

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 810 of 2011**

1. Laxmi Narayan S/o Shiv Kumar Sahu, aged about 19 years,
R/o Nariyara PS Pamgarh, District Janjgir Champa, CG

---- APPELLANT**Versus**

1. State of Chhattisgarh through Station House Officer, Koni,
District Bilaspur, CG

---- RESPONDENT**AND****CRA No. 839 of 2011**

1. Vinay Sahu aged 20 years S/o Narendra Sahu, R/o Village
Nariyara, PS Paamgarh, District Janjgir Champa, CG

---- APPELLANT**Versus**

1. State of Chhattisgarh through Station House Officer, Koni,
District Bilaspur, CG

---- Respondent

For accused/appellants :	Shri Ajay Ayachi and Shri Indrasen Sahu, Advocates
For State :	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker &**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board by Pritinker Diwaker, J****11/01/2018:**

As the aforesaid two Criminal Appeals arise out of the same judgment and order dated 17.10.2011 passed by Additional Sessions Judge, Bilaspur in Sessions Trial No. 88/2009 convicting the accused/appellants under Sections 302/34, 394 read with 397/34 IPC and 25 of the Arms Act and sentencing each of them to undergo imprisonment for life with fine of Rs. 100/- u/s 302/34, RI

for seven years with fine of Rs. 100/- u/s 394 read with 397/34 IPC and RI for three years with fine of Rs. 100/- u/s 25 of the Arms Act, they are being disposed of by this common judgment.

2. Facts of the case leading to disposal of these two appeals in brief are that on 02.01.2009 deceased Vikash Sharma had left his house on motorcycle for ITI Koni where he was taking training in IT Trade, informing his parents that in the night he would stay in the house of his aunt if got late. Thereafter, on 05.01.2009 body of the deceased was found near Vivekanand Boys' Hostel lying in the bushes and it was identified by his brother Shrikant Sharma (PW-1) at whose instance *merg* intimation Ex. P-1 was recorded on the same day. Immediately thereafter FIR (Ex. P-2) was registered against the unknown person for the offence under Section 302 IPC. After drawing inquest (Ex.P-17) dead-body was sent for postmortem examination which was conducted by Dr. Vijay Chandel (PW-16) who gave his report Ex. P-22. Further case of the prosecution is that Nokia cell phone of the deceased was being tracked by the police and it is said that the same was sold by accused/appellant Vinay Sahu to one Ravi Kumar (PW-9) and the moment said Ravi Kumar switched on the cell phone by putting the other SIM card, it was tracked by the police and on interrogation by the police he informed that he had purchased the same from accused Vinay Sahu. Said cell phone is alleged to have been recovered from accused Vinay Sahu at police station Koni. Likewise, one motorcycle belonging to the deceased was also recovered from Laxminarayan in the police station vide Ex. P-5. After investigation, charge-sheet was filed by the police against the accused/appellants under Sections 302, 397, 34 IPC followed by framing of charge by the Court below u/s 302/34, 394 read with 397/34 IPC and 25 of the

Arms Act.

3. In order to prove its case the prosecution has examined 18 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below, by the judgment impugned, has convicted and sentenced both the accused/appellants as described above.

5. It is relevant to note here that charge under Section 25 of the Arms Act was framed against one Manoj Keshkar also but during trial he absconded but subsequently in separate trial being ST No. 88/2009 he has been acquitted vide judgment and order dated 8.4.2013.

6. Counsel for the accused/appellants submit as under:

(i) That there is no eyewitness to the incident and the entire case of the prosecution is based on the circumstantial evidence.

(ii) That none of the circumstances speaks of direct involvement of the accused/appellants in the murder of the deceased but even then the Court below has held them guilty for the same which is palpably illegal.

(iii) That even the seizure of cell phone and motorcycle allegedly belonging to the deceased has no evidentiary value for the reason that it was made in the police station.

7. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants

as described above are strictly in accordance with law and there is no illegality or infirmity in the same.

8. Heard counsel for the parties and perused the evidence available on record.

9. Shrikant Sharma (PW-1) – the brother of the deceased has stated that on 02.01.2009 the deceased had left home for ITI where he was pursuing the computer course, on Hero Honda motorcycle and carrying a Nokia cell phone with him. While leaving home the deceased is stated to have informed that if got late, he would stay in the house of his aunt. This witness has further stated that when the deceased did not return even thereafter, he tried to contact him on his cell phone but it was switched off and that two-three days thereafter body of the deceased was found in the bushes near Vivekanand boys' hostel. Subsequently, FIR and *merg* came to be recorded. Smt. Krishna Sharma (PW-2) and Ram Kushal Sharma (PW-3) are the parents of the deceased have not stated anything specific against the accused/appellants. Rather, it has come in their evidence that the deceased had no ill-will with anyone. Roopnarayan (PW-4) – the witness to seizure of cell phone and motorcycle has stated that he saw the police bringing the accused persons to the police station but he was not aware as to from where they were arrested. According to this witness, in presence of the accused/appellants the police had informed him as to what seizure was made from whom, and on this being informed by the police he signed certain papers. As regards seizure of mobile, he has stated that such articles are easily available in the market. Madhubala (PW-5), Shivnarayan Sahu (PW-6), Hirat Ram (PW-11) and Banshilal Dubey (PW-13) are the witnesses who assisted in the investigation. Krishna Kumar Nirmalkar (PW-7) has stated that he

spoke to Ravi Kumar (PW-9) on his cell phone but he did not remember its number. Ravi Kumar (PW-9) has stated that accused Vinay Sahu had sold one cell phone to him and the same was seized by the police. Shiv Kumar Kaushik (PW-10) – the seizure witness has not supported the case of the prosecution and has been declared hostile. Dhirendra Singh (PW-12) is the Patwari who prepared spot map (Ex. P-15) Gopal Kumar Shrivastava (PW-14) – an employee in Nokia Company has stated that he had sold the cell phone in question to Shrikant Sharma (PW-1). Satrupata Taram (PW-15) is the investigating officer who has duly supported the case of the prosecution. Dr. Vijay Chandel (PW-16) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-22 stating that he noticed number of abrasions, lacerations and contusions including fracture of occipital and parietal region and the cause of death was coma as a result of hemorrhage because of head injuries. Evidence of this witness shows that the death was homicidal in nature. Prabhakar Tiwari (PW-17) and Badri Prasad Tiwari (PW-18) are the police officials who assisted in the investigation.

10. After going through the evidence on record it is quite apparent that there is no eyewitness to the incident and the entire case hinges on the circumstantial evidence. Record shows that on 02.01.2009 the deceased had left his house for ITI Koni informing that if he got late in the night, he would stay in the house of his aunt and then on 05.01.2009 his dead-body was found near Vivekanand Boys' Hostel lying in the bushes. Even the seizure of mobile and motorcycle having been made in the police station has no value in the eye of law as it is a very weak type of evidence and unless corroborated from some other independent source, it is not

sufficient to entail conviction. Furthermore, though the cell phone is said to have been seized from accused Vinay Sahu in the police station, evidence of Ravi Kumar (PW-9) goes to show that in the night the people of Crime Branch had come to him and taken the same from him. Even the memorandum of the accused/appellants has not been recorded. One of the witnesses to seizure (PW-10) has not supported the case of the prosecution and has been declared hostile. That apart, it has come in the evidence of PW-4 that such mobiles are easily available in the market. Likewise, seizure of motorcycle from accused/appellant Laxminarayan in the police station is also doubtful. The prosecution has also not adduced any evidence that the accused/appellants have caused hurt much less the grievous hurt in committing the robbery or dacoity and therefore their conviction under Section 394/397 IPC is also not sustainable in the eye of law. There is even no evidence to show that any weapon was held by the accused/appellants and for that their conviction under Section 25 of the Arms Act is not sustainable in law. On the contrary, the seizure of pistol made under Ex. P-4 is said to have been made from one Manoj Keshkar who has already been acquitted by the court below in a separate sessions trial. It has also come in the evidence of the parents of the deceased that the deceased had no inimical relations with anyone. Thus none of the circumstances has been established by the prosecution to hold the accused/appellants under any of the sections of IPC or even the Arms Act. 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 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.”

11. Thus, the requirements sought to be fulfilled in the cases of circumstantial evidence as per the settled legal position are lacking and do not complete the chain. None of the circumstances pinpointedly indicate towards the involvement of the accused/appellants in the crime alleged against them. Court below has also not been justified in appreciating the evidence of the witnesses in its proper perspective and has abruptly arrived at the conclusion of holding the accused/appellants guilty as described above. In this view of the matter where the legal parameters have not been resorted to by the prosecution in collecting cogent and clinching evidence against the accused/appellants, they are entitled to receive the benefit of doubt. Accordingly, the appeals are allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charges levelled against them. As the accused/appellants are already on bail, no order to set them free etc is required and consequently the bail bonds furnished by them stand discharged.

12. Appeals allowed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge