

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 154 of 2015**

- Leelashankar Sahu S/o Rajaram Sahu Aged About 20 Years R/o Village- Rakhi, Police Station - Kurud, Revenue And Civil District - Dhamtari C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Kurud, District Dhamtari C.G.

---- Respondent

For Appellant	:	Shri Sunil Verma, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

CRA No. 226 of 2015

1. Gaukaran Sahu S/o Ashwani Kumar Sahu Aged About 21 Years
2. Harish Kumar Sahu S/o Ashwani Kumar Sahu Aged About 19 Years

Appellants No. 1 to 2 R/o Village Chhorbhatti, PS Kurud, Civil And Rev. Distt. Dhamtari C.G.

---- Appellants**Versus**

- State Of Chhattisgarh Through District Magistrate, Dhamtari, Distt. Dhamtari C.G.

---- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Gautam Chourdiya, JJ

Per P. Diwaker, J

10/08/2018

As both these appeals arise out of common judgment of conviction and order of sentence dated 16.12.2014 passed by the Sessions Judge, Dhamtari (CG) in ST No.20/2014 convicting each of the appellants under Sections 302/34 & 201/34 of IPC and sentencing them to undergo imprisonment for life, to pay a fine of Rs.100/- and RI for seven years and fine of Rs.100/- with default stipulations respectively, they are being disposed of by this common judgment.

02. As per prosecution case, deceased Devendra Sahu was a friend of accused/appellant Leelashankar Sahu. Sometime before 3.8.2014 accused Leelashankar had taken the bicycle of deceased Devendra Sahu without informing him and went to meet his girlfriend Umeshwari Sahu in another village. He was seen by the villagers who detained his bicycle and compelled him to go back to his village. When the deceased demanded back his bicycle, it was informed by Leelashankar that the same had been kept by the other villagers as a result of which some dispute cropped up between the deceased and appellant Leelashankar. Deceased is said to have threatened appellant Leelashankar that if his bicycle is not returned to him, he would disclose his love story to everyone. Receiving this threat, appellant Leelashankar decided to eliminate the deceased and for this, he took help of other accused/appellants namely Gaukaran Sahu and Harish Sahu. All the three accused called the deceased, took him to village pond and there it is said that the deceased was assaulted by them by means of different weapons as a result of which he died. Thereafter,

they also tied a *gamchha* around his neck and kept his body in the village pond by putting a big stone on the body. The raincoat of the deceased was also hidden by them in the village pond. On 6.8.2014 a floating dead body was noticed by the villagers, the same was subsequently identified to be that of the deceased and at the instance of Gyaneshwar Sahu (PW-1), brother of the deceased, a complaint Ex.P/1 was recorded on 6.8.2014. On 7.8.2014 FIR (Ex.P/28) was registered against the unknown person under Sections 302 & 201 of IPC.

03. Inquest over the dead body was conducted vide Ex.P/5 on 6.8.2014. The dead body was sent for postmortem, which was conducted on the same day by PW-5 Dr. Umashankar Navratan vide Ex.P/22. The autopsy surgeon noticed that the body was swollen, foul smell emanating from body, scaling of skin of left side of chest and both legs, face swollen, eyeballs and tongue were protruded, three lacerated wounds-one on left side of temporal region and two on right side of temporal region and that there were abrasions over the wrist and hands. He also noticed multiple fracture of left as well as right temporal bones and trachea was also fractured. In his opinion, the cause of death was cardio-respiratory arrest due to throttling and multiple fractures of skull bone leading to internal bleeding and that the nature of death was homicidal.

04. On 8.8.2014 memorandum of accused/appellant Leelashankar was recorded vide Ex.P/14, which led to recovery of bloodstained full shirt, *panchha*, one cell phone (Ex.P/8) and raincoat (Ex.P/9) which

was identified to be that of the deceased vide Ex.P/6. On the memorandum of appellant Gaukaran recorded on the same day (Ex.P/15), bloodstained axe and kurta were seized vide Ex.P/10 & P/19 respectively and memorandum of appellant Harish Sahu (Ex.P/16) led to seizure of bloodstained club and full shirt vide Ex.P/17 & P/18 respectively. Vide Ex.P/30, bicycle of the deceased was seized from one Khublal Sahu whereas vide Ex.P/25 one big stone allegedly used for keeping the dead body underwater was seized from the spot.

05. As per FSL report (Ex.P/36), human blood was found on full shirt and *panchha* seized from appellant Leelashankar and club & full shirt seized from appellant Harish Sahu. Further, the report confirms presence of human blood of B Group on the full shirt & *panchha* seized from appellant Leelashankar. However, there is nothing on record to show as to what was the blood group of the deceased. As per FSL report, blood found on other articles was disintegrated and therefore, its group could not be determined.

06. After completion of investigation, charge sheet was filed against the accused/appellants under Sections 302, 201 read with 34 of IPC followed by framing of charges by the trial Court accordingly.

07. 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.

08. 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.

09. Counsel for the appellants submit 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 motive has been attributed to the appellants solely on the basis of memorandum of the accused persons whereas the said part of the disclosure statement is inadmissible under the law.

(iii) the only piece of evidence against the appellants is the seizure of certain articles on their memorandums. Though human blood of B group was found on full shirt and *panchha* seized at the instance of appellant Leelashankar but there is absolutely no evidence on record as to what was the blood group of the deceased and the blood found on other articles was disintegrated. Therefore, this circumstance is also not conclusive in nature so as to uphold the conviction of the appellants.

(iv) that in the statement u/s 313 of CrPC no specific question was put to appellant Leelashankar regarding presence of human blood on his clothes.

10. On the other hand, State counsel supporting the impugned

judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

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

12. PW-1 Gyaneshwar Sahu is the informant. He has not stated anything specific against the appellants. PW-2 Bhavani Sahu, grandfather of the deceased, is a witness to inquest and he has also not stated anything against the appellants to prove their involvement in commission of the offence. PW-3 Khileshwar Sahu, sister of the deceased, has identified the raincoat of the deceased vide Ex.P/6. PW-4 Vedram Sahu witness to memorandum and seizure, has turned hostile. PW-5 Dr. Umashankar Navratan conducted postmortem on the body of the deceased on 6.8.2014 vide Ex.P/22 and noticed that the body was swollen, foul smell emanating from body, scaling of skin of left side of chest and both legs, face swollen, eyeballs and tongue were protruded, three lacerated wounds-one on left side of temporal region and two on right side of temporal region and that there were abrasions over the wrist and hands. He also noticed multiple fracture of left as well as right temporal bones and trachea was also fractured. In his opinion, the cause of death was cardio-respiratory arrest due to throttling and multiple fractures of skull bone leading to internal bleeding and that the nature of death was homicidal.

13. PW-6 Jeevrakhan, witness to inquest Ex.P/5 and seizure of stone Ex.P/25, has turned hostile. PW-7 Purnanand, witness to

memorandum and seizure, has also been declared hostile. PW-8 Nathuram Suryakar, Head Constable, assisted in the investigation. PW-9 M.K. Hota, investigating officer, has supported the prosecution case.

14. Admittedly, there is no direct evidence against the appellants to prove their complicity in the crime in question and their conviction rests upon circumstantial evidence i.e. recovery of certain incriminating articles at their instance.

15. 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:

“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. □

26. The next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of "Ganesh Bhuvan" from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of Ganesh Bhuvan is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though

as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder.”

16. In ***Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507*** while dealing with recovery of bloodstained articles the Supreme Court held as under:

“11. As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the cloths of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.”

17. Keeping in view the aforesaid principles of law relating to circumstantial evidence if we examine the facts and evidence of the present case, it emerges that there is no legally admissible evidence against the appellants connecting them with the crime in question. So far as recovery of incriminating articles at the instance of the appellants

is concerned, the witnesses to memorandum and seizure have not fully supported the prosecution case and have been declared hostile. Though according to FSL report (Ex.P/36), human blood was found on full shirt and *panchha* seized from appellant Leelashankar and club & full shirt seized from appellant Harish Sahu and it also confirms presence of human blood of B Group on the aforesaid articles seized from appellant Leelashankar, however, there is nothing on record to show as to what the blood group of the deceased. As per FSL report, blood found on other articles was disintegrated and therefore, its group could not be determined. In these circumstances, the prosecution has failed to establish as to what nexus these articles had got with the crime in question. Moreover, from perusal of statement u/s 313 of CrPC of appellant Leelashankar, it is noticed that no specific question was put to him regarding presence of human blood on the articles allegedly seized at his instance.

18. As regards motive, we find substance in the arguments of the appellants that it has been attributed to the appellants solely on the basis of their memorandum statements whereas the said part of the disclosure statement is inadmissible under the law. Furthermore, the witnesses to the disclosure statements have also not supported the same and as such, the prosecution cannot draw any benefit of these statements. Though all the circumstances put forth by the prosecution, if taken together, raise an accusing finger at the appellants but the settled legal position comes to their rescue that the suspicion howsoever strong cannot take the place of proof and the prosecution is required to prove its case beyond all reasonable doubt.

19. Thus considering the overall facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution in light of the aforesaid principles of law, we are of the opinion that the prosecution has failed to prove guilt of the appellants to the hilt so as to exclude the possibility of any person other than the appellants being the perpetrator of the crime beyond the shadow of all reasonable doubt. This being the position, the benefit of doubt must be credited to the appellants and they deserve to be acquitted of the charges leveled against them.

20. In the result, the appeals succeed and are, accordingly, allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charges under Sections 302/34 & 201/34 of IPC by giving 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/

(Gautam Chourdiya)
Judge