

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 961 of 2012

- Sanjeet Dhali S/o Shri Kalipad Dhali Aged About 26 Years, Occupation Mechanic, R/o P.V. 11, PS - Pankhajur, Distt. - Kanker C.G.

**---- Appellant
In Jail**

Versus

- State Of Chhattisgarh Through - PS - Bande, Distt. - North Bastar Kanker C.G.

---- Respondent

For Appellant	:	Shri Arvind Sinha, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

Per P. Diwaker, J

03/07/2017

This appeal arises out of the judgment of conviction and order of sentence dated 12.9.2012 passed by the Sessions Judge, Kanker, Distt. North Bastar in ST No.116/2011 convicting the appellant under Sections 302 and 382 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.500/- and RI for seven years, pay a fine of Rs.500/- respectively with default stipulations.

02. As per the prosecution case, the appellant is a TV mechanic and had his shop near the house of the deceased namely Rachna Kundu. The appellant developed intimacy with the deceased who was residing all alone as her husband had deserted her. On 28.4.2011 the deceased called the appellant to her house to have sex with her and it

is said that there she asked the appellant to have sex with her without using condom as she wanted to have a child from him. As the appellant was already married and had a son he refused to have sex with her without using condom. Then some dispute cropped up between the two and it is said that the appellant committed murder of the deceased by strangulating her with her scarf. On 29.4.2011 merger intimation Ex.P/1 was lodged by PW-1 Gopal, nephew of the deceased. Inquest over the dead body was performed vide Ex.P/3 on 30.4.2011 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-9 Dr. NR Navratan vide Ex.P/27 who noticed that the tongue was protruded, blood was oozing from the nose, there were abrasion and contusion on the neck, kidney, lungs, windpipe, ribs, membrane of the intestines were congested. In his opinion, the cause of death was asphyxia and the nature of death was homicidal strangulation. After receiving postmortem report and merger inquiry, FIR (Ex.P/29) was registered on 9.5.2011 under Sections 302 and 380 of IPC against unknown person.

On 10.5.2011 memorandum of the appellant was recorded vide Ex.P/5, based on which jewellery of the deceased, CD player, one shouldering machine were seized from the shop of the appellant vide Ex.P/6. Vide Ex.P/7 one portable colour TV and cash of Rs.6500/- was seized from the house of the appellant situated at Village P.V. 11. Vide Ex.P/8 cash of Rs.5000/- from one Neera @ Niranja, to whom the said amount was given by the appellant towards rent, was seized. Vide Ex.P/9 two cell phones allegedly belonging to the deceased were seized from one Kamal Mandal, to whom the same was given by the

appellant. Vide Ex.P/10 cash of Rs.3000/- was recovered from one Sapan Haldar, to whom it was given by the appellant. Vide Ex.P/12 seizure of purchase receipt of TV and CD player was made from PW-7 Sapna Dey, daughter of the deceased. Identification proceedings of the ornaments were conducted vide Ex.P/23 and the ornaments were duly identified by PW-7 Sapna Dey. After filing of charge sheet, the trial Court framed charges under Sections 302 and 382 of IPC against the appellant.

03. So as to hold the accused guilty, the prosecution examined 14 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. Hence this appeal.

05. Counsel for the appellant submits as under:

- (i) that there is no eyewitness account to the incident and the accused/appellant has been convicted solely on the basis of circumstantial evidence of very weak nature in the present case.
- (ii) that the chain of circumstantial evidence is not complete and even then conviction of the appellant has been recorded by the trial Court.
- (iii) that the main piece of evidence against the appellant is his so-

called memorandum and seizure effected in pursuance thereof, but the witnesses to memorandum and seizure have not supported the prosecution case and have been declared hostile.

(iv) that there is no legally admissible evidence against the appellant connecting him with the commission of murder of the deceased and even taking the entire prosecution case as it is, at best he can be held guilty of receiving stolen property and considering the fact that he has already remained in jail for more than six years, he should be set free forthwith by sentencing him to the period already undergone.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that on the memorandum of the appellant, certain seizures have been effected and most importantly, the seized ornaments have been duly identified by daughter of the deceased PW-7 Sapna Dey vide identification memo Ex.P/23.

(ii) that there is no reason to doubt the said identification proceedings because it is not the case of the appellant that Naib Tehsildar, who conducted identification, had any previous animosity with him or he has falsely implicated him for any reason. PW-14 Naib Tehsildar has duly supported the identification proceedings.

(iii) though the memorandum and seizure witnesses (PW-3 and PW-12) have been declared hostile but both of them have admitted their signature on the relevant documents.

(iv) that PW-5 Girish Tiwari who had recorded the memorandum and effected seizure of various articles has duly supported the prosecution case and there is no reason for this Court to disbelieve his statement.

(v) even if the witnesses to the memorandum and seizure have not

supported the prosecution case, statement of the police officer (PW-5 Girish Tiwari) who recorded the memorandum and effected seizures and remained consistent while deposing in the Court, can be safely relied upon.

(vi) that apart from ornaments, various other incriminating articles have been seized either from the possession of the appellant or from other persons and one of those persons namely Sapan Haldar who has been examined as PW-4 has duly supported the prosecution case.

(vii) that in a case like the present one where immediately after committing murder seizures have been effected, presumption is raised against the accused as to how he came in possession of the articles belonging to the deceased and unless the said circumstance is properly explained, the said presumption goes against the accused.

He has placed reliance on the judgment of the Supreme Court in the matter of ***Baiju Vs. State of M.P.*** reported in ***AIR 1978 SC 522***.

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

08. PW-1 Gopal Kundu, nephew of the deceased, has stated that his uncle deserted the deceased about 10-12 years back and since then she was residing all alone and had performed marriage of her daughter Sapna about 2 ½ – 3 years back. He has further stated that the person who committed murder of the deceased had taken her ornaments, TV and other items. He has further stated that at the instance of appellant gold ornaments, cash and TV were recovered. He has proved lodging of merg intimation Ex.P/1.

It is relevant to note here that no question has been put to this witness by the defence as to how he came to know that the person who committed murder of the deceased had taken away the ornaments, TV and other articles and the same were subsequently recovered at the instance of the appellant.

09. PW-2 Kalipad has turned hostile and not supported the prosecution case. PW-3 Manoj Rai is a witness of memorandum of the appellant Ex.P/5 and seizures Ex.P/6 to P/13 and arrest memo of the appellant Ex.P/14. Though he has not supported the prosecution case but has admitted his signature on these documents. In para-5 he has, however, admitted the fact that he being a journalist understands everything, without reading the document he is not supposed to sign the same but by mistake he signed all these documents at the instance of the police.

10. PW-4 Sapan Haldar is a person to whom the appellant had given Rs.3000/- in lieu of purchase of his old TV and the same was subsequently recovered by the police from him. PW-5 Girish Tiwari, Sub Inspector did major part of investigation, He also recorded memorandum of the appellant and effected seizure of certain articles vide Ex.P/6 to P/13. He has duly supported the prosecution case and has described as to the manner in which the said part of investigation was carried out by him. In cross-examination, no relevant question was put to him by the defence and thus his evidence inspires confidence of the Court and appears to be reliable one.

11. PW-6 Ashok Dey, son-in-law of the deceased, has stated that

after coming to know about the murder of the deceased when he reached her house, he found her dead body lying there with injury on her head and on being checked, it was found that TV set, CD player, certain ornaments and cash of Rs.21,500/- were missing from the house. It is relevant to note here that as per wife of PW-6 i.e. PW-7 Sapna Dey, cash amount of Rs.21,500/- was kept by her in the house of the deceased. While cross-examining PW-6, no question has been put to this witness by the defence as to on what basis statement was made by this witness regarding missing of certain articles and cash.

12. PW-7 Sapna Dey, daughter of the deceased, has stated that she had gone to the house of the deceased alongwith her husband Ashok Dey (PW-6) and there she found her mother lying dead with injury on her head. She has stated that on being checked, TV, CD player, two cell phones, ornaments of the deceased and cash of Rs.21,500/- which was kept by her with the deceased, were missing from her house. In the identification proceedings she has duly identified the ornaments of the deceased vide Ex.P/23.

13. PW-8 SR Yadav, Patwari, prepared the spot map Ex.P/24. PW-9 Dr. NR Navratan conducted postmortem on the body of the deceased on 30.4.2011 and noticed that the tongue was protruded, blood was oozing from the nose, there were abrasion and contusion on the neck, kidney, lungs, windpipe, ribs, membrane of the intestines were congested. In his opinion, the cause of death was asphyxia and the nature of death was homicidal strangulation.

14. PW-12 Sujit Havaladar is a witness of memorandum of the appellant Ex.P/5 and seizure Ex.P/6 to P/11. Though he has turned

hostile but has admitted his signature on these documents. PW-14 Bansingh Netam, Naib Tehsildar who conducted identification proceedings of the ornaments of the deceased vide Ex.P/23 has stated that the seized ornaments were duly mixed with other ornaments and PW-7 Sapna Dey, daughter of the deceased, correctly identified the same to be of the deceased.

15. 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 evidence of recovery of ornaments and other articles belonging to the deceased from his possession, for which no plausible explanation has been offered by him.

16. 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.

17. As per the prosecution case, on 28.4.2011 the accused/appellant had gone to the house of the deceased where some dispute cropped up between them and the appellant committed her murder by

strangulating her with her scarf and thereafter, stole the ornaments of the deceased and other articles i.e. TV, CD player, cell phone as also cash amount. On the memorandum of the appellant, seizure of the aforesaid articles was made. Though the witnesses to the memorandum and seizure (PW-3 and PW-12) have not supported the prosecution case and have been declared hostile but merely on that count, their whole evidence cannot be discharged. It is a settled principle of law that the even the evidence of hostile witnesses can be taken into consideration to the extent the same is corroborated by the other piece of evidence. In the present case, the witnesses to the memorandum and seizure have though denied the contents of these documents but have admitted their signature. Most importantly, the police officer (PW-5 Girish Tiwari) who recorded the memorandum and effected seizure has duly proved the recoding of memorandum and effecting seizure (Ex.P/6 to P/12).

18. It cannot be stated as a rule of law that a police officer can or cannot be a sole eyewitness in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to

distrust and suspect him without there being good grounds therefor.

19. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [AIR 2013 Supreme Court 3344 between [Pramod Kumar v. State \(GNCT\) of Delhi](#).]

20. In the present case, the police officer (PW-5 Girish Tiwari) has categorically stated that he recorded the memorandum of the appellant and effected seizure of certain articles pursuant thereto. All the adverse suggestions put to him by the defence have been denied by him. We find no reason to doubt the credibility of this witness and his evidence inspires confidence of the Court.

21. In the matter of ***Baiju Vs. State of M.P.*** (supra), the Supreme Court observed in para-14 of the judgment as under:

“14. As has been stated, the prosecution has succeeded in proving beyond any doubt that the commission of the murders and the robbery formed part of one transaction, and the recent and unexplained possession of the stolen property by the appellant justified the presumption that it was he, and no one else, who had committed the murders and the robbery. It will be recalled that the offences were committed on the night intervening January 20 and 21,

1975, and the stolen property was recovered from the house of the appellant or at his instance on January 28, 1975. The appellant was given an opportunity to explain his possession, as well as his conduct in decoying Smt. Lakhpatiya and the other persons who died at his hand, but he was unable to do so. The question whether a presumption should be drawn under illustration (a) of [section 114](#) of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. Thus the nature of the stolen article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the appellant, the place and the circumstances of its recovery, the length of the intervening period, the ability or otherwise of the appellant to explain his possession, are factors which have to be taken into consideration in arriving at a decision. We have made a mention of the facts and circumstances bearing on these points and we have no doubt that there was ample justification for reaching the inevitable conclusion that it was the appellant and no one else who had committed the four murders and the robbery. In the face of the overwhelming evidence on which reliance has been placed by the High Court, it is futile to argue that the murders could not have been committed by a single person. As has been stated, there is satisfactory evidence on the record to show that the dead bodies of Ramdayal and Smt. Fulkunwar were found at two different places near the "nala" so that it cannot be said that they were murdered together. As regards Smt. Bhagwanti and Rambakas, the evidence on the record shows that they were murdered while they were asleep in the house, and there is no reason why a single person could not have committed their murders also."

22. In the case in hand, the ornaments of the deceased seized from the possession of the appellant have been duly identified by Sapna

Dey (PW-7), daughter of the deceased, in the identification proceedings conducted by PW-14 Bansingh Netam, Naib Tehsildar vide Ex.P/23. The document of Ex.P/23 has been proved by these witnesses. Defence has utterly failed to elicit anything from these witnesses which could make the identification of the ornaments doubtful or untrustworthy. The appellant has not offered any explanation as to how he came in possession of those ornaments and has merely pleaded ignorance about the same. Thus, considering the nature of the stolen articles coupled with the unexplained possession of the same by the appellant, in the given facts and circumstances of the case, a presumption can safely be drawn against the appellant that it is he who committed murder of the deceased and then committed theft of her ornaments and other household articles.

23. For the aforesaid reasons, we are of the opinion that the prosecution has successfully proved guilt of the appellant based on circumstantial evidence and as such, the trial Court was fully justified in convicting and sentencing the appellant for the offence under Section 302 and 382 of IPC.

24. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge