

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 58 of 2012**

- Tauqeer Ahmed @ Bablu, S/o Late Hafeez Ahmed @ Munnabhai Musalman, aged about 20 years, R/o Near Bajrang Mandir, Rajatalab, P.S. Civil Lines, Raipur, District Raipur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : P.S. Civil Lines, Raipur, District Raipur (C.G.)

---- Respondent

For Appellant : Shri Adil Minhaj, Advocate.
For Respondent/State: Shri Ashutosh Pandey, P.L.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt Justice Rajani Dubey

Judgment On Board**11.10.2018****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 10.10.2011 passed by learned III Additional Sessions Judge, Raipur (C.G.), in S.T.No.25/2011 whereby and whereunder the appellant/accused has been held guilty of commission of offences under Sections 302 IPC as also 25 (1) A read with Section 27 of Arms Act & sentenced to undergo rigorous life

imprisonment with fine of Rs.10,000/- and R.I. for three years with fine of Rs.1,000/- plus default stipulation respectively.

02. The prosecution story, as unfolded from the impugned judgment and the record of the case before this Court, is that morgue intimations in Ex.P/20 and P/21 were given in the police station on 02.10.2010 at 6.15 AM by one Pramod upon which it was recorded in the police station that Hafiz Ahmad and his wife Tabassum have been murdered in their house and the appellant, son of the deceased, confessed before Mr. Pramod that he (appellant) committed murder of his father and step mother. An FIR in Ex.P/22 was registered in the police station under Crime No.416/10. After the police reached at the place of occurrence, inquest over the dead body of deceased Hafiz Ahmad and Tabassum was prepared vide Ex.P/4 and P/5 respectively and seizure of various articles found on the floor was also effected in the presence of the witnesses. The two dead bodies were sent for postmortem examination which was conducted by Dr. S.K. Bang (PW/7) who prepared postmortem reports in Ex.P/10 and Ex.P/12 of deceased Tabassum and Hafiz Ahmad respectively. Later on, the appellant as a suspect was apprehended and his memorandum statement was recorded in Ex.P/28 in the presence of witnesses and it is said that on the basis of said memorandum, three weapons namely sword, sword-stick and knife were seized from under the cot which was lying in the

room where the dead bodies were found. Upon conclusion of usual investigation, the prosecution filed charge sheet before the concerned jurisdictional Magistrate, who in turn, committed the case for trial to the Sessions Court. On the basis of material contained in the charge sheet, learned trial Court framed charges of double murder against the appellant alleging that the appellant murdered his father Hafiz Ahmad and his step mother Tabassum by using dangerous weapon like sword, sword-stick and knife. Appellant abjured guilt and was, therefore, put to trial. In order to prove its case, the prosecution examined as many as 11 witnesses. The appellant was also examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. Appellant denied having committed the offence and pleaded innocence. Solitary defence witness Manish Kshatri (DW/1) was also examined to substantiate defence version.

03. The learned trial Court, however, relying upon the evidence led by the prosecution, disbelieved the defence version and held the appellant guilty for commission of offence and sentenced as described above. Conviction of the appellant was based on circumstantial evidence.

04. Assailing legality and correctness of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued extensively before us and submitted

that the prosecution has failed to prove any of the circumstantial evidence incriminating the appellant in connection with alleged murder of Hafiz Ahmad and Tabassum and his conviction is only based on a strong suspicion but without any established incriminating circumstantial evidence. He would submit that the witness of extra-judicial confession has turned hostile. The prosecution witnesses itself has established alibi of the appellant that he was not present in his house and had gone to another station and returned only upon receipt of information in the morning regarding murder. It is next contended that the prosecution has failed to bring any evidence of motive. It is further argued that the so called recovery of weapons at the instance of appellant is extremely doubtful in the circumstances of the case because the evidence on record indicates that the weapons already were found lying at the spot but the recovery has been prepared to implicate the appellant, whereas one of the independent witness to memorandum and seizure has turned hostile and the another has not been examined. The other prosecution witness who was present in the house has not involved the appellant in alleged commission of offence nor has proved appellant's presence in the house though she admits that she was in the house. In support of his submission, learned counsel for the appellant has placed reliance upon the decisions of the Apex Court in the matter of **Mustkeem @**

Sirajudeen v. State of Rajasthan.¹, Vijay Shankar v. State of Haryana² and Vijay Thakur v. State of Himachal Pradesh³.

05. On the other hand, learned counsel for the State would submit that the appellant is the son of deceased Hafiz Ahmad. The prosecution has come out with the case that he had taken serious objection to second marriage performed by his father with deceased Tabassum, another victim, and with this strong motive of eliminating his father and step mother, he murdered them. It is next submitted that the appellant being the son of the deceased and there being no evidence of his residence elsewhere, it was for the appellant to prove by a strong reliable evidence his alibi rather than relying upon the prosecution witness to prove the same. Next submission of learned counsel for the State is that as far as seizure is concerned, merely in the inquest report there is a speculation of murder possibly having been caused by sword, sword-stick and knife, the memorandum statement and seizure of aforesaid weapons proved by the evidence of Investigating Officer may not be discarded. He would also submit that evidence has come that the clothes of the appellant were found to be stained with blood, therefore, it was for the appellant to explain as to how his clothes were stained with human blood. Learned State counsel also added at the last

1 (2011) 11 SCC 724

2 (2015) 12 SCC 644

3 2014 CRL.J. 4906

that in the memo of arrest of the appellant it has been written that minor cut injuries were found on the hands of the appellant which the appellant has failed to explain.

06. We have heard the rival submission made by learned counsel for the parties and perused the records of the Court below.

07. The entire case of the prosecution rests on circumstantial evidence. Though, it has been alleged that the appellant had a strong motive to kill his own father and step mother for the reason that his father had contacted second marriage which was not acceptable and seriously objectionable to the appellant and other members of the family including his mother, we find that this allegation has remained in the realm of insinuation without there being any evidence at all. None of the prosecution witnesses have come out with such a story or the appellant having any kind of objection or that being the reason for any serious enmity between the appellant on one hand and his father and step mother on the other. Merely because Hafiz Ahmad contacted second marriage, that by itself, would not be sufficient to draw an inference of motive on the part of the son born out of the first marriage. We cannot lose sight of the fact that the appellant and the deceased are Mohammedan where more than one marriage is permissible according to their own personal laws. Therefore, we do not find that the prosecution

has led any evidence to establish motive nor is inferred from established circumstances of the case otherwise proved by the prosecution.

08. Though, the prosecution came out with case of extra-judicial confession having been made by the appellant to one Banshilal Kosariya (PW/1), this witness has turned hostile in his examination before the Court. After having been declared hostile, he has been examined by the prosecution and has denied suggestion that Tauqeer Ahmed @ Bablu (appellant) came to his house in the morning and confessed before him that he has murdered his father and step mother. Except this, there is no other evidence of extra-judicial confession brought by the prosecution.

09. The material on record shows that the appellant is son of the deceased and in the absence of any evidence of alibi, this Court would have presumed that the appellant was present in the house at and around the time of incident of murder of his father and step mother, but then the prosecution itself has established that alibi of the appellant.

10. Shayara Banu (PW/3) has deposed that she along with her elder son had gone to Bhatapara where she stayed for two days and there she received phone call from Irshad Bhai that Hafiz Ahmad and Tabassum have been murdered and immediately thereafter, on that day itself, they rushed to Raipur and found that Hafiz Ahmad and Tabassum were lying

dead in the house. This witness had been declared hostile and upon being examined by the prosecution, she has stated that 5-6 years before Hafiz had brought Tabassum in the house but has denied suggestion that after Tabassum came there used to be quarrel in the house. She empathetically states that they used to live like sister.

11. Zainab (PW/4) is the daughter of the deceased and sister of the appellant. She has deposed that on 02.10.2010 they had slept in the night and next day at 5.00 AM when she woke up, it was seen that her father and mother were lying dead in bloodbath in the room and there were seen injuries over their bodies where after, their neighbour Pramod Kumar was informed. Then they went to the house of maternal grand mother. She states that she does not know who murdered her mother and the father. In cross-examination, a suggestion that as Tabassum was step mother, there used to be quarrel in the house has been denied. She has also denied the suggestion that when she woke up in the morning, saw her brother Tauqeer Ahmed @ Bablu (Appellant) sitting there in the house. She has also denied suggestion that the appellant had confessed before her that he committed murder of his father and the mother.

12. From the aforesaid evidence of the prosecution itself, we find that the presence of the appellant in his house itself is rendered extremely doubtful because his own mother has

stated that the appellant was at Bhatapara along with her and his sister does not say that the appellant was at home. She later denied the suggestion of his (Appellant's) presence.

13. As far as alleged memorandum statement Ex.P/28 of the appellant is concerned wherein, according to the prosecution, he has stated regarding the incident and hiding the weapon used in the commission of offence, is also rendered extremely doubtful because this memorandum is said to have been prepared in the presence of two independent witnesses namely Pramod (not examined) and S.K. Lal. However, out of these two, only S.K. Lal has been examined as PW/10 who has not supported the prosecution case of any disclosure statement given by the appellant vide Ex.P/28 and has been declared hostile. The other witness Pramod has not been examined by the prosecution. True, it is that in case where the evidence of investigating officer with regard to recovery is reliable, memorandum statement and recovery could be held proved, in the case in hand, we find that there are no corroborating evidence of memorandum statement and recovery from the appellant. On the other hand, other circumstance and evidence on record go against such memorandum statement and recovery. We find that after the police arrived at the scene of occurrence, at about 10.30 AM seizure of certain clothes found at the scene of occurrence where the dead body was lying were effected vide Ex.P/7.

The witness of seizure memo (Ex.P/7) namely Mohd. Shabbir (PW/5) states that in his presence the police has seized a knife and proved his signature in Ex.P/7. Ex.P/7, however, does not show that any knife was seized.

14. We also noticed that in the inquest reports Ex.P/4 and Ex.P/5 there is specific mention of the weapons namely sword, sword-stick and a knife. It is not the case of the prosecution that the appellant had disclosed regarding commission of offence with the help of these weapons. It is also not a generalized statement that the weapon possibly could be a sharp one. The memorandum specifically mentioned sword, sword-stick and knife. Incidentally, these three weapons are said to be recovered on the basis of memorandum statement of the appellant recorded at 1.00 PM.

15. Furthermore, these three weapons are said to be recovered from that very room where the dead bodies were lying. It is said that they were recovered from under the cot. The police had already arrived at the spot early in the morning and scene of occurrence was prepared, all other articles including the dead bodies which were lying there, were seized. Therefore, saying that the three weapons which were lying in that room itself were later on recovered from that very spot on the disclosure by the appellant, itself renders story of recovery on the memorandum of the appellant extremely doubtful. It is the version of the defence that all the weapons were already

lying at the spot and that is why one of the prosecution witness of seizure of articles at 10.30 AM vide seizure memo Ex.P/7 states that a knife was already seized but a concocted memorandum statement and recovery has been prepared to involve the appellant on the basis of suspicion that in all probability he must have killed his father and the step mother.

16. We must also advert to an important submission of learned counsel for the State that in the arrest memo of the appellant, there is mention of minor injuries in his hand. We are not inclined to treat it as proved incriminating circumstance for want of medical examination of the appellant. We do not find any medical report on the record of the case. The appellant perhaps would have been required to explain injuries found on his body, however, for that the prosecution first have to prove presence of injury in the body of the appellant. There is no medical examination of the appellant much less an injury report proved by the Doctor. Even the Investigating Officer has also not stated anywhere that he had seen the injury in the hands of the appellant and, therefore, such observation was noted in the arrest memo of the appellant. Therefore, only on the basis of something written in the arrest memo, which by itself is not a piece of substantive evidence, we cannot allow this to be used as incriminating circumstance pointing towards the guilt of the appellant.

17. The forensic evidence collected by the prosecution also does not constitute clinching material, so as to constitute an important incriminating circumstantial evidence. According to the prosecution, from the spot blood, stained cotton swabs spread on the floor were seized vide Ex.P/7. It contained blood of deceased Hafiz Khan as also that of Tabassum. In the memo dated 27.12.2010 of the office of Superintendent of Police, Raipur by which, seized articles including swabs were sent to the FSL for forensic examination, the cotton swabs containing blood of Tabassum is marked as 'D' and that of Hafiz has been marked as 'E'.

18. The FSL reports Ex.P/34 and Ex.P/35 show that on these two cotton swabs i.e. articles 'D' and 'E' blood was found. The serologist report with regard to the group and origin of blood as contained in Ex.P/35 shows that article 'D' and 'E' was stained with 'O' group blood.

19. The prosecution has come out with the case of seizure of appellant's T-shirt made under Ex.P/27. The independent seizure witnesses of the prosecution have either not been examined or, if examined, turned hostile. They are none other than the two witnesses of memorandum statement and alleged recovery of weapon namely Pramod and S.K. Lal (PW/10). While S.K. Lal (PW/10) has not supported the prosecution case of seizure of T-shirt from the possession of the appellant and has turned hostile, the other witness

Pramod has not been examined. The investigating officer has stated regarding recovery of that T-shirt from the possession of the appellant. This T-shirt was also sent for FSL examination under the memo dated 27.12.2012, marked as article 'L'. This was also found to have sustained with blood, however, in the serologist report this T-shirt is found stained with 'B' group blood.

20. Mere presence of the blood which has been proved to be other than the blood group of the deceased, by itself, is not an incriminating circumstance where the allegation against the appellant is of having committed murder of Hafiz and Tabassum. Had it been a case that the T-shirt allegedly recovered from the appellant was found containing blood of the same group and origin as that of the two deceased or at least one of them, the appellant was required to explain the same failure of which could be treated as an incriminating circumstance pointing towards the guilt of the appellant. But then, the prosecution has completely failed to explain this discrepancy. In-fact, prosecution has not led any evidence to prove as to what was the blood group of the appellant.

21. We, thus, find that none of the circumstantial evidence led by the prosecution have been proved by required standards so as to form a complete chain of circumstance pointing towards the guilt of the appellant and the appellant alone that in all probability it is the appellant who has

murdered the two persons namely Hafiz and Tabassum. At this stage, we consider it apposite to refer from the decisions cited by learned counsel for the appellant wherein their Lordships in the Supreme Court dealt with similar cases where the prosecution sought to prove the allegation of murder only on the basis of recovery of certain incriminating articles or weapon alone and such recovery has been found doubtful and except that no other incriminating circumstance is proved to bring home the guilt.

22. In the case of **Mustkeem alias Sirajudeen V. State of Rajasthan**⁴, it was held:-

“23. It is too well settled in law that where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. No doubt, it is true that conviction can be based solely on circumstantial evidence but it should be decided on the touchstone of law relating to circumstantial evidence, which has been well settled by law by this Court.

24. In a most celebrated case of this Court, **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **1984 (4) SCC 116 : 1984 SCC (Cri) 487** in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under:- (SCC p.185)

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the

4 (2011) 11 SCC 724

accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) The circumstances should be of a conclusive nature and tendency,

(iv) They should exclude every possible hypothesis except the one to be proved, and

(v) 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".

25. With regard to [Section 27](#) of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under [Section 27](#) of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

26. If the recovery memos were prepared at the Police Station itself then the same would lose their sanctity as held by this Court in **Varun Chaudhary Vs. State of Rajasthan** reported in *AIR 2011 SCC 72 : (2011) 12 SCC 545*.

27. The scope and ambit of [Section 27](#) were also illuminatingly stated in **Pulukuri Kotayya & Ors. Vs. King Emperor** reported in *AIR 1947 PC 67 : (1946-47) 74 IA 65*, reproduced hereinbelow:- (IA p.77)

"...it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered

many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

The same were thereafter restated in another judgment of this Court in **Anter Singh Vs. State of Rajasthan** reported in **2004 (10) SCC 657 : 2005 SCC (Cri) 597**

28. The doctrine of circumstantial evidence was once again discussed and summarised in **Sattatiya Vs. State of Maharashtra** reported in **2008 (3) SCC 210 : (2008) 1 SCC (Cri) 733** in the following terms:

"10. ..It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstance from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances".

23. In a subsequent decision in the case of **Vijay Thakur v. State of Himachal Pradesh** reported in **2014 Cri. L. J. 4906**, similar observations were made in the background where the case of prosecution was based mainly on certain recoveries, it was held:-

"13 It is to be emphasized at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against these two appellants. It is a case of blind murder. There are no eye-witnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established

pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused persons, is discernible without any doubt. Insofar as these two appellants are concerned, there is no circumstance attributed except that they were with Rajinder Thakur till Sainj and the alleged disclosure leading to recoveries, which appears to be doubtful. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

24. In yet another decision in the case of **Vijay Shankar v. State of Haryana** reported in **(2015) 12 SCC 644** dealing with the aspect of incriminating evidence in the form of recovery of bloodstained clothes and weapon, Hon'ble Supreme Court having recorded finding that the circumstantial evidence of motive, extra-judicial confession and last seen was not reliable, held that much weight could not be attached to the recovery of bloodstained clothes and knife only so as to sustain conviction. It was observed thus:-

“20. According to the prosecution, after the alleged confession, Budh Ram (PW 12) and Har Sarup produced the appellant before the investigating officer and Dalip Singh (PW 20) arrested the appellant on 19-3-1995. His confession led to the recovery of bloodstained clothes from the box lying in the house of the appellant and also a knife from the field. Bloodstained clothes and also the knife were sent to the Forensic Science Laboratory and human blood was detected in the bloodstained clothes of the appellant. So far as the bloodstained clothes and knife, the material was disintegrated. As discussed earlier, extra-judicial confession made to Budh Ram (PW 12) is highly doubtful and in these circumstances, much weight cannot be attached to the alleged recovery of bloodstained clothes and the knife.

25. In view of the aforesaid discussion, we have to hold that

the prosecution has failed to prove any circumstantial evidence to hold that the appellant guilty of commission of offence beyond the reasonable doubt.

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 charges, levelled against him. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge