

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 311 of 2013**

- Rajkumar @ Shanu son of Shivkumar Suryawanshi, aged about 20 years, resident of in front of Water Tank, Ward No.2, Police Station-Civil Line, Bilaspur, District - Bilaspur (C.G.)

---- Appellant**Versus**

- The State of Chhattisgarh Through : The Station House Officer, Police Station Kota, District Bilaspur (C.G.)

---- Respondent

For Appellant : Shri S.C. Verma, Advocate.
For Respondent/State: Shri Vaibhav Goverdhan, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****03/01/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 25.02.2013 passed by the 3rd Additional Sessions Judge, Bilaspur, in S.T. No.185/2011 convicting the accused/appellant under Sections 147, 302/149, 201 of IPC and sentencing him to undergo R.I. for one year, imprisonment for life with fine of Rs.1,000/- and R.I. for two years with fine of Rs.500/- plus default stipulations respectively.

02. As per the prosecution case, accused/appellant

Rajkumar, Ankit Upadhyay, Vikas Das, Ankit Malu, Sheikh Yasin and the deceased Raja @ Iliyasi had gone to Kori Dam, Kota for enjoying picnic. It is said that near dam the deceased, after consuming liquor, started abusing other persons and quarreled with them. Further case of the prosecution is that the deceased was beaten by twig of tree by his friends resulting into death of the deceased. After leaving the body of deceased in a jungle, the accused/appellant fled from the spot and were arrested after two days. In the meanwhile, on 07.09.2011, dead body of the deceased was found in a jungle near Kori Dam and after receiving information, the dead body was identified by Ismile Khan, cousin brother of the deceased, at whose instance dehati merg was lodged vide Ex.P/9 on 07.09.2011. On the same day, inquest on the body of deceased was conducted vide Ex.P/2 and dead body was sent for postmortem examination to Community Health Center, Kota where Dr. D.P. Dhruv (PW/2) conducted postmortem examination on the body of deceased and gave his report Ex.P/3 noticing following injuries:-

- (i) Rigor mortis past off. Hypostatic condition present at upper part of chest. Mouth open, tongue and eyes were protruded. Whole body was swollen and maggots were crawling. Blisters were present on the body.
- (ii) External wound in the size of 5 cm x 3 cm over left palm dorsal aspect.
- (iii) External wound in the size of 3 cm x 2 cm x 2

cm over right temporal region.

- (iv) External wound in the size of 4 cm x 2 cm x 1 cm over left temporal region.
- (v) External wound in the size of 4 cm x 3 cm x 1 cm over upper part of right occipital region.
- (vi) Multiple contusions on back side with undefined border.

The Autopsy Surgeon opined the cause of death of deceased to be injury on vital part (brain) & mode of death was heamorrhage and coma.

03. On 07.09.2011, numbered merg (unexhibited) was also recorded. On 09.09.2011, after merg inquiry, FIR (Ex.P/15) was registered under Sections 302, 201 and 34 of IPC against friends of the deceased. On 14.09.2011, disclosure statement of the accused/appellant was recorded vide Ex.P/11, based on which, branch of tree was seized vide Ex.P/12, however, there is no FSL and Serological reports on record to confirm presence of blood thereon and its origin respectively. After filing of charge sheet, the trial Court framed charge under Sections 147, 302 read with section 149 and 201 of IPC against the appellant. Separate charge-sheet was filed against Ankit Upadhyay, Vias Das, Ankit Malu and Sheikh Yasin and they being juvenile were tried separately by the Juvenile Justice Board, Bilaspur.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statement of

the accused persons 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits:

- That there is no eye-witness account to the occurrence and the conviction of the appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and, therefore, there can be no inference that it was the appellant who committed the murder.
- That the evidence of last seen cannot be used against the appellant because the deceased left the company of his six friends including the appellant.
- That there is no evidence on record that the deceased died because of assault made by the appellant. As per the prosecution case, deceased was beaten by his friends and no specific role has been assigned to any individual.
- That no motive has been proved by the prosecution. Even assuming that some assault was given by the appellant along with other co-accused persons to the deceased, at best

the appellant can be convicted under Section 323 or 325 of IPC.

- That it is the deceased who first consumed liquor and started abusing the appellant and his friends, and, therefore, if some incident occurred, the same would not come within the category of murder. It has been submitted that the appellant is in jail since 15.09.2011 and, therefore, also he is liable to be acquitted.
- That almost on the same set of evidence, Juvenile Justice Board has acquitted four juvenile accused by holding that there is no evidence to show that the deceased died after sustaining a particular injury caused by a particular person.
- That Autopsy Surgeon D.P. Dhruv (PW/2) has stated that head injury could have been sustained by him on account of fall.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Pavan Sahu (PW/1) is witness to inquest made under Ex.P/2. Dr. D.P. Dhruv (PW/2) conducted postmortem examination on the body of deceased and gave his report Ex.P/3 opining the cause of death to be injury on the vital part

(head) of the deceased and mode of death was heamorrhage and coma. The Autopsy Surgeon has stated that the head injury of the deceased may come because of fall. Prashant Verma (PW/3) is Patwari who prepared spot map vide Ex.P/7. Ismail Khan (PW/4), lodger of dehati merg (Ex.P/9), has stated that he too had gone to Kori Dam and while returning he met juvenile accused Ashu who informed him that he (Ashu) along with the deceased and other friends had come to Kori Dam for picnic. He has further stated that on the same night itself when he again met Ashu, he informed him that while climbing peak they fell apart and he does not know their whereabouts. Sayyad Naeem (PW/5) is father of the deceased. He has stated that on 05.09.2011 the deceased had taken his motorcycle, however, he did not return in the night. Thereafter, he searched and during search he met with juvenile accused Ashu who informed him that deceased had climbed the mountain along with his four other friends and thereafter where have they gone he is not aware. He has further stated that his son accompanied his friends including the appellant. Sandeep Agrawal (PW/7) and Imtiaz Ahmed (PW/8) saw the picnic party quarreling. Mirza Kareem Baig (PW/9) - Constable, Narsingh Ram (PW/10) - Inspector and Pardesi Ram Dhruv (PW/13) - Head Constable assisted in the investigation. S.N. Pandey (PW/11) - Investigating Officer has duly supported the prosecution case. Usman Ali (PW/12) is a witness to memorandum of the accused/appellant (Ex.P/11)

and seizure of branch of tree made under Ex.P/12. Charanjeet Singh (PW/14) is a witness to dead body identification panchanama (Ex.P/2). Sayyad Shahid Khan (PW/15) had identified the dead body.

17. Admittedly, there is no legally admissible evidence on record pointing out the guilt of accused/appellant and his conviction rests upon circumstantial evidence main being the fact that the deceased had gone to Kori Dam along with the accused/appellant and his friends. Once the evidence is there on record that the deceased had left the Kori Dam along with number of persons then it cannot be said that it is the accused/appellant alone, who was seen in the company of the deceased, had killed him unless being corroborated by other substantive piece of evidence.

18. 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 in paras 11, 12 & 13 as under:-

“11. In Hanumant Govind Nargundkar V. State of M.P. [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court 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.”

12. In *Padala Veera Reddy V. State of A.P.* [(1989) Supp (2) SCC 706], this Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt

of the accused but should be inconsistent with his innocence.

13. **In Sharad Birdhichand Sarda v. State of Maharashtra** [(1984) 4 SCC 116], it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and
- (5) 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.

19. In the instant case, a careful reading of the evidence on record goes to show that the deceased after consuming liquor had quarreled with his friends and therefore he was beaten by them. When the deceased was beaten by his all six friends, the question of slapping whole responsibility on the accused/appellant alone does not arise unless his active participation in beating the deceased is proved beyond shadow of doubt. There is absolutely no evidence on record to show that the deceased died because of the injury caused by the appellant by branch of tree which was seized vide Ex.P/12. The Doctor (PW/2) conducting autopsy on the body of deceased has categorically stated that the head injury of the deceased could have been possible due to fall. That apart, on the memorandum of the accused/appellant (Ex.P/10), branch of tree was seized vide Ex.P/12 but there is no FSL or Serological report on record to show presence of blood thereon and confirming origin of the same. Thus, in absence of any such report, the seizure of branch of tree cannot be connected with the commission of crime. True it is that the deceased died in unfortunate manner but on the basis of evidence adduced by the prosecution, the accused/appellant cannot be convicted. That apart, it is relevant to mention here that almost on the similar facts and circumstances of the

case, all four juvenile accused persons namely Ankit Upadhyay @ Chhotu, Vikas Das @ Chhotu, Ankit Malu @ Siddharth and Sheikh Yasin @ Ashu, who have allegedly beaten the deceased, have already been acquitted by the Juvenile Justice Board, Bilaspur vide order dated 09.11.2016 in Criminal Case No.220/2011 by extending them benefit of doubt.

20. Thus having examined the evidence in the present case in light of the aforesaid principles of law, we are unable to hold the appellant guilty of the crime in question. None of the circumstances relied upon by the trial Court has been proved by the prosecution so as to exclude the possibility that it is the appellant alone who is the author of crime beyond the shadow of all reasonable doubt. Being so, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

21. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Sections 147, 302/149 and 201 of IPC by extending him benefit of doubt. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE