NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 849 of 2010

- Amrit Lal Sahu s/o. Pyarelal Sahu, aged about 21 years, occupation Agriculturist, r/o. Village Dihipara Ghatula, Police Station Sihava, District Dhamtari (CG).

---- Appellant

Versus

- State Of Chhattisgarh through Station House Officer, Police Station Sihava, District Dhamtari (CG).

---- Respondent

CRA No. 926 of 2010

- Tarachand Sahu s/o. Pyarelal Sahu, aged about 27 years, occupation Agriculturist, r/o. Village Dihipara Ghatula, Police Station Sihava, District Dhamtari (CG).

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Sihava, District Dhamtari (CG).

---- Respondent

&

CRA No. 1074 of 2013

- Pyare Lal Sahu S/o Anand Ram Sahu Aged About 56 Years R/o Village Ghatula, Tah. Nagri, Distt. Dhamtari C.G. Ps Sihawa Civil And Rev. Distt. Dhamtari C.G.

---- Appellant

Versus

- The State Of Chhattisgarh Through Police Station Sihawa, Distt. Dhamtari C.G.

---- Respondent

For Appellant in CRA No. 849 of 2010 : Mr. Y.C. Sharma, Advocate.

For Appellants in CRA No. 926 of 2010 & 1074 of 013 : Mr. Arun Kochar, Advocate.

For Respondent/State : Mr. Vivek Sharma, Govt. Advocate..

Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

21-09-2017

Per Pritinker Diwaker, J.

1. As all the three appeals arise out of a common judgment dated 23-11-2010 passed by the Sessions judge, Dhamtari, District Dhamtari in Sessions Trial No. 15 of 2010, they are being disposed of by this common judgment.
2. The appellants have preferred these appeals against the judgment of conviction and order of sentence dated 23-11-2010 passed by the Sessions Judge, Dhamtari, District Dhamtari, in Sessions Trial No. 15 of 2010 convicting the accused/appellants as under:

Sl.No.	Conviction	Sentence
i)	Under Section 201/34 of IPC	RI for five years and to pay fine of Rs.1000/-, in default f payment of fine amount to undergo further RI for six months.
ii)	Under Sections 302 of IPC	Life imprisonment and fine of Rs.5000/-, in default of payment of amount RI for one year.
iii)	Under Section 201/34 of IPC	RI for five years and to pay fine of Rs.1000/-, in default of payment of fine to undergo additional RI for six months.

3. As per the prosecution case, accused/appellant Tarachand had borrowed some money from Yogesh Tiwari and Yogesh Tiwari was persistingly demanding the same about one month prior to the date

of incident. Yogesh Tiwari demanded his money from Tarachand, but not only it was refused by him but Tarachand also threatened Yogesh Tiwari for dire consequences. It is said that on 11-10-2009 accused/appellant Tarachand committed murder of Yogesh Tiwari by causing several injuries to him and then with the help of accused/appellant Amrit Lal, the dead body of the deceased was thrown in a brook. On 11-10-2009 dead body was found in a brook, upon receiving information number of villagers along with Jagdish Pandey (PW/1) had gone to lodge merg intimation (Ex.P/1) on 12-10-2009 at 8.40 a.m. Inquest on the dead body was conducted vide Ex.P/2 on 12-10-2009, dead body was sent for post-mortem which was conducted by Dr. D.R. Thakur (PW/9) on 12-10-2009 vide Ex.P/22 and found the following injuries.

i) Lacerated wound present on centre of head in the size of 6 cm long and 5 cm width upto skull bone;

ii) Cut wound present on occipital region of left side in the size of 6 cm long and 2 cm width and depth upto skull bone, margin clean cut; and

iii) Cut wound present on left temporal region in the size of 6 cm long and 2 cm width and depth upto skull. Skull fracutured and depressed and clotted blood present inside scalp.

He opined that mode of death is coma due to head injury caused by hard and blunt object and death is homicidal in nature.

4. After merg inquiry, on 14-10-2009 first information report (Ex.P/12) was registered under Sections 302 and 201 of IPC against the

unknown person. On 26-10-2009 memorandum statement of accused Tarachand was recorded vide Ex.P/13, based on which seizure of Ex.P/15 of hammer, vest and lower was made whereas vide Ex.P/16, Nokia Mobile of deceased, vide Ex.P/17, jute bag containing soil of mud and blood and vide Ex.,P/19 Tractor and Trolley bearing registration No. CG 05 ZG 2203 and CG 05 ZG 2204 were seized. On the same day, memorandum of accused Amrit Lal was recorded vide Ex.P/14 and vide Ex.P/18 seizure of slipper of deceased was made. As per FSL report vide Ex.P/29, blood was found on hammer, vest, lower and jute bag, however, there is no serological report. After filing of the charge-sheet, the trial Court has framed the charge against the appellant Tarachand under Section 302, 201 and 34 of the IPC whereas against Amrit Lal charge-sheet was filed under Section 201 and 34 of the IPC.

5. So as to hold the accused/appellants guilty, the prosecution examined 11 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. 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.

6. Aggrieved with their conviction, accused/appellants have preferred Criminal Appeals No. 926 of 2019, 849 of 2010 whereas Criminal Appeal No.1074 of 2013 has been preferred by one Pyarelal praying for released of his Tractor and Trolley bearing registration No. CG 05 ZG 2203 and CG 05 ZG 2204 on suprudnama.

7. Learned counsel appearing for the accused/appellants submit as under:

(i)	That the accused/appellants have been convicted solely on the basis of circumstantial evidence and the chain of circumstantial evidence is not complete, therefore, the appellants are entitled for benefit of doubt;
(ii)	That the main piece of evidence against the appellants is their memorandum statements (Ex.P/13 & P/14) based on which certain seizures have been effected
(iii)	That though FSL repor (Ex.P/29) is positive in respect of certain seized articles but in absence of serological report, the FSL report is insignificant.
(iv)	In relation to Criminal Appeal No. 1074 of 2013, it has been argued that the Tractor and Trolley belongs to Pyarelal, therefore, the same be released in favour of Pyarelal.

8. *Per contra,* 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.

9. We have heard learned counsel for the parties and perused the judgment impugned including the record of the court below.

10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

11. PW/1 Jagdish Pandey, is a lodger of merg intimation and witness of inquest. PW/2 Rahul Tiwari is a witness of inquest. PW/3 Radheshyam Sahu has turned hostile. PW/4 Koduram Tiwari has stated that on the date of incident at about 3.30 pm, in the evening, when he was returning to his home, he met deceased who informed him that he is going to appellant Tarachand to take back his money. He has stated that on the second day he came to know about the death of the deceased. PW/5 Birendra Mishra has stated that about a month prior to the date of incident deceased demanded his money back from Tarachand, however, Tarachand had refused to give him the said amount by saying that he does not have the moey and Tarachand also told the deceased that if you will harass him, it will not be good. This witness further stated that he too asked Tarachand to return the money of the deceased. PW/6 Chovaram Sahu is a witness of spot map. PW/7 Hem Lal Sahu is a witness of investigation. PW/8 Mukesh Tiwari is a witness of memorandum and seizure. PW/9 Dr.D.R. Thakur, who conducted postmortem and found injuries as mentioned above. PW/10 Shiv Mangal Tiwari is father father of the decesed who has stated that there was some monetary transaction between the appellant Tarachand and deceased and they had some hot talks regarding the same. PW/11 Narendra Pujari is

the Investigating Officer who has stated that on memorandum statement of accused Tarachand seizure of Ex.P/15 of hammer, vest and lower was made whereas vide Ex.P/16, Nokia Mobile of deceased, vide Ex.P/17, jute bag containing soil of mud and blood and vide Ex.,P/19 Tractor and Trolley bearing registration No. CG 05 ZG 2203 and CG 05 ZG 2204 were made whereas on memorandum of accused Amrit Lal vide Ex.P/18 seizure of slipper of deceased was made.

12. It is relevant to point out that neither slipper of the deceased was subjected to identification nor there is any evidence that mobile seized from the possession of the appellant Tarachand vide Ex.P/16 belongs to the deceased and though the blood-stains were found on certain articles, but there is no serological report proving the origin of the blood or blood group of the same

13. 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. In the matter of **Sattatiya @ Satish Rajanna kartalla Vs. State of Maharashtra (2008) 2 SCC 210**: the suprme Court while dealing with circumstantial evidence observed in paras 11, 12, 13 & 26 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."

14. In **Kansa Behara Vs Statee of Orissa, reported in 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."

15. In the case of **Govindaraju @ Govind vs. State and another, reported in (2002) 4 SCC 722** , the Supreme Court held as under:

> 51. Now, we will come to the recoveries which are stated to have been made in the present case, particularly the weapon of crime. Firstly, these recoveries were made not in conformity with the provisions of Section 27 of the Indian Evidence Act, 1872. The memos do not bear the signatures of the accused upon their disclosure statements. First of all, this is a defect in the recovery of weapons and secondly, all the recovery witnesses have turned hostile, thus creating a serious doubt in the said recovery. According to PW4 and PW5, nothing was

> recovered from the appellant Govindaraju. According to PW6 and PW8, nothing was recovered from or at the behest of the accused, Goverdhan.
>
> 52. Ex.Mo1 was the knife recovered from Govindaraju while Mo2 and Mo3 were the knife and the blood-stained shirt recovered from the accused, Goverdhan. Ex.Mo1, the weapon of offence, did not contain any blood stain. Ex.Mo2, the knife that was recovered from the conservancy at the behest of the accused, Goverdhan was blood-stained. Ex.P15, the report of the FSL, shows that item no.7 `one chaku' was blood-stained. However, the prosecution has taken no steps to prove whether it was human blood, and if so, then was it of the same blood group as the deceased or not. Certainly, we should not be understood to have stated that a police officer by himself cannot prove a recovery, which he has affected during the course of an investigation and in accordance with law. However, it is to be noted that in such cases, the statement of the investigating officer has to be reliable and so trustworthy that even if the attesting witnesses to the seizure turns hostile, the same can still be relied upon, more so, when it is otherwise corroborated by the prosecution evidence, which is certainly not there in the present case."

16. Close scrutiny of the evidence makes it clear that but for the memorandum of the accused/persons leading to certain seizures, there is no evidence showing the involvement of the accused/appellant in commission of the offence. Though FSL report is positive in respect of the seized articles but in absence of serological report, FSL report (Ex.P/29) loses its importance and merely on the basis of said evidence, it will not be safe for us to hold the conviction of the appellants. As per evidnece of PW/4 Koduram Tiwari, on the date of incident deceased informed him that he is going to appellant Tarachand to get back his money and on the next day, dead body of the deceased was found, however, on the basis of

the said evidence, the appellant Tarachand cannot be convicted. Likewise, there is absolutely no evidence against the accused/appellant Amrit Lal whioch could show as to in what manner he helped the accued Tarachand for disposal of the dead body. The evidence adduced by the prosection is not sufficient to hold the appellants guilty for commission of any offece.

17. Thus having examined the evidence in the present cases 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 perpetrators 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 appeals are allowed. Conviction of the appellants under Sections 302, 201 and 34 of the IPC is set aside. The appellants are acquitted of the charges under Sections 302, 201 and 34 of IPC framed against them. The appellat Amrit Lal is reported to be on bail. His bail bonds stand discharged. The appellant Tarachand is reported to be in jail. He be released forthwith, if not required in any other case.

19. So far as Criminal Appeal No. 1074/2013 preferred by the appellant Pyarelal is concerned, considering the facts and circumstances of the

case and in view of the decision of Criminal Appeals No. 926 of 2010 and 849 of 2010, we allow the appeal preferred by Pyarelal and it is directed that the veicle in question (Tractor and Trolley bearing registration No. CG 05 ZG 2203 and CG 05 ZG 2204) be given to him on suprudnama on specific condition as may be imposed by Judicial Magistrate First Class, Dhamtari.

Sd/-

(**Pritinker Diwaker**)
JUDGE

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju