

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 842 of 2011**

- Lumesb Ram Sahu S/o Sonu Ram Sahu, aged 27 years, R/o B Jamgaon, P.S. Balod, District Durg (C.G.)

---- Appellant**Versus**

- The State of Chhattisgarh Through : P.S. Balod, District Durg (C.G.)

---- Respondent

For Appellant	:	Ms. Roshu Tiwari and Ms. Samishti Solemon, Advocates.
For Respondent/State:		Shri Anil Pilley, Dy. Adv. General.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board

By Pritinker Diwaker, J
19/01/2018

This appeal arises out of the judgment of conviction and order of sentence dated 26.08.2011 passed by the Additional Sessions Judge, District Durg, in S.T. No.68/11 convicting the accused/appellant under Sections 450 and 302 (on two counts) of IPC and sentencing him to undergo R.I. for 10 years with fine of Rs.50 and imprisonment for life with fine of Rs.50/- plus default stipulations respectively.

02. In the present case, there are two deceased namely Smt. Maktula Bai and Ku. Pawan Rekha. It is said that

accused/appellant and deceased Ku. Pawan Rekha were having affair, however, the same was objected by the family members of Ku. Pawan Rekha and, therefore, she stopped talking to the appellant. The accused/appellant could not tolerate this behaviour of Ku. Pawan Rekha and on the date of incident i.e. 30.09.2010, he made an attempt to talk to Ku. Pawan Rekha and when she refused to have any talk with him, the accused/appellant went to the house of Ku. Pawan Rekha carrying sickle and knife in his hand and there he committed murder of Ku. Pawan Rekha by causing severe injuries to her and thereafter he also killed Maktula Bai, maternal grand mother of Ku. Pawan Rekha. After commission of offence, accused/appellant fled from the spot and on 01.10.2010, after consuming some poisonous substance, he had gone in front of Sub Jail, Balod and knocked the door of Jailer, thereafter he was immediately taken to hospital and his MLC is Ex.P/32. At the instance of Mangal Ram (PW/1), father of deceased Pawan Rekha, merg intimation was recorded on 30.09.2010 at 4.20 and 4.35 pm vide Ex.P/1 and P/2 respectively followed by FIR (Ex.P/3) on the same day at 4.45 pm under Section 302 of IPC against unknown person. On 30.09.2010, inquest on the bodies of deceased Maktula Bai and Pawan Rekha was conducted vide Ex.P/6 and P/7 respectively, and bodies were sent for postmortem examination to Govt. Hospital, Balod where Dr. Babulal Ratre (PW/6) conducted postmortem examination on the body of deceased Maktula Bai and gave

his report Ex.P/22 noticing one incised wound of 7 x 7 x 2 cm below left scapular region. Postmortem examination on the body of deceased Ku. Pawan Rekha was conducted by Babulal Ratre (PW/6) who gave his report Ex.P/23 noticing two incised wounds, one abrasion and two lacerated wounds of different sizes over right forearm, left chest, left elbow, right arm, shoulder, left post parietal, right occipital area, left back of chest, right back of chest and lower part of lungs. The Autopsy Surgeon opined the cause of death of deceased to be shock due to excessive heamorrhage from vital organ.

03. On 02.10.2010, memorandum of the accused/appellant (Ex.P/11) was recorded, based on which, one knife, sickle and one plastic bag were seized vide Ex.P/12. One T-Shirt, black colour full pant and one Intex cell phone were seized vide Ex.P/11-A. From the spot, one pair of slipper and sickle were seized vide Ex.P/14, which was allegedly identified vide Ex.P/26 by Sonu, father of the accused/appellant. Seized articles were sent for its chemical examination to FSL, Raipur vide Ex.P/28 and as per unexhibited FSL report, presence of blood on articles i.e. plaster (A and C), sickle (E), slipper (F), shirt, skirt and inner-wear (G1, G2, G3, G4) of deceased Ku. Pawan Rekha, saree (H) of deceased Maktula Bai, knife, sickle, T-shirt and full pant (I, J, K, L) of the appellant, was confirmed, however, there is no serological report on record to confirm its origin and blood group. Komanlal Deshmukh (PW/10) was a witness before whom the extra-judicial confession was

allegedly made by the accused/appellant but he has not supported the prosecution case and turned hostile. After filing of charge sheet, the trial Court framed charge under Sections 450 and 302 (on two counts) of IPC against the appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant 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.

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

06. Learned counsel for the appellant submits:

- That there is no eye-witness account to the occurrence and the conviction of the appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and, therefore, there can be no inference that it was the appellant who committed the murder.
- That Komanlal Deshmukh (PW/10), before whom the extra-judicial confession was made by the appellant, has not supported the prosecution case.
- That though on the memorandum of the

accused/appellant (Ex.P/11), certain seizures have been effected vide Ex.P/11-A, P/12 & FSL report is also positive, but in absence of serological report where prosecution has utterly failed to prove its origin and blood group, the seizure loses its significance.

- That so far as seizure of pair of slipper from the place of occurrence is concerned, such identical slippers are easily available in the market and many people wear such slipper. Reliance is placed on the decision of Apex Court in the matter of **Amar Sai Vs. State of Chhattisgarh**¹ and **Kansas Behera Vs. State of Orissa**,².

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

09. Mangal Ram (PW/1) is complainant at whose instance merg intimation (Ex.P/1, P/2) and F.I.R. (Ex.P/3) were recorded. He is also a witness to inquest (Ex.P/6 and P/7).

10. Meena Bai (PW/2), mother of the deceased, has not stated anything specific against the accused/appellant.

11. Binjhawar Ram (PW/3) is witness to inquest (Ex.P/6, P/7), spot map (Ex.P/10), memorandum of the accused/appellant

¹ 2006 (3) C.G.L.J. 55

² 1987 SC 1507

(Ex.P/11) and seizure made under Ex.P/11-A & P/12. This witness has not supported the prosecution case.

12. Ghanshyam Sahu (PW/4) is also a witness to memorandum of the accused/appellant (Ex.P/11) and seizure (Ex.P/11-A & P/12).

13. Tomendra Kumar Kunjam (PW/5) - Constable, assisted in the investigation.

14. Dr. Babulal Ratre (PW/6) conducted postmortem examination on the bodies of deceased and gave his report Ex.P/22 and P/23 opining the cause of death of deceases to be shock due to excessive heamorrhage from vital organ.

15. Prabhakar Pandey (PW/7) is witness to identification panchanama of slipper (Ex.P/26). In cross-examination, this witness has stated that such slippers are normally available in the market and he was told by the police that the said slipper was of the accused/appellant and on that basis he identified the same.

16. Ganesh Ram Devdas (PW/8), village Kotwar, is witness to inquest made under Ex.P/6, P/7, seizure of sickle, slipper, plain and bloodstained soil made under Ex.P/14, P/15 and P/16 respectively.

17. P.C. Shrivastava (PW/9) - Investigating Officer, has duly supported the prosecution case.

18. Komanlal Deshmukh (PW/10) - Deputy Jailer, has not stated anything specific against the accused/appellant and

turned hostile. Pawan Kumar Sahu (PW/11) is Principal where accused/appellant was serving as Teacher, has also not stated anything specific against the accused/appellant.

19. Admittedly, there is no legally admissible evidence on record pointing out the guilt of the accused/appellant and his conviction rests upon circumstantial evidence main being his memorandum (Ex.P/11), seizure made under Ex.P/11-A & P/12, unexhibited FSL report and evidence of Prabhakar Pandey (PW/7), witness to identification panchanama of slipper (Ex.P/26) seized from the spot.

20. In the matter of **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210**, the Supreme Court while dealing with circumstantial evidence observed in paras 11, 12 & 13 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.

21. In the instant case, careful reading of memorandum of

accused/appellant (Ex.P/11) demonstrate the fact that the accused/appellant was having affair with deceased Ku. Pawan Rekha and as she stopped talking with the accused/appellant, he first committed her murder and thereafter her grandmother Smt. Maktula Bai by sickle and knife. On his memorandum, sickle, knife, T-shirt, full pant, mobile phone were seized vide Ex.P/11-A and P/12, these articles were sent for its chemical examination and as per un-exhibited FSL report, presence of blood thereon (except mobile phone) was confirmed but there is no serological report on record confirming its origin and group. Thus, in absence of serological report, seizure of certain articles made under Ex.P/11-A and P/12 based on memorandum (Ex.P/11) of the accused/appellant loses its significance.

22. In **Kansa Behera Vs. State of Orissa, 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 clothes 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.

23. Another circumstance put-forth by the prosecution is seizure of pair of slipper from the spot (Ex.P/14) allegedly belonging to the accused/appellant and its identification panchanama (Ex.P/26).

24. Prabhakar Pande (PW/7), witness to identification panchanama (Ex.P/26), has categorically deposed in para 2 that as he was told by the police, he identified the slipper to be that of the accused/appellant. This witness has further clarified that the identical slipper can easily be made available from the market. Thus, the seizure of slipper and identification of the same create suspicion and the same cannot be made basis for convicting the accused/appellant. The evidence adduced by the prosecution is so weak in nature and on the basis of this, accused/appellant cannot be convicted.

25. Thus having examined the evidence in the present case in light of the aforesaid principles of law, we are unable to hold the appellant guilty of the crime in question. None of the circumstances relied upon by the trial Court has been proved by the prosecution so as to exclude the possibility that it is the appellant alone who is the author of crime beyond the shadow

of all reasonable doubt. Being so, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

26. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Sections 450 and 302 (on two counts) of IPC by extending him benefit of doubt. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE