seized articles remains un-exhibited and the prosecution did not bother to collect and produce the serological report to fortify its case. Furthermore, the dead-body was found lying by the side of the road which is open to movement by mankind as well as the animals and therefore it cannot be said with certainty that it was only the human blood. Possibility of such blood having oozed out of the

wounded animals roaming on the road cannot be ruled out. That apart, it has come in the evidence that the said road remains open for public movement, but how the dead-body kept lying up to the morning hours skipping the eye of passers-by, is a big surprise. Relations between the accused/appellants and the deceased are also stated to be intimate. Evidence of Sandip Sori (PW-3) - the one with whom the deceased had consumed liquor also goes to show that after taking dinner, in the dead of night he went to drop the deceased in the house of his brother (PW-2) and thereafter he returned to his house. After receiving information about the deceased being killed, in the morning he went to the spot and found the body of the deceased lying there with injuries on his head and legs. Trail of blood from the place where the body of the deceased was lying to the house of the accused/appellants, as well as the cap lying in the heap of garbage is also stated to have seen by him. As already observed, in the absence of serological report the blood trail noticed by PW-3 is of no value. As regards cap of the deceased found in the heap of garbage, it being a common article available in the market, cannot be connected with the deceased particularly when there is no evidence to show that on the fateful day, he was wearing the said cap.

9. In the cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should 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. Dealing with a similar question in the matter of **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210**, it has been held by the Apex Court 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.

10. Further, dealing with the recovery of bloodstained articles in the matter of ***Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507*** 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.”

11. If the facts and evidence of the cases in hand is seen in the light of the aforesaid legal framework, the chain of circumstances relied upon by the prosecution is too fragmented to be made a basis for holding the accused/appellants guilty for the offence alleged against them. Even the witnesses examined in this case, in particular, PW-2 and PW-3 have not stated anything concrete and they have just expressed their suspicion looking to prevailing circumstances. But, mere suspicion, however strong it is, will not suffice for holding one guilty, is the legal prescription holding the filed. There is no evidence even as regards the conviction under Section 201 IPC because had any such thing been attempted, there was no time constraint to do so and instead of road the body would have been recovered from

somewhere else. Findings recorded by the Court below, therefore, do not appear to be based on the correct appreciation of the evidence and being so they are liable to be set aside giving benefit of doubt to the accused/appellants.

12. In the result, the appeals succeed with the acquittal of the accused/appellants of the charges levelled against them. As all the accused/appellants are already on bail, there is no need to pass any order for their release etc,

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge