

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 898 of 2012**

Chetan Ratre S/o Parau Ram Ratre Aged About 21 Years R/o Vill. Matia Donde,
Chowki - Vidhansabha, Thana Dharsiwa, Distt. Raipur C.G. ---- **Appellant**

Versus

State Of Chhattisgarh Through The PS Dharsiwa, Distt. Raipur C.G.**Respondent**

For Appellant	:	Mr. Y.C. Sharma, Advocate
For State	:	Ms. K. Tripti Rao, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Judgment On Board by Manindra Mohan Shrivastava, J.

05.10.2018

Heard.

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 05.09.2012 passed by the Fifth Additional Sessions Judge, Raipur, in Sessions Trial No.51/2012, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 460 read with Section 34 of IPC	R.I. for 10 years with fine of Rs.500/- in default of which, one month additional R.I.
Under Section 302 read with Section 34 of IPC	R.I. for life with fine of Rs.500/- in default of which, 1 month additional R.I.

2. The case of the prosecution, as unfolded from the impugned judgment and the records of the case, is that an FIR in Ex.P/14 was lodged by Neelkanth Miri (PW 9) in the Police Station on 04.11.2011 that Samundri Bai has been murdered in her house by unknown persons. An investigation was carried out and it is said that later on, the appellant Chetan Ratre along with co-accused Dev Prasad Banjare were apprehended being the

suspect in the alleged crime and their memorandum in Ex.P/1 & Ex.P/6 were recorded, in which, it was stated that they had murdered Samundri Bai, looted her jewellery and cash. Further case of the prosecution is that on the basis of the memorandum of the appellant-Chetan Ratre, a cash of Rs.5,000/- was seized from his house whereas on the memorandum given by the co-accused including the appellant that the looted jewellery has been sold in the jewellery shop of Suraj Soni (PW15), looted jewellery was seized and later on, according to the prosecution, the same was also identified by Saraswati Bai (PW7) as the belongings of deceased Samundri Bai. Upon completion of usual investigation, charge-sheet was filed before the jurisdictional Magistrate who, in turn, committed the case for trial. On the basis of the material contained in the charge-sheet, learned trial Court framed charges against the appellant as also co-accused Dev Prasad Banjare for alleged commission of offence under Section 302 and 460 read with Section 34 of IPC. The appellant having abjured guilt was subjected to trial.

3. In order to prove its case, the prosecution examined as many as 31 witnesses. The appellant was examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. The appellant in his examination denied all the incriminating circumstances and pleaded innocence. No defence witness was examined.

4. Learned Trial Court relying upon recovery of ornaments on the memorandum of the appellants and their identification by Saraswati (PW7) as belongings to the deceased, held the appellant guilty of commission of offence and sentenced as described above.

5. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel appearing for the appellant argued that the entire case of the prosecution rests on an extremely doubtful and weak evidence of alleged recovery of looted ornaments on the memorandum of the present appellant and co-accused Dev Prasad Banjare. He would submit that except this, there is no other incriminating material, circumstantial evidence to connect the appellant with the alleged commission of offence. He would further submit that the evidence of Suraj Soni (PW15), the owner of the jewellery shop and Dakendra Vishwakarma (PW16) are contradictory on a very material aspect as to whether it was the appellant or co-accused Dev Prasad Banjare, who had come to the jewellery shop for selling allegedly looted gold ornaments. Therefore, on such a shaky evidence as to who had come to the Jeweller to sell the looted articles, the appellant is entitled to be acquitted by giving him benefit of doubt.

6. On the other hand, learned counsel for the State supported the judgment of conviction and order of sentence by submitting that in so far as the present appellant is concerned, on the basis of his memorandum vide Ex.P/6, cash of Rs.5,000/-, said to be looted from the deceased, was recovered from his possession, which was found kept in his house. It is further submitted that Suraj Soni (PW15) has emphatically and repeatedly stated that it was the present appellant Chetan Ratre, who had come to the shop for selling the gold ornaments. These articles were duly identified by Saraswati Bai (PW7), the daughter of the deceased, therefore, a complete chain of circumstantial evidence is formed which points towards the guilt of the present appellant and the co-accused leading to conviction of the present appellant and other co-accused Dev Prasad Banjare on the allegation of having share common intention to murder Samundri Bai.

7. Earlier, this Court had enquired as to whether Dev Prasad Banjare had also filed any appeal. The record does not show that he had filed any appeal.

8. The entire case of the prosecution as against the appellant Chetan Ratre rests only on the evidence of Suraj Soni (PW15), who is said to have stated that the appellant had come to sell the looted ornaments of the deceased Samundri Bai. On this evidence of circumstantial nature, inference that the appellant was one of the assailant, who murdered Samundri Bai and looted ornaments and cash along with co-accused Dev Prasad Banjare has been drawn. Except this, there is no other evidence of incriminating nature involving the appellant in the alleged commission of offence.

9. Suraj Soni (PW15), the owner of the jewellery shop, has stated that he identifies Chetan Ratre but does not identify Dev Prasad Banjare. He has deposed that the appellant had come to his shop for sale of jewellery but when he was asked to bring the bills as Chetan Ratre was not known to the jeweller, the appellant came along with one Dakendra Vishwakarma, resident of nearby place, who identified the appellant and thereafter, the deal was struck for a consideration of Rs.40,000-42,000/- as the cost of the jewellery. He further deposes that Chetan Ratre got the bill prepared in the name of Dev Prasad Banjare. Though this witness has not fully supported the case of the prosecution, with the permission of the Court, leading question were put to this witness by prosecution and thereafter, this witness has stated that at the time of sale, Chetan Ratre was given the name of Dev Prasad Banjare and the receipt was also in the name of Dev Prasad Banjare. In para 7, another leading question and suggestion given to him that the person, who had come in his house, had disclosed his name as Dev Prasad Banjare, resident of Matia has been admitted but then, this witness further states that the present appellant Chetan Ratre introduced himself

as Dev Prasad Banjare and sold the jewellery. In cross examination, he states that he is neither familiar with Chetan Ratre nor with Dev Prasad Banjare. He admits that Dakendra Vishwakarma is the person known to him, resident of Kharora and he had stated that he very well knows the person keeping the ornaments. He then again states that appellant Chetan Ratre had come to the shop and he is identifying him. He further states that after verifying from the bill book, he informed the police that the jewellery were sold in the name of Dev Prasad Banjare and does not contain the name of Chetan Ratre. He admits that Dakendra Vishwakarma had brought that concerned person.

10. From the evidence of this witness, it appears that it is the appellant, who had come to his shop but when this witness did not accept saying that he does not know him, the appellant then came with Dakendra Vishwakarma (PW16), who identified him and thereafter sale took place.

11. However, the evidence of Dakendra Vishwakarma (PW16) is serious contradiction to the version of Suraj Soni (PW15). Dakendra Vishwakarma (PW16) has stated in his evidence that he knows both Chetan Ratre and Dev Prasad Banjare. He deposes that on 04.11.2011, Dev Prasad Banjare came to him and started weeping saying that he needs money for treatment of his wife and children when this witness expressed inability to lend money, Dev Prasad Banjare showed to him golden chain and said that he wanted to sell it but the jeweller refused to purchase for want of identification. This witness further states that thereafter, he had taken Dev Prasad Banjare to Mahavir Jewellers and seeing him the goldsmith said that as he has come, he is ready to accept the articles and thereby he took the jewellery and gave money to Dev Prasad Banjare. This witness further deposes that thereafter, Chetan Ratre arrived and when he enquired, Dev Prasad Banjare told him that Chetan Ratre (the appellant) is his brother. He further states that Dev Prasad Banjare was having three mobiles and one of the mobile was exchanged after removing the SIM.

12. In his cross examination, he admits that Suraj Soni is known to him. He admits that it is Dev Prasad Banjare, who had gone to the shop of Suraj Soni along with him. In para 8 of his evidence, he states that he was not knowing Chetan Ratre earlier and on the date, when he was introduced by Dev Prasad Banjare, then he came to know that he is his brother since then, he knows Chetan Ratre. In para 10 of his cross examination, he again reiterates that in the shop of Suraj Soni, it is Dev Prasad Banjare, who had gone along with him.

13. It would, thus, be seen that while Suraj Soni (PW15) states that the appellant had come to his jewellery shop along with Dakendra Vishwakarma and Dakendra Vishwakarma

introduced him and then sale was made, Dakendra Vishwakarma (PW16) is emphatic that he only knew Dev Prasad Banjare and on his request, he had taken him to the jewellery shop and he introduced Dev Prasad Banjare, whereafter sale and purchase took place.

14. This witness goes to the extent of depositing that before Dev Prasad Banjare introduced to him Chetan Ratre, he did not know Chetan Ratre, On that day, itself, after sale and purchase, Dev Prasad Banjare introduced the appellant to Dakendra Vishwakarma.

15. Suraj Soni (PW15) & Dakendra Vishwakarma (PW16) both say that they are known to each other as they are nearby inhabitant. Dakendra Vishwakarma (PW16) admits that it is Dev Prasad Banjare, who had come and identified the person desirous of sale. Dakendra Vishwakarma is emphatic that he only took Dev Prasad Banjare.

16. In view of the aforesaid material, contradiction, in the prosecution evidence, it becomes highly doubtful as to whether it was the appellant or Dev Prasad Banjare, who had gone to the shop of Suraj Soni (PW15) to sell the ornaments.

17. Except the aforesaid evidence, there is no other evidence connecting the appellant with the alleged commission of offence. Therefore, in these circumstances, we find ourselves unable to affirm the judgment of conviction and sentence.

18. In our considered opinion, the appellant is entitled to be given benefit of doubt.

19. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is set aside. The appellant is acquitted. The appellant be set free forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge