

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 48 of 2010**

- Bhushan Banjare, S/o Bhagchand Banjare, aged about 24 years, R/o Village Kathiya Bemetara, At Present Nehru Nagar, Supela, District Durg

---- Petitioner

Versus

- The State Of Chhattisgarh through Police Station, Utai, District Durg (C.G.)

---- Respondent

CRA No. 199 of 2010

1. Rajesh Thakur S/o Salig Ram Thakur, aged about 20 years, Village Indira Chouck Marouda, P. S. Newai, District Durg (C.G.)
2. Sonalu Mandavi S/o Chatur Mandavi, aged about 20 years, Village Indira Chouck Marouda, PS Newai, District Durg (C.G.)

---- Petitioners

Versus

- State Of Chhattisgarh

---- Respondent

For Appellants
For Respondent-State

None
Shri Arvind Dubey, PL

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****26/06/2018**

1. The appellants Bhushan Banjare, Rajesh Thakur and Sonalu Mandavi have assailed the legality and validity of their conviction

under Section 302/34 of IPC with separate conviction to Sonalu Mandavi under Sections 25 & 27 of the Arms Act and sentence of life imprisonment and RI for 2 years, respectively, with usual default stipulation.

2. The dead body of the deceased Jhumuk Lal was found near Nevai Dam on 04.05.2008, on which merg intimation was recorded at the instance of PW-6 Naresh Kothari vide Ex-P-22. Since the dead body could not be identified immediately, the unknown dead body was sent for autopsy, which was conducted by PW-3 Dr. Shivnarayan Manjhi of Medical College, Raipur on 06.05.2018 vide report Ex-P-5 & P-6. Dr. Manjhi reported that the death is homicidal in nature, as the deceased has sustained stab injuries and other injuries over his person and the death has occurred within 2-10 days prior to postmortem examination. The FIR was registered against unknown person on 05.05.2008 vide Ex-P-44.
3. After about 3 months, the Police summoned PW-13 Ashok Kumar Garg, son of deceased, for identification and on 29.08.2008, the dead body was identified to be that of the deceased Jhumuk Lal vide identification memo (Ex-P-29). The identification of the wearing apparels of the deceased was also carried vide Ex-P-30. The memorandum statement of the appellant Bhushan Banjare was recorded vide Ex-P-31 and at his instance, one mobile set and cash of Rs.100/- was recovered vide Ex-P-34. On this document, the second page carries the date of seizure as 28.05.2008. The memorandum statement of the appellant Sonalu

Mandavi was recorded vide Ex-P-32 and at his instance, one knife and one jeans trouser was recovered vide Ex-P-35. The memorandum statement of appellant Rajesh Thakur was recorded vide Ex-P-33, pursuant to which cash amount of Rs.50/-, one black colour trouser and one full sleeve T-shirt were recovered vide Ex-P-36. The seized articles were sent for FSL examination and the report (Ex-P-27) was submitted finding blood stains on the trouser and knife recovered from Sonalu Mandavi and T-shirt recovered from Rajesh Thakur.

4. The appellant namely Bhushan Banjare has been arrayed on the foundation that he was married to PW-10 Radheshwari Banjare sometimes in the year 2004 and had three issues out of the wedlock. Bhushan Banjare used to exert physical cruelty on her for demand of dowry. On or about 12th April, 2008, Bhushan Banjare's mother-in-law had come to stay in his house with them. 2-3 days prior to 04.05.2008, Bhushan Banjare's mother-in-law called her son PW-13 Ashok Kumar Garg, on which Ashok Kumar Garg arranged some money and sent his father Jhumuk Lal to the village where Bhushan Banjare was residing, however, Jhumuk Lal never reached the house of Bhushan Banjare. When Jhumuk Lal did not reach the village, Bhushan Banjare and PW-13 Ashok Kumar Garg spoke to each other, on which Bhushan Banjare informed that the deceased has not reached to their place.
5. On the basis of the memorandum statement and recovery of blood stains articles including knife and other circumstantial

evidence, the appellants were arrested and sent for trial. The trial Judge has convicted the accused persons mainly for the reason that Bhushan Banjare was torturing his wife for demand of dowry and on 04.05.2008, he had handed over one white colour saree to his mother-in-law when she was leaving his house to go back to her native village. It has also been noted by the trial Court that at the same time when the deceased was done to death, Bhushan Banjare had borrowed the motorcycle belonging to PW-4 Kulbhushan Sharma and had gone out of his place of work i.e. Regency Hotel, from 12:30 pm to 7 pm. It is also mentioned by the trial Court that Bhushan Banjare was not available in the house from 03.05.2008 to 05.05.2008 and after coming back, he was keeping silence, on which PW-10 Radheshwari Banjare asked him about the reason for his silence, then the accused stated that he has committed murder of Jhumuk Lal Garg.

6. No one appears for the appellants, therefore, we have heard learned State counsel and perused the record.
7. The appellants' conviction is based on circumstantial evidence, as there is no ocular version of the incident. For sustaining conviction on the basis of circumstantial evidence, the chain of circumstantial evidence should be so completed and intricately connected that it eliminates all other hypothesis except the hypothesis of the guilt of the accused.
8. The principle, on which a conviction based on circumstantial evidence would be permissible in law, has been enunciated by the Supreme Court in the matter of **Sharad Birdhichand Sarda**

vs State of Maharashtra¹. The Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under:

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahebrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

‘certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and must be’ is long and divides vague conjectures from sure conclusions.’

- (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.”

9. In the matter of **Navaneethakrishnan vs State by Inspector of Police**², the Supreme Court has again reiterated the principles and has held thus in paras 14 & 23:-

1 AIR 1984 SC 1622

2 AIR 2018 SC 2027

“14. In the present case, there is no witness of the occurrence and it is only based on circumstantial evidence. Before moving further, it would be apposite to refer the law regarding reliability of circumstantial evidence to acquit or convict an accused. The law regarding circumstantial evidence was aptly dealt with by this Court in [Padala Veera Reddy vs. State of Andhra Pradesh and Others](#) 1989 Supp. 2 SCC 706 wherein this Court has observed as under:-

“10. x x x x

- (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 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.”
23. The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the

necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove.”

10. In view of the settled legal position, as mentioned above, we are required to carefully scrutinize the evidence to consider whether the evidence in the present case is of such sterling quality on which the conviction is permissible.
11. Admittedly, there is no evidence of last seen together against the appellants. The evidence of extra judicial confession, as stated by PW-10 Radheshwari Banjare, was never revealed to the Police during her case diary examination under Section 161 of CrPC vide Ex-D-1. This is only in the nature of statement made by the accused when the appellant Bhushan Banjare stated that he has committed mistake. Firstly, it runs short of confessing that he has committed murder of the deceased and secondly, if according to her court statement, Bhushan Banjare had revealed to her on 05.05.2008 that he has eliminated her father i.e. deceased Jhumuk Lal, there was no reason why this witness could not have informed the Police instantly and lodged a report against Bhushan Banjare for commission of murder of her father. It is also strange that both brother and sister i.e. PW-10 Radheshwari Banjare and PW-13 Ashok Kumar Garg have never lodged any report of missing person for more than 3 months. As the deceased allegedly left his village on or about 03.05.2008 and information about the dead body possibly belonging to Jhumuk Lal was received by PW-13 Ashok Kumar Garg only on

28.08.2008, absence of effort on the part of these two witnesses raises doubt over the entire prosecution case. The conduct of Bhushan Banjare in gifting one white saree to his mother-in-law when she left his house on 04.05.2008 has come for the first time in the court statement of PW-10 Radheshwari Banjare and P-13 Ashok Kumar Garg. This important statement is missing from their case diary statement vide Ex-D-1 & D-2.

12. The other evidences against the appellants are in the nature of their memorandum statement and recovery of wearing apparels and knife from one or the other accused, which was found to be blood stained. On this count, suffice it would be to mention that witnesses to the memorandum and seizure namely, P-15 Narendra Kumar Yadav and P-17 Ramesh Samal have turned hostile and have not supported the prosecution. Moreover, the recovery has been made after about 4 months from the date of incident. It is very surprising and it is contrary to ordinary human conduct that a person would commit murder and keep the evidence intact for 4 months so that in the event of his arrest, it will be used against him in proving his guilt. This is apart from the lacuna that in the FSL report (Ex-P-27), blood was found in some of the articles, but there is no report of serological examination confirming the origin of blood and blood group so as to connect seizure of incriminating articles with that of the murder of the deceased.
13. The accused Sonalu Mandavi has also been convicted for committing offence under Sections 25 & 27 of the Arms Act.

However, in the absence of the seizure witnesses having supported recovery of the knife from Sonalu, conviction under Sections 25 & 27 of the Arms Act is also not sustainable.

14. In our considered opinion, the prosecution has failed to prove its case beyond all reasonable doubts, as the nature and quality of circumstantial evidence does not point towards the guilt of the accused.
15. Both the appeals deserve to be and are hereby allowed. Conviction of all the appellants under Section 302/34 of IPC and that of Sonalu Mandavi under Sections 25 & 27 of the Arms Act is set aside. The appellants are on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the higher Court as and when directed.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Vimla Singh Kapoor