

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 384 of 2014

- Annu Kumar @ Purshottam S/o Nandu Panika, aged 27 years, R/o Chindiya, P.S. Ramanujan Nagar, District Sarguja, at present R/o Old G.M. Office Colony, Haldibadi, P.S. Chirmiri, District Korea, (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : Station House Officer, P.S. Chirmiri, District Korea (C.G.).

---- Respondent

And

CRA No. 429 of 2014

- Rajesh Panika, aged 34 years, S/o Shri Gorelal @ Bhorelala Panika, R/o Sadak-Dafaie, Haldibadi, Chirmiri, P.S. Chirmiri Civil & Revenue District Korea - Baikunthpur (C.G.)

---- Appellant

Vs

- State of Chhattisgarh Through - Police Station, Chirmiri, Civil and Revenue District Korea - Baikunthpur (C.G.)

---- Respondent

For Appellant in CRA No.384/2014	:	Shri V.C. Ottalwar, Advocate.
For Appellant in CRA No.429/2014	:	Shri J.A. Lohani, Advocate.
For Respondent/State	:	Shri Adil Minhaj, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant**

Judgment On Board

By Pritinker Diwaker, J

01/05/2017

As these two appeals arise out of the common judgment dated 28.02.2014 passed by II Additional Sessions Judge, Manendragarh District Korla (C.G.), in S.T. No.90/2007 convicting the accused/appellant Annu Kumar @ Purshottam in Cr.A.No.384/2014 under Sections 449, 302, 397 and 201/34 IPC & sentencing him to

undergo R.I. for ten years with fine of Rs.1,000/-, R.I. for life with fine of Rs.2,000/-, R.I. for seven years with fine of Rs.1,000/- and R.I. for seven years with fine of Rs.1,000/- respectively & convicting accused/appellant Rajesh Panika in Cr.A.No.429/2014 under Sections 414 and 201/34 IPC & sentencing him to undergo R.I. for three years with fine of Rs.500/- and R.I. for seven years with fine of Rs.1,000/- respectively, plus default stipulations, they are being disposed of by this common judgment.

02. As per the prosecution case, appellant Annu Kumar @ Purshottam S/o Nandu Panika was residing in Quarter No.273 at Old G.M. Office Colony, Haldibadi, Chirmiri and next to his house, the deceased Sumitra Devi W/o Late Manohar Das was also residing. In the night intervening 10-11/05/2007, while deceased was watching television in her house, the accused/appellant Annu Kumar went to her house, demanded water and when the deceased was going to kitchen to take water, at the same time, accused/appellant Annu Kumar committed her murder causing injury by a crowbar. Further case of the prosecution is that after committing murder of the deceased, the accused/appellant Annu Kumar looted Videocon T.V. and certain silver ornaments of the deceased, kept the body of the deceased in aluminum trunk and after obtaining crowbar from one Sunita (PW/7), a pit was dug with the help of co-accused Rajesh and Madanlal & after purchasing salt, body of deceased was buried in his (appellant's) courtyard. When different lock was noticed outside the door of the deceased Sumitra by her brother Baldev Das (PW/6), missing report (Ex.P/5) was lodged by him on 14.05.2007. Thereafter, police came to

the house of deceased, due formalities in presence of witnesses regarding panchanama (Ex.P/20) were carried out, lock was broken and almirah was found open and T.V. missing. During inquiry, it was also noticed by the police that one trunk was purchased by the appellant Annu Kumar and that his house was also found to be locked. On 16.05.2007, one aluminum trunk was seized vide Ex.P/28 from the possession of Manoj Kumar, brother of accused Annu Kumar from his native place Chhindiya. Remnants of burnt clothes and ash were seized vide Ex.P/29 from the field behind the appellant's Annu house. That apart, bloodstained white bag, bloodstained card of lucky draw scheme, one work book, one bloodstained copy, small pieces of bloodstained paper were also seized vide Ex.P/30 from the village of appellant Annu Kumar. Dehati merg Ex.P/38 and dehati nalisi Ex.P/39 to this effect were recorded on 16.05.2007. After merg inquiry, F.I.R. Ex.P.27 was registered against the accused persons under Sections 302 and 201/34 of IPC. On 16.05.2007, house of appellant Annu Kumar was searched vide Ex.P/22, in the courtyard some loose soil was noticed and on removing the same the body of deceased was found. Thereafter, on 17.05.2005 an application was made before the S.D.M. Chirmiri vide Ex.P/28 for exhuming the dead body and in presence of S.D.M. the body of deceased was recovered and panchanama thereof was prepared vide Ex.P/21. Throughout this investigation, appellant Annu was neither present at his residence situate at Old G.M. Office Colony, Haldibadi nor at his native village Chhindia. On 17.05.2007, memorandum of co-accused Rajesh and Madanlal were recorded vide Ex.P/8 and P/9 respectively, based on

which one Videocon colour T.V. from co-accused Rajesh and one spade from co-accused Madanlal were seized vide Ex.P/14 and P/15 respectively. That apart, bloodstained paint from the door and wall of the kitchen of deceased was scratched and seized vide Ex.P/16. On 20.05.2007, the accused/appellant Annu Kumar was arrested and his memorandum Ex.P/10 was recorded, based on which bloodstained paint from the entrance wall of appellant's Annu Kumar house was seized vide Ex.P/11, bloodstained paint from room adjacent to bathroom was seized vide Ex.P/12, salt mixed soil was seized vide Ex.P/13 from the porch of appellant's house, one crowbar was seized vide Ex.P/17 and certain silver ornaments were also seized from him vide Ex.P/18. A query was sought from the Assistant Surgeon, Community Health Center, Chirmiri, regarding seized weapon (crowbar) used in commission of crime, and report thereof was obtained vide Ex.P/35-A. According to which, injuries sustained by the deceased could have been caused by this weapon. In the meanwhile, on getting body of deceased, on 17.05.2007 inquest was prepared vide Ex.P/7 and dead body was sent for postmortem examination to Community Health Center, Chirmiri Vide Ex.P/34 where Dr. Pradeep Kumar Rohan (PW/24) conducted postmortem on the body of deceased and gave his report vide Ex.P/34-A opining the cause of death to be antemortem head injury and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant Annu Kumar, co-accused Rajesh and Madanlal under Sections 302, 201, 449, 394/34 IPC. However, while framing the charge, the trial Court has framed the charge against appellant Annu

Kumar under Sections 449, 302, 397 and 201 IPC, whereas against co-accused Rajesh and Madanlal the charge was framed under Sections 412 IPC alternatively under Section 414 and 201/34 IPC. During the trial, co-accused Madanlal has expired and the trial Court proceeded with the case against accused/appellant Annu Kumar and co-accused Rajesh.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 28 witnesses. Statements of the accused/appellants 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence, this appeal.

05. Shri V.C. Ottalwar, learned counsel for the appellant Annu Kumar in Cr.A.No.384/2014 submits as under:-

- That no evidence has been led by the prosecution showing that the accused/appellant Annu Kumar was residing in Quarter No.273, Old G.M. Office Colony, Haldibadi. He submits that in fact the appellant was residing at village Chhindia.
- That the accused/appellant Annu Kumar has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is so weak which cannot be made basis for his conviction.

- That as per the prosecution case, after committing murder of the deceased, the accused/appellant Annu Kumar looted her ornament, whereas as per the evidence available on record, when the body of deceased was recovered, the gold ornaments were found on her body. He further submits that had it been the case of loot, appellant Annu Kumar would not have left the gold ornaments on the body of deceased.
- That after the death of Manohar Das-husband of deceased, there were number of claimants claiming compassionate appointment including that of Baldev - brother of deceased and thus possibility of committing murder of deceased by some other person cannot be ruled out.
- That though the crowbar is alleged to have been seized from the possession of appellant Annu Kumar but no blood stain has been found on the said weapon.
- That neither the identification of the ornaments has been conducted nor it has been stated by the witnesses that the seized ornaments were of the deceased.
- That even blood has also not been noticed on the other seized articles.

06. Shri J.A. Lohani, learned counsel for the appellant Rajesh in Cr.A.No.429/2014 submits that there is no legally admissible evidence on record making the accused/appellant liable for conviction under Sections 414 and 201/34, however, if this Court after re-appreciation of the evidence reaches to the conclusion that conviction of this appellant is just and proper, considering the facts and circumstances of the case,

in particular the role attributed to this appellant, he may be sentenced to the period already undergone by him. He further submits that the accused/appellant has already remained in jail for about 4 years. In support of his contention, he placed reliance on the decision in the matter of **Pradeep Kumar Vs. State of Himachal Pradesh**¹ wherein the Apex Court has held that the evidence available on record is sufficient to implicate the appellant in commission of the offence under Section 201 IPC and his conviction was confirmed, however, considering facts and circumstances of the case, the appellant's age and family background, the sentence was reduced to 2 years.

07. Learned State counsel supporting the impugned judgment submits as under:-

- That the fact that appellant Annu Kumar was residing in the house in question, from where the body of deceased has been recovered, is nowhere disputed by him. Learned State counsel has referred the cross-examination of the Maheshwar Singh (PW/28)- Investigating Officer. He submits that the defence of appellant Annu Kumar was that he was residing in separate house, then it was for him to lead such evidence to this effect, which is completely missing in this case.
- That from the house of deceased one T.V. was looted by appellant Annu Kumar, he gave the said T.V. to co-accused Rajesh and the same was recovered at his instance from one Govind which was mortgaged to him for Rs.2000/-.
- That apart from T.V., warranty card of the same has been seized from Baldev (PW/6)-brother of deceased which has been proved vide

¹ (2015) 4 SCC 192

seizure memo Ex.P/19 and the name of deceased was also mentioned in it, which shows that the T.V. in question was of deceased.

➤ That appellant Annu Kumar was also missing from the date of incident, his house was found to be locked, which too was broken open by the police.

➤ That the body of deceased has been recovered from the courtyard of appellant Annu Kumar vide Ex.P/21 and the same has been proved by Baldev Das (PW/6).

➤ That other articles i.e. one aluminum trunk vide Ex.P/28, remnant of burnt clothes and ash vide Ex.P/29, bloodstained white bag, bloodstained card of lucky draw scheme, one work book, one bloodstained copy, small pieces of bloodstained paper vide Ex.P/30 have been seized from the village of appellant Annu Kumar.

➤ That from the evidence adduced by the prosecution only one conclusion can be drawn that it is appellant Annu Kumar who has committed the murder of deceased.

08. We have heard counsel for the parties and perused the material available on record.

09. C.K. Painkra (PW/1) is Patwari who prepared spot map vide Ex.P/1 has stated that house of the deceased was adjacent to the house of accused Annu Kumar. Preeti Gupta (PW/2), Sahodri (PW/3), Arun (PW/4) and Chetan Das (PW/5) have turned hostile.

10. Baldev Das (PW/6) is brother of deceased and is also local councilor. He has stated that the deceased was residing in Qtr. No.272 situate at old G.M. Office Colony, Haldibadi and that her husband

Manohar Das died of cancer about two years back. He has also stated that his another sister Shakuntala is residing in different house at Shanichari Bazar, Aamanala, Haldibadi and has three children. As deceased was issue-less, the name of three children of his sister Shakuntala has been recorded in the service record of Manohar Das as dependent. He has also stated that after the death of Manohar Das (husband of deceased), Dharamdas, son of his (this witness) sister Shakuntala, was keen for compassionate appointment but the deceased was not interested in it and that she herself wanted to have the compassionate appointment, for which legal proceeding was also initiated by Dharamdas and decision thereof was yet to come. He has further stated that after the death of Manohar Das, his deceased sister was residing all alone in Qtr. No.274 and he used to take care of her by visiting frequently. This witness has stated that on 13.05.2007 his family members had gone to attend the marriage of one Gulab in G.M. Office Colony and in the evening when he went there to take his children, he saw the lock on front door. On being inquired, he came to know that his sister had not been seen from 3-4 days. He also inquired from his relatives but he got no information about whereabouts of the deceased. Thereafter, on 14.05.2007 he lodged the missing report in police station, Chirmiri vide Ex.P/5. This witness has further stated that on 15.05.2007 police came to the house of deceased and it was noticed that lock which has been put on the door was a different one, he had suspicion in his mind and thought it proper to see the house after breaking the lock. Thereafter, in presence of police and others the lock was broken and it was found that T.V. was missing and door of almirah was open. This

witness, in para 5, has further stated that the house (Qtr. No.273) of accused Annu Kumar adjacent to deceased's house was also locked and it was informed by one Naresh Kaliya that on 11.05.2007 at about 5.00 pm accused/appellant Annu Kumar had come to him and demanded spade and thereafter appellant Annu Kumar took his (Naresh's) motorcycle, went to market, bought a hen and 12 kg salt. This witness has also stated that Naresh had also informed him that at about 8.00 pm he went to appellant Annu's house and saw co-accused Rajesh and Madan sitting there, on which he asked appellant Annu as to why Rajesh and Madan were sitting here, on which, appellant Annu replied that he had called Rajesh and Madan for digging pit. This witness also went on to state that he was also informed by one Arun @ Zallu that on 12.05.2007 at about 1.30 pm, accused/appellant Annu got transported one trunk to his parental house at village Chhindia and likewise he was also informed by one Chetan Das that appellant Annu had come to sell bichiya and anklet to the shop where he (Chetan) was working. This witness has further stated that on 16.05.2007 Nandu, father of appellant Annu, met at night in his old G.M. Office Colony Quarter. On being inquired by police, he told that he had gone to his parental house at village Chhindia. On next day, the house of appellant's father Nandu was searched by police where some loose soil was noticed. Thereafter, the same was removed and one bag inside the pit was found. The bag was slightly opened, some hair was seen then this witness suspected it to be that of his deceased sister Sumitra. After obtaining permission from SDM, the body was exhumed. This witness in para 9 has stated that blood stained spots were noticed in bathroom of

Annu's house and on main door. Likewise, in his sister's house also the blood stained spot was noticed. This witness also went on to state that on 19.05.2007 he came to know that appellant Annu Kumar was arrested by police in connection with murder of one person of Rajwar community. This witness, in para 13, has further stated that on 21.05.2007 at the instance of appellant Annu Kumar one crowbar was seized from the house of one Sunita, which was used in commission of murder of deceased. This witness has also proved memorandum of appellants Rajesh, Madanlal and Annu Kumar made under Ex.P/8, P/9 and P/10 respectively. He has also proved seizure of blood stains of appellant's Annu house made under Ex.P/11, P/12 & salt mixed soil under Ex.P/13, seizure of colour television vide Ex.P/14, seizure of spade vide P/15, blood stained spot of house of deceased vide Ex.P/16, seizure of crowbar vide Ex.P/17, seizure of silver ornaments vide Ex.P/18, seizure of warranty card of T.V. vide Ex.P/19, panchanama of deceased's house vide Ex.P/20, panchanama of appellant's Annu house vide Ex.P/21 and panchanama of deceased's house vide Ex.P/22. In para 30, this witness has stated that golden ear ring was found on the body of his sister Sumitra. In cross-examination, he has reiterated that the house of father of appellant Annu Kumar is adjacent to his sister's house.

11. Sunita (PW/7) and Vijay (PW/8) have turned hostile. Shripat Rai (PW/9) is witness to inquest Ex.P/7, panchanama Ex.P/20 by which lock of deceased's house was broken, panchanama of house of deceased Ex.P/21, seizure of blood stained spots Ex.P/11, Ex.P/12 and salt mixed soil Ex.P/13. Dinesh Kumar Dahariya (PW/10) is witness to seizure of

T.V. vide Ex.P/19, seizure of lock, key and broken bangle vide Ex.P/25, seizure of warranty card of TV vide Article-A-4 and panchanama Ex.P/22. Raghunath (PW/11) is witness to panchanama made under Ex.P/22 and seizure of lock, key and broken bangle vide Ex.P/25. Rajesh Singh (PW/12) is witness to inquest Ex.P/7 and dead body panchanama made under Ex.P/21. Narottam Kumar (PW/13) is witness to memorandum of co-accused Rajesh made under Ex.P/8, seizure of T.V. under Ex.P/14, memorandum of accused Madanlal vide Ex.P/9, seizure of spade made under Ex.P/15 and panchanama Ex.P/22. Naresh Kumar (PW/14), Pinky (PW/15), Gyandas (PW/16), and Baba Vir Sai (PW/19) have turned hostile. Anil Dubey (PW/20) is Head Constable who recorded merg intimation Ex.P/26. Feku Singh (PW/21) turned hostile. R.K. Chouhan (PW/22) is Assistant Sub Inspector who has registered the F.I.R. vide Ex.P/27. Durga Prasad (PW/23) is witness to memorandum of appellant Annu Kumar vide Ex.P/10 and seizure of blood stained spot vide Ex.P/16. Dr. Pradeep Kumar Rohan (PW/24) conducted postmortem on the body of deceased vide Ex.P/34-A and found following injuries/symptoms:-

- (i) Skin of hands and feet peeling off, eye were open, left eye bulging, tongue was inside the mouth, foul smell coming from nostril and mouth.
- (ii) Hands and feet were tied with electric wire as also with white cotton cloth.
- (iii) On internal examination, a large linear fracture of frontal bone extending to the left orbital fossa upto neck was noticed.

According to him, the cause of death was antemortem head injury

(fracture of skull with intracranial injury) and death was homicidal in nature. A query report regarding weapon of offence (crowbar) used in commission of crime was also obtained from the autopsy surgeon vide Ex.P/35-A wherein he has stated that the injury sustained by the deceased could have been caused by the said weapon.

12. Govind Yadav (PW/25), Rajesh Painkra (PW/26) and Anil Dubey (PW/27) are the formal witnesses. Maheshwar Singh (PW/28) is Investigating Officer who has duly supported the prosecution case.

13. Admittedly, there is no direct evidence connecting the accused/appellants with the crime in question and their conviction is based on circumstantial evidence. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

14. Close scrutiny of the evidence makes it clear that the house of appellant Annu Kumar was adjacent to the house of deceased Sumitra

Devi. It is not in dispute that deceased was living all alone in her house after the death of her husband. From the evidence otherwise available on record, it is established by the prosecution that in the night intervening 11-12/05/2007 taking the advantage of loneliness of deceased, appellant Annu Kumar entered her house and after committing her murder by crowbar, looted certain articles like T.V. and silver ornaments. Thereafter, appellant Annu buried the body of deceased in the courtyard of his house. The evidence also reflects that at the time of incident, appellant Annu was all alone in his house. At the instance of appellant Annu, one crowbar has been seized vide Ex.P./17, though there is no F.S.L. report but the query report of autopsy surgeon Ex.P/35-A confirms the fact that injury sustained by the deceased could have been caused by the said crowbar. The ornaments have also been seized from the possession of appellant Annu for which though no test identification has been conducted but PW/6 has identified those articles to be that of the deceased. Various other witnesses relating to circumstantial evidence have deposed that initially appellant Annu transported one trunk to his house and with the help of other accused persons after putting salt the dead body was buried. There is absolutely no substance in the argument of learned counsel for appellant Annu Kumar that the prosecution has utterly failed to prove that appellant was residing in the house in question where the body of deceased was buried as though there may be some discrepancies in mentioning the quarter number but the fact remains that the body of deceased was exhumed from the courtyard where appellant Annu was residing and no plausible explanation has been offered by him in his statement recorded

under Section 313 of Cr.P.C. That apart, C.K. Painkra (PW/1) -Patwari who prepared spot map vide Ex.P/1 has written specific note that the house of appellant (Qtr. No.273) is adjacent to deceased's house. If entire cross-examination of the investigating officer PW/28 is considered, it is apparent that the investigating officer has been crossed-examined by accused Annu Kumar on this point and he has admitted the fact that the house in question where the dead body has been found was of the appellant Annu. Appellant Annu has not adduced any evidence that at the time of occurrence of the incident he was residing separately in his village and was not in occupation of the house in question where the dead body was found. PW/9, PW/10, PW/11, PW/12, PW/13, PW/14, and PW/23 have duly proved the involvement of appellant Annu in commission of offence. That apart, appellant Annu was absconding from the date of commission of offence after locking the door from outside. Taking the cumulative effect of the evidence adduced on behalf of prosecution, we are of the view that appellant Annu has rightly been convicted by the Court below. Likewise, conviction of co-accused Rajesh Panika has also been duly proved by the prosecution. Videocon T.V. of deceased has been seized from one Govind Yadav (PW/25), which as per the prosecution, was kept mortgaged for Rs.2000/- with PW/25. It has come in the evidence of Baldev (PW/6) that one Naresh Kaliya informed him that appellant Annu had demanded spade from him and when Naresh went to appellant's house at night, he saw co-accused Rajesh and Madan who were called by appellant Annu for digging pit. That apart, memorandum (Ex.P/8) of co-accused Rajesh and seizure thereof made under Ex.P/14 have been duly proved by PW/6. Thus, the

assistance of the co-accused Rajesh in burring the body of deceased has been proved by the prosecution. The judgment cited by Shri Lohani, learned counsel for the appellant in Cr.A.No.429/2014 in the matter of **Pradeep (supra)** being distinguishable on the ground of fact, the same is of no help and we are not inclined to reduce the sentence imposed upon appellant Rajesh.

15. In the instant case, prosecution has been able to prove the complete chain of circumstantial evidence against the appellants and the trial Court was thus fully justified in convicting the appellants on the basis of such evidence.

16. Thus, considering the evidence collected by the prosecution and all the surrounding circumstances, this Court is of the opinion that the trial Court while convicting and sentencing the appellants has not committed any error of law. Consequently, the appeals preferred by the appellants are bereft of any substance, the same are liable to be and are hereby dismissed. Appellants are reported to be in jail and therefore no further order regarding their arrest etc. is required.

17. Appeals are thus dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE