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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 130 of 2014**

1. Somati Ekka Wd/o Late Shri Munshiram Uraon, aged about 45 years.
2. Kamal Ekka S/o Late Shri Munshiram Uraon, aged about 29 year,
Both R/o village Prem Nagar, Pathalgaon, Police Station -
Pathalgaon, District (Revenue and Civil) - Jashpur (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : District Magistrate,
Jashpur, District (Revenue and Civil), Jashpur (C.G.)

---- Respondent

For Appellant	:	Shri Vineet Kumar Pandey, Adv.
For Respondent/State:		Shri Subhash Yadav, Dy. G.A.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava
&
Hon'ble Smt Justice Rajani Dubey

Judgment On Board**20.06.2019****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 29.11.2013 passed by Additional Sessions Judge, Kunkuri, District Jashpur (C.G.), in Sessions Trial No.09/2013 whereby and whereunder, the

appellants have been held guilty of commission of offence under Section 302/34 IPC and sentenced as described below:-

Conviction	Sentence
Section 302/34 IPC	Life Imprisonment with fine of Rs.2,000/- (In default, 01 year R.I.)

02. The prosecution story as unfolded from the impugned judgment and the records of the case, is that on 01.10.2012, an FIR in Ex.P/5 was lodged in the police station by Pradeep Kumar Chouhan (PW/3) that Balak Ram was assaulted by his mother Smt. Somati Ekka (A-1), brothers Kamal Ekka (A-2) and Fulsai Ekka and murdered, on which, offence was registered. A merg was also registered and inquest over dead body was prepared. The dead body was sent for postmortem and Dr. Smt. Sakuntala Nikunj (PW/2) conducted postmortem and gave a report in Ex.P/3 regarding death due to number of injuries. As the name of the appellants along with juvenile accused Fulsai Ekka was mentioned in the FIR, the investigation culminated in filing of charge sheet against the appellants for alleged commission of offence of murder of Balak Ram. The third accused Fulsai Ekka, being juvenile, was separately tried before the Juvenile Board.

03. Though, there was no eye-witness to the incident, the prosecution led circumstantial evidence that the dead body was found in the veranda of the house, blood stained club and axe was recovered from the house on the memorandum given

by the appellants and that the conduct of the appellants was also blameworthy as they had not reported the matter in the police station, and it was at the instance of the village Kotwar, a report was made in the police station. Though, the appellants came out with the plea of innocence in their examination under Section 313 of Cr.P.C., denying incriminating circumstances led by the prosecution, the learned trial Court, relied upon the circumstantial evidence, to hold that it is the appellants who had committed murder of the deceased and sentenced as described above in para 1 of this judgment.

04. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellants would argue that the prosecution has failed to prove its case beyond reasonable doubt and, even if, there is strong suspicion, unless it is translated into truth on the basis of clinching evidence, it could not be made a basis to convict the appellants and the kind of evidence which the prosecution has led, the appellants are entitled to be given benefit of doubt.

05. On the other hand, learned State counsel supports the judgment of conviction and order of sentence by submitting that, even though, there is no direct evidence, the established and proved circumstance that the dead body was found in the veranda of the house, it is the case of homicidal death, axe

and club recovered from the house were found to be stained with human blood, which the appellants have failed to explain and that even the clothes of one of the appellant Somati Ekka (A-1) was found to be stained with blood, who also failed to explain and further the conduct of the appellants that they did not lodge the report, it is only village Kotwar who lodged the report, all pointed towards the guilt of the appellants and formed complete chain of circumstantial evidence to draw an inference that, in all probability, it is the appellants and the appellants alone, who must have killed the deceased.

06. We have heard learned counsel for the parties and perused the record including the impugned judgment.

07. Present is not a case where the prosecution has come out with the direct evidence and the entire case rest only on circumstantial evidence. Therefore, as per settled legal position, the prosecution was required to prove incriminating circumstance so as to form complete chain to draw inference that in all probability, it is the appellants and the appellants alone, who must have killed the deceased.

08. The circumstantial evidence, on the basis of which, conviction of the appellants has been ordered, are as below:-

- i. The dead body of Balak Ram was found in the veranda of the house.
- ii. Balak Ram died homicidal death due to injuries caused by sharp edged weapon.
- iii. The axe and club recovered from the house of

the appellants was found stained with human blood.

- iv. Blouse of appellant Somati Ekka (A-1) seized by police was also found stained with blood.
- v. The appellants failed to explain presence of human blood on various articles.
- vi. Conduct of the appellants is blameworthy as the report was not lodged by them but by the Kotwar of the village.

09. As far as the first circumstance of incriminating nature that the dead body of Balak Ram was found in the veranda of the house, we find that the evidence of prosecution witnesses itself shows that the dead body was found in the enclosed premises of the house and it was open, though, just by the side of the house. Madan Ram Bhagat (PW/1), in his cross-examination, has admitted that the place of incident abut CC road and is open and accessible to all and its an open place.

Pradeep Kumar Chouhan (PW/3), the FIR informant, has admitted in his cross-examination that the dead body of Balak Ram was lying by the side of road, which is public road used by all. The map (Ex.P/7) also shows that the place where the dead body was found, was just by the side of the house, but dead body was lying on an open place.

10. As far as recovery of axe and club is concerned, we find that the two independent witnesses of prosecution Kamlesh Sahu (PW/7) and Johani Bai (PW/8) have neither supported the prosecution case of appellants having given any disclosure

statement in their presence nor recovery of axe and club from the house of the appellants. The evidence of Investigating Officer J.P. Singh (PW/10) is that he had taken memorandum of the two appellants and, based on their memoranda, an axe and club was taken out from the house of the appellants. But Kamlesh Sahu (PW/7) and Johani Bai (PW/8) do not support the statement. There is nothing in their statements to prove that the place from where the axe and club was taken out, was the house of the appellants. Kamlesh Sahu (PW/7), while denying that any memorandum statement was recorded in his presence, though, states that police had recovered a club, an axe and rope after showing him in his presence, he does not say where-from it was taken out. Whether it was taken out from the house or it was lying at the place of incident or it was in the police station, is not known. A suggestion that in his presence, the Investigating Officer seized pink colour blouse of Somati Ekka (A-1) from her possession, has also been denied.

11. J.P. Singh (PW/11) the another witness of memorandum and seizure has also not supported the prosecution case, and according to him, no statement was recorded in his presence and whatever recovery was shown, was shown in the police station.

12. In a case where the prosecution case rest on circumstantial evidence only, the aspect of recovery assumes

importance and unless there is clinching evidence that recovery of weapon said to be bloodstained was either recovered from a place disclosed by the accused or at-least from the house of the accused, the recovery, by itself, would not be an incriminating circumstance. It is quite doubtful as to the place where-from the recovery was made. It is only when there is clinching evidence that the club and the axe both were recovered from the house, irrespective of whether it was on the basis of disclosure statement or not, it could constitute an incriminating evidence.

13. Prosecution case of seizure of a blouse from appellant Somati Ekka (A-1), apart from being doubtful, does not establish live link as the FSL report does not prove that it was human blood, much less of the group and origin of that of the deceased.

14. Once we hold that the very recovery of axe and club either on the disclosure statement or from the house of the appellants becomes doubtful, the other incriminating evidence of these articles being stained with human blood obviously loses its significance and seizure to be an incriminating circumstance so as to involve the appellants in the alleged commission of offence. In other words, there is no live-link established between the recovery of club and axe and they being stained with human blood. It is only when recovery either at the instance or from the possession of the appellants

is found established that failure on the part of the appellants to explain that how it was stained with human blood, in certain circumstances, may lead to an incriminating circumstance pointing towards the guilt of the appellants.

15. The prosecution evidence is regarding FIR lodged by the village Kotwar. We have gone through the evidence led by the prosecution but none of the prosecution witnesses have stated that the appellants were initially involved in suppressing the incident and, later on, some of the villagers or even Kotwar, went to the house and the matter came to light. There is no evidence either-way. Mere circumstance that the FIR was lodged in the police station by the Kotwar of the village, would not, by itself, constitute an incriminating circumstance.

16. We, therefore, find that all the circumstances, which have been led by the prosecution, may at the most, constitute a strong suspicion regarding involvement of the appellants in the alleged commission of offence, but in order to convict, it was required to be translated into proved chain of circumstances from which reasonable inference could be drawn that, in all probability, it is the appellants and the appellants alone, who must have killed the deceased. In our considered opinion, the prosecution case suffers from doubt and it would not be safe to convict the appellants. Therefore, the appellants are entitled to be given benefit of doubt. We,

accordingly, do so.

17. The appeal is accordingly allowed. Impugned judgment of conviction and order of sentence is set aside and the appellants are acquitted of the charge levelled against them by the trial Court by extending them benefit of doubt. The appellants are reported to be in jail. They be set at liberty forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge

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