

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 33 of 2013

1. Baba Gond @ Rohit, son of Sundar Gond, aged about 56 years, R/o Mohatara, PS Nawagarh, District Bemetara, CG

---- Appellant

Versus

1. State of Chhattisgarh through the Station House Officer, Nawagarh, District Bemetara, CG

---- Respondent

CRA No. 84 of 2013

1. Narsingh Chandrakar S/o Uderam Chandrakar, aged about 27 years, R/o Mohatara, PS Nawagarh, District Bemetara, CG

---- Appellants

Versus

1. State of Chhattisgarh through District Magistrate, District Bemetara, CG

---- Respondent

AND

CRA No. 68 of 2013

1. Chintu Yadav S/o Sukhram Yadav, aged about 46 years, R/o Village Mohtara, Police Station Nawagarh, District Bemetara, CG

---- Appellant

Versus

1. State of Chhattisgarh through the Station House Officer, Nawagarh, District Durg, CG

---- Respondent

For Appellants	:	Shri P.P. Sahu, Shri Chandresh Shrivastava, Shri Vivek Sharma and Shri R.K. Pali, Advocates
For Respondent/State:		Shri Anil Pillai, Dy. AG

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

Judgment on Board by Pritinker Diwaker, J

06/03/2018

As the aforesaid three Criminal Appeals arise out of the same judgment dated 21.12.2012 passed by Additional Sessions Judge Bemetara, District Durg in Sessions Trial No. 23/2011 convicting the accused/appellants under Sections 302/34 and 201/34 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 1000/- u/s 302/34 and RI for three years with fine of Rs. 500/- u/s 201/34 plus default stipulations, they are disposed of by this common judgment.

2. Name of the deceased in this case is Balla Kewat who used to work as an exorcist in the village. Allegedly, he was having illicit relations with the wife of accused/appellant Chintu Yadav. Case of the prosecution is that on 28.01.2011 accused Chintu Yadav took the deceased with him for exorcising his wife and children and thereafter on the same day at about 7.30 PM his dead-body was found at the market place of village Murkuta. Further case of the prosecution is

that accused Chintu Yadav and Narsingh Chandrakar took the motorcycle of Ramchand (PW-19) saying that it would be returned soon. Thereafter it is said that after committing the murder of deceased when the accused/appellants were carrying the dead-body on motorcycle, it fell off near the market of Murkuta. On this, accused Baba Gond got down whereas the other two accused persons left the place and went to some other village from where they were brought back by the villagers. Prosecution case further reveals that on the same day at about 10 PM *merg* intimation Ex. P-16 was recorded at the instance of accused Chintu Yadav mentioning in it that while he was going with other accused persons as also the deceased to village Gania deceased fell down from the motorcycle and died. Inquest Ex. P-3 was drawn on 29.01.2011 followed by postmortem examination which was conducted by Dr. Sanjay Balbhadre (PW-11) vide report Ex. P-9. On 31.01.2011 memorandum of accused Chintu Yadav (Ex.P-12) was recorded based on which seizure of club was made under Ex. P-13, which as per FSL report Ex. P-23 was stained with blood. Further, vide Ex. P-5 a Platina motorcycle was also recovered from the spot. However, no serological report is on record to ascertain the origin of the said blood. After investigation, police filed the *challan* against the accused/appellants and the Court below framed the charge against them under Sections 302/34 and 201/34 IPC.

3. In order to prove its case the prosecution has examined 21 witnesses. 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 has convicted and sentenced the accused/appellants as mentioned above, by the judgment impugned.

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

(i) That there is no eyewitness to the incident and the conviction of the accused/appellants is based on the circumstantial evidence.

(ii) That none of the circumstances so as to draw an inference of guilt of the accused/appellants has been proved by the prosecution beyond reasonable doubt, and even the chain of the circumstances relied upon is not complete linking them with the crime in question.

(iii) That there is absolutely no evidence to show as to where and at what point of time the deceased was killed and that how the dead-body was carried by the accused/appellants, three in number, on a motorcycle.

(iv) That in his statement recorded under Section 313 of the Code of Criminal Procedure accused Chintu Yadav has categorically denied of giving any *merg* intimation to the police.

(v) That conduct of the accused/appellants is very important where after the death of the deceased they decided to leave

accused Baba Gond at the place where the dead-body was lying and the remaining two went to their houses to get back, and they got back also soon thereafter.

(vi) That had the accused/appellants committed the murder of the deceased, all three would have run away from the spot on the motorcycle which they already had.

(vii) That though the FSL report shows the presence of blood on the club seized but in the absence of serological report, seizure of club made by the prosecution is not of much significance.

(viii) That the so-called evidence of last seen by Brij Bai (PW-4) is not reliable because she has not stated as to at what point of time the deceased had left the house with accused Chintu Yadav. She has also not stated that the deceased and the accused Chintu Yadav had gone on motorcycle.

(ix) That the statements of Rupesh Markande (PW-2) and Bhavan (PW-8) who are said to have seen the accused/appellants near the body of the deceased are not reliable as there are number of material contradictions and omissions in the same.

(x) That other witnesses being Satish Navrang (PW-16), Budhe Lal (PW-17) and Raj Kumar (PW-18) who are also said to have seen the accused/appellants with the body of the deceased have not supported the case of the prosecution and have been declared hostile.

(xi) That the accused/appellants were not known to PW-02

and PW-08 but yet their names find place in the FIR.

(xii) That there is over writing in the postmortem report Ex. P-9 as while opining about the mode of death initially the autopsy surgeon has mentioned the word “RTA – Road Traffic Accident” but subsequently by erasing the same he has mentioned “heavy vehicle run over the body”.

(xiii) That in respect of accused Narsingh Chandrakar and Baba Gond it is argued that neither their memorandum has been recorded nor any motive has been attributed to them for committing the murder of the deceased. Even the seizure has not been effected from them.

(xiv) Reliance is placed on the decisions of the Apex Court in the matter of **Satish Nirankari v. State of Rajsthan (2017) 8 SCC 497** and that of **Jaharlal Das V. State of Orissa (1991) 3 SCC 27**.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Sections 302/34 and 201/34 IPC are strictly in accordance with law and there is no infirmity in the same. He submits that as the deceased was having illicit relations with the wife of accused Chintu Yadav, all the accused/appellants might have decided to eliminate him and accordingly on 28.01.2011 they not only killed him but also inserted a club in his anus. According to him, chain of circumstances for drawing an inference about the involvement

of the accused/appellants in the crime in question is complete and there is no scope to interfere with the judgment impugned. State counsel further submits that even there is no challenge to the statements of PW-2 and PW-8 and being so the Court below has rightly relied upon the same while recording the finding of conviction. He submits that even if it is taken that there is some overwriting in the postmortem report, once the death has been held to be homicidal in nature, other things become useless for the accused/appellants to draw benefit in any manner.

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

8. Dineshwari Prasad Kurrety (PW-1) is the Patwari who prepared spot map Ex. P-1 of the place where the dead-body was found. Rupesh Markande (PW-02) has stated that on the date of incident in the evening hours when he along with Bhavan (PW-8) was sitting in the shop of Satish, some noise was heard by him emanating from the side of Indira Cycle Store where all the accused/appellants were standing and close to them one Platina motorcycle and dead-body of some unknown person were also kept. According to this witness, when he along with Bhavan (PW-8) went there, accused Chintu Yadav and Narsingh Chandrakar went away on the same motorcycle and one Baba Gond stayed there. At that time, according to this witness, he was not aware whether the person lying was dead or alive, however, on being asked, the

accused staying there told him that the deceased was unconscious on account of intoxication. This witness has further clarified that on seeing the three accused persons standing, he asked one of them to stay there for offering water to the deceased, if needed, and accordingly two persons moved away. Thereafter, on touching the person lying unconscious, he noticed his hand to be stiffened and thus presumed him to be dead. This witness then is stated to have called the village Kotwar and also telephonically informed the police about the incident. Meanwhile, according to this witness, accused present there namely Baba Gond also tried to flee away but they did not let him do so. Little later, number of villagers gathered and in their presence accused Baba Gond disclosed that other two accused had gone to the house of their relatives at village Ghota. On this, some of the villagers are stated to have gone to that village and brought them back to village Murkuta, and about half an hour thereafter the police party arrived there and the accused/appellants were handed over to it. In cross-examination this witness has stated that the incident occurred at about 7 PM in the middle of the village where number of shops are there but at that time all the shops were closed and there was no light there-at. He has further stated that before incident he did not know accused Narsingh Chandrakar and that his name was disclosed to him by one of the elderly person present there. He however has stated that he did not see the deceased being assaulted by the accused/appellants.

Bhavan (PW-8) is the witness who at the relevant time was in the company of PW-2 and according to him when he was sitting in the shop of one Satish, four persons including the accused/appellants came on a motorcycle and making one fall off and dropping one Baba Gond (one of the accused here) the remaining ones moved forward. According to this witness, when he went near the person felled off the motorcycle, he was already dead. As stated by this witness, accused Baba Gond stayed there whereas the other two went to village Ghota to get back soon. When those two persons did not return for quite long time, this witness along with others went to village Ghota, brought back accused Chintu Yadav and immediately thereafter accused Narsingh Chandrakar also reached there on motorcycle and then all three were handed over to police. In cross examination, this witness has stated that he did not see anyone beating the deceased or pushing off the motorcycle. He also admits that at the place where the body was lying there was no light. Satish Navrang (PW-16), Budhe Lal (PW-17) and Raj Kumar (PW-18) who were also in the company of PW-2 and PW-8 at the place where the body of the deceased was lying, have not supported the case of the prosecution and been declared hostile. Mohni Das Kurre (PW-3) – the witness to inquest as well as Ramesh Kumar (PW-6) – the witness to seizure of vehicle, have also not supported the case of the prosecution and been declared hostile. Smt. Brij Bai (PW-4) – the wife of the deceased has stated that she knew accused/appellant Chintu Yadav but not the other two.

She has stated that on the date of incident accused Chintu had come to her house and took her husband with him saying that they would come back within an hour but thereafter he (deceased) did not return alive. According to her, she was told by the police that her husband was killed by accused Chintu. It is relevant to note that this witness has nowhere stated as to at what time her husband left the house and how. According to her, she did not see the incident of beating and has stated the things as informed to her by police. Thanu (PW-5) – brother of the deceased is a hearsay witness and he too has stated that except accused Chintu, he for the first time, saw accused/appellant Baba Gond and Narsingh Chandrakar in the Court. Lachhan Kurre (PW-7) has stated that on the date of incident at about 8-9 PM on hearing the noise “*chor chor*” he went to the kitchen garden and in the light of torch saw accused Baba Gond coming from someone else's kitchen garden to that of his and that after taking dinner when he went to the shop of one Satish, he came to know that the accused persons were not the thieves but murderers. According to this witness, one dead-body was also seen lying by the side of road. In cross examination, he has stated that he did not see anyone running away after leaving the dead-body at the place where it was lying. Dr. Sanjay Balbhadre (PW-11) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-9 mentioning the presence of abrasions, contusions, stab wounds and fracture of ribs. Cause of death, according to this

witness, was vasovagal shock and sudden cardio respiratory arrest and mode of death is opined to be homicidal followed by heavy vehicle run over the body. In paragraph No. 14 of his evidence, he has admitted that there is some interpolation in the opinion part of the postmortem report Ex. P-9. He however has denied that at the interpolation part the word "RTA" was written. He has admitted that RTA means Road Traffic Accident. He has further admitted that the words "heavy vehicle" mentioned in PM report does not mean dumper, truck etc. rather it means motorcycle, jeep etc. He has admitted that the deceased died on account of being run over by heavy vehicle. It is relevant to note here that mode of death has been opined as homicidal followed by run over by heavy vehicle whereas initially the word "RTA" was mentioned which according to the autopsy surgeon means Road Traffic Accident. Prakash Singh Rajput (PW-13) is the witness who assisted in investigation. Dev Singh (PW-14) and Vidya Das (PW-15) are the witnesses to memorandum and seizure but they have supported only the seizure of club and not the memorandum. Ramchand (PW-19) is the owner of motorcycle which accused Chintu Yadav and Narsingh Chandrakar had taken from him. Shiv Kumar Verma (PW-20) has stated that he knew the accused persons and that accused Baba Gond had come to him for petrol but he refused saying that it was not available with him. According to this witness, two-three days thereafter he came to know that some murder had taken place and the appellants herein were arrested by the police.

K.P. Banjare (PW-21) is the investigating officer who has duly supported the case of the prosecution.

9. We have given our due consideration to the submissions advanced by the counsel on either side and have also minutely gone through the judgment impugned along side the depositions of the witnesses which were referred to and relied upon by the parties in support of their respective cases. As is clear from the factual discussion made above, it is a case of circumstantial evidence and there is no eyewitness to the incident in question. One of the circumstances relied upon by the prosecution is that the deceased was last seen by his wife namely Brij Bai (PW-4) according to whom accused Chintu Yadav, on the date of incident, had come to her house and took her husband with him to get back shortly but since thereafter he did not return alive, rather information of his death was received by her. However, PW-4 has nowhere stated as to at what point of time and how her husband left in the company of accused Chintu Yadav so that the interregnum between the two ends i.e. leaving the house and the dead-body being located, could be culled out as to for how long he remained with him. Thus the so-called last seen theory is not decisive of the complicity of the accused/appellants in the crime in question.

10. The other circumstance relied upon by the prosecution is the recovery of blood stained club on the memorandum of

accused Chintu Yadav but in the absence of serological report to establish the origin of blood – whether it was of the blood group of the deceased, such seizure is not of any value to point the accusing finger at the accused/appellants. It is pertinent to mention here that except accused Chintu Yadav, the memorandums of other accused persons have not been recorded nor any seizure has been effect at their behest. Even PW-2 and PW-8 have categoricly stated that they did not see any of the accused/appellants beating or assaulting the deceased. They have just stated that on hearing the noise emanating from the nearby Cycle Store when they went there, they saw one person lying and one motorcycle parked nearby. According to PW-2 he was not aware whether the person lying there was dead or alive. Their evidence further shows that on being asked by them, accused Baba Gond stayed there to give water to the person lying there if needed, and the remaining two went to some other village on motorcycle. PW-2 did not even know the name of accused Narsingh Chandrakar. Thus the conduct of accused Baba Gond staying near the dead-body on the say of PW-2 and PW-8 and the remaining two going to some other village speaks a lot of their innocence. Had they been actively involved in the murder mystry, there was no occasion for them to come to a market place that too carrying the dead body, and they could have easily chosen some secluded path to skip the public eye. What is more surprising here is that at the place where the dead-body was lying, number of shops are there but not even a single person

has come forward to state as to what in fact transpired at the spot. Rather, the record shows that when PW-2 asked the accused persons as to what happened to the deceased, he was told that he (deceased) was unconscious on account of consumption of liquor. Though as per the evidence of PW-2 and PW-8, accused Narsingh Chandrakar was not known to them before the incident but yet the prosecution did not make any effort to conduct Test Identification Parade and in a slipshod manner he has been arrayed as an accused in the case. Even PW-4 has stated that except accused Chintu Yadav she did not know the other accused persons.

11. It is a settled legal position that a criminal case cannot be decided on the basis of hypothesis and it is for the prosecution to prove the guilt of the accused charged for such an offence and that too beyond reasonable doubt. In a case where there is no eyewitness and the case rests on circumstantial evidence, the prosecution is obligated to prove all those circumstances which leave no manner of doubt to establish the guilt of accused persons i.e. chain of circumstances must be complete and most clearly point to the guilt of the accused. Chain of circumstances means that all the circumstances are linked up with one another and the chain does not get broken in between. It also needs to be emphasized that what is required is not the quantitative but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Though the

material on record slightly goes to show that the deceased was having illicit relations with the wife of accused Chintu Yadav and for that he could have been murdered but this analogy does not get legal approbation for the reason that it is a settled position of law that mere suspicion, howsoever strong it is, can not take the place of legal proof. In a case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or guilt of any other person. Here in this case, though PW-2 and PW-8 have half-heartedly tried to open their mouth against the accused/appellants but their companions being PW-16, PW-17 and PW-18 who also were in the company of PW-2 and PW-8 have not lent support to the case of prosecution and have been declared hostile. All this apart, in the concluding part of the postmortem report, there is some over-writing while opining the cause of death, which also creates a dent in the case of the prosecution. Right from ***Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra (2008) 3 SCC 210*** based on many other previous judicial authorities upto ***Satish Nirankari v. State of Rajasthan (2017) 8 SCC 497*** it has consistently been the position of law that the circumstances pressed into service must derive the conclusion of guilt in the first instance and not otherwise, which however remained totally amiss in the case in hand and being so the accused/appellants are entitled to receive the benefit of the same.

12. Having thus seen the entire case file including the evidence of the witnesses, prosecution appears to have failed in proving its case beyond all reasonable doubt. So also the Court below has not weighed the evidence in the proper perspective while arriving at the conclusion of guilt of the accused/appellants. Findings so recorded by the Court below being ill-justified do not deserve affirmation and therefore we set aside the same by allowing the appeals – three in number. Accordingly, the appeals are allowed, judgment impugned is hereby set aside and the accused/appellants are acquitted of the charges levelled against them. Appellants who are inside as of now be set free forthwith if not required in any other case.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Sanjay Agrawal)
Judge

Jyotishi