

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 4 of 2018**

- Bhola @ Krishna Kanwar S/o Lalsai, aged about 23 years, Occupation - Labourer, R/o village - Udari, Police Station Lundra, District Ambikapur (C.G.)

---- Appellant**Versus**

- The State of Chhattisgarh Through : The Station House Officer, Police Station Chakradhar Nagar, District Raigarh (C.G.)

---- Respondent

For Appellant : Shri Suresh Tandan, Advocate.
For Respondent/State: Shri Avinash Mishra, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****18/04/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 15.03.2005 passed by the 4th Additional Sessions Judge (FTC), Raigarh, in S.T. No.104/2004 convicting the accused/appellant under Sections 302, 201 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.100/- and R.I. for seven years with fine of Rs.100/- plus default stipulation respectively.

02. As per the prosecution case, the accused/appellant was a rickshaw puller, having live-in-relation with deceased Shobha @ Sharda and he was residing as tenant in the house

of one Puni Ram (PW/3). On 16.10.2002, merged intimation (Ex.P/1) was lodged by Puni Ram (PW/3) mentioning therein that the house in question was given to the appellant on rent wherein he was residing along with the deceased. Though there was lock in the house of the accused/appellant but flies were humming around the house and foul smell was also coming. When Rusi Das (PW/4) peeped from the door, one dead body was noticed, thereafter, on 17.10.2002, inquest on the body of deceased was conducted vide Ex.P/3 and body was sent for postmortem examination which was conducted by Dr. S. Lakra (PW/13) and gave his report Ex.P/17 noticing following injuries/symptoms:-

- (i) The body was extensively putrefied and foul smell was coming.
- (ii) Skull hair fall off, eye and tongue protruded, mouth open. Peeling off skin started all over the body. Areola and nipple peeled off.
- (iii) Peeling off skin and blisters were present mostly over distal end of four limbs.
- (iv) Secondary sexual characters were well developed. Maggots were present in variable size crawling all over the body. Longest size of maggot was 1-1/4 cm long and 1/2 cm mid circumference.

The Autopsy Surgeon opined that no definite opinion regarding cause and mode of death of deceased can be given as the body was highly decomposed and petrified.

03. Viscera was sent for chemical examination and as per

unexhibited FSL report, no poisonous substance was found therein. On 17.04.2004 i.e. after about one year and six months, the accused/appellant was arrested and his memorandum (Ex.P/14) was recorded, based on which, iron key was seized vide Ex.P/13 and it is said that the said key was of the lock found on the door of the appellant. After filing of charge sheet, the trial Court framed charge under Sections 302 and 201 of IPC against the appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 16 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 on the memorandum of the accused/appellant (Ex.P/14), one key has been seized vide Ex.P/13 but the memorandum is recorded after about 1 year and six months of the incident, and it is literally impossible to seize the key of the said house after a lapse of this much of time.
- That the deceased was not wife of the accused/appellant but she came along with him on 05.10.2002 and, thereafter, the accused/appellant had left the said village and in the meanwhile deceased was killed by someone.
- That the cause and mode of death of the deceased has not been proved by the prosecution. It has been further argued that it can be a case of natural death and unless the homicidal death is proved by the prosecution, the accused/appellant cannot be convicted under Sections 302 and 201 IPC.
- That there is no evidence against the accused/appellant on the basis of which he can be convicted under Section 201 IPC.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that after killing the deceased, the accused/appellant flee from the spot and was arrested after about one year and six months. It has been further argued that no explanation has been offered by him in his statement recorded under Section 313 of Cr.P.C. as to how the deceased died.

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

09. Sona Devi (PW/1) is sister of the deceased. She has stated that the accused/appellant and Ashok (PW/7) had come to her house and asked the deceased to accompany her for gutkha, thereafter, the deceased did not return. She has further stated that after coming to know about the murder of the deceased, she had gone to hospital and identified the body of the deceased to be that of her sister.

10. Sadhu Charan (PW/2) - brother of the deceased has made almost similar statement as has been made by PW/1.

11. Puni Ram Chouhan (PW/3) is landlord and lodger of merg intimation (Ex.P/1). He is also a witness to inquest (Ex.P/3) and seizure of certain articles made under Ex.P/7, P/8 and P/9. This witness has stated that lock of the house was opened and panchanama of the house was prepared.

12. Rusi Das (PW/4) has stated that Ghasiram, Pardesi, Nilambar and others had come to his house and all of them reached the house of Puni Ram (PW/3) who had given his house on rent to the accused/appellant. He has also stated that flies were humming and foul smell was also coming from the house. Thereafter, they reported the matter to police who reached the place and after breaking the lock of the room one dead body was noticed.

13. Jai Prasad (PW/5)-village Kotwar, Kanchan (PW/6), Ashok

(PW/7) and Ishwar Chuhan (PW/8) have turned hostile.

14. B.P. Yadav (PW/9)-Assistant Sub Inspected assisted in the investigation.

15. Shashtri Kumar Pradhan (PW/10) is the Patwari who prepared spot map vide Ex.P/15.

16. Prakash Narayan Pandey (PW/11) - Constable assisted in the investigation.

17. Munna Singh Painkra (PW/12) is a rickshaw puller. He has stated that when the accused/appellant, deceased Shobha and Ashok (PW/7) came to his house, he asked about deceased Shobha, on which, they replied that PW/7 would keep her as wife.

18. Dr. S. Lakra (PW/13) conducted postmortem examination on the body of the deceased and gave his report (Ex.P/17) stating that no definite opinion can be given regarding cause and mode of death of deceased as the body was highly decomposed and petrified.

19. Rameshwar Prasad (PW/14) - Assistant Sub Inspector assisted in the investigation.

20. Satish Dubey (PW/15) - Thana Incharge, did part of investigation.

21. S.S. Sharma (PW/16) - Investigating Officer has duly supported the prosecution case.

22. Admittedly, there is no legally admissible evidence on record pointing out the guilt of accused/appellant and the

case rests upon circumstantial evidence main being the his memorandum (Ex.P/14) based on which one key was seized vide Ex.P/13.

23. 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 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.

24. Close scrutiny of the evidence makes it clear that memorandum of the accused/appellant was recorded on 17.04.2004 at 11.30 AM, based on which one key was seized on the same day at 12.10 PM vide Ex.P/13, whereas broken iron kunda of the door was seized at 10.00 AM vide Ex.P/9 meaning thereby the lock of the door was broken before the memorandum of the accused/appellant and seizure. Even otherwise, merely on the basis of seizure of key and opening

of the lock of the house by said key, it cannot be presumed that it is the accused/appellant who committed murder of the deceased. The prosecution has also failed to establish beyond doubt that the said key had any nexus with the crime in question. That apart, according to evidence of PW/1 and PW/12, the deceased was last seen not only with the accused/appellant but also with PW/7, thus, it is difficult to infer that it is the appellant alone who is responsible for the offence. Yet another important aspect of the case is that there is no evidence that the deceased died homicidal death. When the body was sent for postmortem examination, it was highly decomposed, putrefied and it has been opined by the autopsy surgeon (PW/13) that no definite opinion can be given regarding cause and mode of death of the deceased. Thus considering the oral and medical evidence on record, possibility of the natural death of the deceased cannot be ruled out.

25. 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.

26. 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 302 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