

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRA No. 335 of 2013

Beersai S/o Hire Singh Gond Aged About 30 Years R/o
 Aamadula Gotipara Ps Daundi, Distt. Balod, Chhattisgarh
 --- Appellant

Versus

State of Chhattisgarh through P.S., Daundi, Distt. Balod
 Chhattisgarh --- Respondent

For the applicant	:	Mr. C. Jayant K. Rao, Advocate.
For the Respondent	:	Mr. Sanghrsh Pandey, Dy.G.A.

D.B : Hon'ble Shri Justice Goutam Bhaduri,
Hon'ble Shri Justice Parth Prateem Sahu, JJ

Order on Board**04.08.2018**

1. This appeal is against the impugned judgment/order dated 02.03.2013 passed by the Additional Sessions Judge, Balod, District Durg, Chhattisgarh in Sessions Case No. 41/2012 whereby the appellant was convicted under section 302 IPC and sentenced to undergo life imprisonment. He was also directed to pay a fine of Rs.100/-, in default of payment of fine, to further undergo R.I.,for 3 months.
2. The case of the prosecution in short is that on 12.06.2012 at village Aamadula, the appellant has killed his father Hari Singh while he was guarding his field and fled away from the village. On the next day, the other son of the deceased has reported the merg which was marked as Ex.P-1. Subsequently the dead body was subjected to postmortem

and the postmortem report Ex.P-1 revealed that the cause of death was homicidal in nature due to shock and asphyxia. From the spot itself by the side of dead body, an Axe and bamboo stick were also recovered which were sent to FSL and thereafter, after recording the statement of witnesses, the charge sheet was filed u/s 302 of IPC.

3. During the course of trial, the appellant abjured his guilt, denied the entire allegations levelled against him and claimed to be tried. The prosecution in order to prove the guilt of accused examined as many as 9 witnesses. The learned court below after evaluating the entire evidence on record convicted and sentenced the accused/appellant as afore-mentioned. Hence this appeal.
4. Learned counsel for the appellant submits that no evidence is existing against the appellant and he was not in the village at the time of incident and it is only on suspicion, the appellant was convicted. He submits that the prosecution has failed to bring home the guilt of accused so as to hold conviction. He submits that a perusal of the statement of P.W.2 Vijay Kumar would show that there is only apprehension about the commission of crime which cannot end in conviction, therefore, the present appeal is liable to be allowed.
5. Per contra, learned State Counsel opposes the arguments and submits that the judgment/order passed by the Court below is well merited which do not call for any evidence.
6. We have heard learned counsel for the parties at length and have also perused the records of the court below.
7. P.W.2 Vijay Kumar is elder brother of the appellant and son

of the deceased. According to his statement on 11.06.2012 when he went to the field, he saw his father was lying in the hutment meant for guarding the field commonly known as *Laari*. He found that his father was dead. Subsequently the matter was reported to the police and the merger intimation was lodged vide Ex.P-3 and thereafter the inquest report was prepared and dead body was sent for postmortem. The statement of this witness shows that the partition of properties had already taken place among the family members before the incident and the deceased has disclosed to the mother of witness and the appellant herein that the appellant used to harass but what was the reason for such harassment was not disclosed. It is stated that only his brother has killed his father but he is not the eye-witness. So the allegations were made on presumption. It is further stated that the appellant has not entered into any quarrel with his father, the deceased to establish the motive. He further stated that after consuming liquor, the appellant used to abuse and assault but with whom it was being done is not made clear. Only omnibus statement has been made. The cross examination of this witness would show that the appellant, witness P.W.2 and the deceased and mother they had partitioned their properties wherein they got land of one acre each. Further this witness (P.W) has admitted that only on suspicion a statement was made that the accused appellant herein has killed his father.

8. The statement of Kotwar Hiralal (PW.4) shows that he has deposed that he came to know about the fact that the present appellant has killed his father when he returned to

village after two days . He also stated that after consuming liquor the accused used to quarrel with each other and the accused used to harass for the money. The said statement appears to be a hearsay. It is further stated that the place of incident is an open field wherein anybody can have easy access to enter therein.

9. In the case of *State of Himachal Pradesh Vs. Raj Kumar*¹ Court reiterated the law laid down in case of *Sharad Birdhichand Sarda v. State of Maharashtra*² wherein five principles as regards the proof of a case based on circumstantial evidence was reiterated which are as under:-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully 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, the Supreme Court in case of *Anjan Kumar Sarma & Others v. State of Assam*³ has held as under :

“14. Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are :

1 (2014) 14 SCC 39

2 (1984) 4 SCC 116

3 (2017) 14 SCC 359

(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. (See ***Sharad Birdhichand Sarda v. State of Maharashtra***⁴ & ***M.G. Agarwal v. State of Maharashtra***)

11. Further as has been held by the Supreme Court in case of *Vijay Shankar v. State of Haryana* reported in **(2015) 12 SCC 644** when certain chain of circumstances of the circumstantial evidence are absent and it is proved within all human probability the crime was committed and is incapable of explanation of any hypothesis other than that of the guilt of the accused, conviction cannot be sustained.

12. If the statement of witnesses are examined in the light of the principles laid down by the Supreme Court, the facts do not fall to end in conviction. P.W.2, the brother has categorically stated in his evidence that only on suspicion he has attributed the allegation. Admittedly there is no eye-witness to the incident. Merely because of the fact that after the incident the appellant was absent from his village cannot be the basis to convict the appellant u/s 302 IPC.

13. After going through the entire evidence on record, we are of the opinion that no reasonable evidence exists to sustain the conviction. Consequently, the judgment of conviction and order of sentence of the court below dated 02.03.2017 is set aside. The appellant is acquitted of the charges. In the result, the appeal is allowed. It is stated that the appellant is on bail. His bail bonds shall continue for a period of six months subject to the provisions of section 437-A of Cr.P.C.

**Sd/-
GOUTAM BHADURI
JUDGE**

**Sd/-
PARTH PRATEEM SAHU
JUDGE**