

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 186 of 2012

1. Birbal Sahu S/o Pabar Sahu, aged about 25 years,
2. Rupesh Kumar Sahu S/o Shankarlal Sahu, aged about 23 years,
3. Devraj Thakur S/o Pachak Ram, aged about 20 years,

All are R/o Village Bharda, P.S. Dondilohara, Tahsil Baold, Distt. Durg C.G. Presently Distt. Balod.

---- Appellants

Versus

- State Of Chhattisgarh Through - The District Magistrate, Durg C.G. Presently Distt. Balod (C.G.)

---- Respondent

For Appellants	:	Shri Aditya Bharadwaj, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Justice Pritinker Diwaker

29/08/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 6.1.2012 passed by the Additional Sessions Judge, Balod, Distt. Durg (CG) in ST No.98/2011 convicting each of the appellants under Sections 302/120B & 201 of IPC and sentencing them to undergo imprisonment for life, to pay a fine of Rs.100/- and RI for one year plus fine of Rs.100/- with default stipulations respectively.

02. As per prosecution case, deceased Bhagwat, uncle of accused/appellant Birbal had taken Rs.8500/- from Birbal and was not

returning the same. Sometime in April, 2011 when appellant Birbal again demanded his money back, he was abused by deceased Bhagwat as a result of which Birbal got annoyed with him. Further case of the prosecution is that appellant Birbal hatched a criminal conspiracy with other accused/appellants. They went to post office where the deceased was working, however, the deceased was not found there and therefore, they left the said place after getting their mobile number written on the register of the office. It is alleged that on 27.5.2011 the accused/appellants took the deceased to jungle, committed his murder by strangulation and they burnt his dead body so that it could not be identified by anyone. On 30.5.2011 one dead body was found in the jungle by Forest Guard PW-1 Ravindra Nath Singh Yadav and his colleague Sanjay Kumar and at the instance of PW-1 merged intimation Ex.P/1 was registered on the same day. On 31.5.2011 the dead body was identified by father of the deceased PW-2 Ganesh Ram vide Ex.P/5. Inquest on the dead body was conducted on 30.5.2011 vide Ex.P/3 and thereafter the body was sent for postmortem which was conducted on 31.5.2011 vide Ex.P/10 by PW-5 Dr. SK Soni who noticed that the dead body was highly decomposed, bones were visible, muscles and skin of both hands, legs, waist region, abdomen & chest were destroyed by wild animals; tongue, eye and viscera were putrefied; 3rd & 4th right side ribs and 5th & 6th left side ribs were taken out by wild animals; both foot not burnt; and all the internal organs were burnt. Some part of the skin, muscles, right femur bone, skull and right hand fingers were sent to FSL for ascertaining nature of burn, age and sex of the deceased. Since the body was highly decomposed, no opinion regarding cause and nature of death could be given.

Memorandum of appellants Devraj Thakur, Birbal & Rupesh Kumar were recorded on 25.6.2011 vide Ex.P/6, P/7 & P/8 respectively. Pursuant to the memorandum of Birbal, one plastic jerrican and one nylon rope were seized vide Ex.P/9 and under Ex.P/10 one mobile of Micromax company was also seized. From the spot also certain articles were seized vide Ex.P/20. Documents of the vehicle allegedly used in commission of the crime were seized vide Ex.P/16 from accused/appellant Rupesh Kumar. While framing charges, the trial Judge charged the appellants under Sections 302, 120B & 201 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined 09 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that there is no eyewitness account to the incident and conviction of the appellants is based on circumstantial evidence but none of the circumstances from which inference of guilt of the appellants could be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that it were the appellants who committed murder of the deceased.

(ii) that the appellants have been convicted solely on the basis of their memorandum statements and seizure made in pursuance thereof, however, none of the seizure has been connected by the prosecution with the crime in question. Even there is no FSL or any other report in respect of the seized articles.

(iii) that present is in fact a case of no legally admissible evidence, yet the appellants have been convicted by the trial Court.

06. On the other hand, State counsel supporting the impugned judgment submits that conviction of the accused/appellants is strictly in accordance with law and there is illegality or infirmity in the judgment impugned requiring any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Ravindra Nath Singh Yadav is the Forest Guard at whose instance merger intimation Ex.P/1 was recorded. He is also a witness to inquest and spot map. PW-2 Ganesh Ram, father of the deceased, identified the dead body vide Ex.P/5. He has not made any specific allegation against the accused persons. PW-3 Ramprasad Sahu is a witness to memorandum (Ex.P/6 to P/8), seizure (Ex.P/9 & P/10), Panchanamas (Ex.P/11 & P/15) and arrest memos (Ex.P/12 to P/14). PW-4 Shantilal is a witness to seizure Ex.P/9. He has turned hostile. PW-5 Dr. SK Soni conducted postmortem on the body of the deceased and noticed injuries as mentioned above. He states that some part of the skin, muscles, right femur bone, skull and right hand fingers were sent to FSL for ascertaining nature of burn, age and sex of the deceased. Since the body was highly decomposed, no opinion

regarding cause and nature of death could be given.

09. PW-6 Manish Dubey was Data Entry Operator in the post office where the deceased was working and it is the person to whom cell number was allegedly given by the accused persons when they had gone there in search of the deceased. He states that he had noted down the cell number in a register and subsequently the said register was seized by the police vide Ex.P/12. PW-7 Radhelal is a witness to memorandum of the appellants (Ex.P/8 to P/9), Panchanamas (Ex.P/11 & P/15) and arrest memos (Ex.P/12 to P/14). In cross-examination he admits that suggestion that he signed all these documents at the instance of police, neither the police read over the contents of the documents to him nor did he read the same. PW-8 RD Singh, Sub Inspector, did part of investigation. PW-9 KK Kushwaha, investigating officer, has supported the prosecution case.

10. Admittedly, there is no direct evidence against the appellants to show their complicity in the crime in question and their conviction rests upon circumstantial evidence, main being their disclosure statements and seizure effected in pursuance thereof.

11. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground

for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

12. Keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that there is no legally admissible evidence against the appellants unerringly pointing towards their guilt. Though disclosure statements of the appellants were recorded and pursuant to the memorandum of Birbal, one plastic jerrican, one nylon rope and one mobile of Micromax company were seized vide Ex.P/9 & P/10, however, the prosecution could not establish any nexus of these articles with the crime in question as there is no FSL or any other report in respect of the seized articles. Even the prosecution could not ascertain the nature and cause of death of the deceased. The circumstantial evidence in this case falls short of the required standard on all material particulars. Though these circumstances raise an accusing finger at the appellants but suspicion howsoever strong cannot take the place of proof and the prosecution is required to prove its case by leading cogent and trustworthy evidence. It has to be extra-cautious while dealing with cases of circumstantial evidence, however, in the present case, the evidence led by the prosecution is not of such a degree and quality which could bring home the charges leveled against the appellants. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and the appellants are entitled to

be acquitted of the charges by giving them benefit of doubt.

13. In the result, the appeal is allowed and the impugned judgment is hereby set aside acquitting the appellants of all the charges levelled against them by extending them benefit of doubt. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Rajani Dubey)
Judge