

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 524 of 2013**

- Kishan Singh Parvana @ Parvanna @ Sidhdhu, 30 years R/o Village Sarkadakala PS- Uchrau, District Jyotibha Phule Nagar (UP), Presently R/o Behind Gurudwara, Bharat Singh Colony, Mahasamund, Barcha, PS Pathariya, Civil and Revenue District Bilaspur, C.G.

---Appellant**Versus**

- State of C.G., through the PS Amanaka, District Raipur, C.G.

---- Respondent

For Appellant	Shri A.K. Gupta, Advocate.
For Respondent/State	Shri Santosh Bharat, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Shri Prashant Kumar Mishra J.****29.07.2019**

1. The appellant would call in question the legality and validity of the judgment of conviction and order of sentence dated 02.05.2013 passed by the Sessions Judge, Raipur, C.G. in ST No.80/12 whereby he has been convicted and sentenced for committing murder of deceased Gurmit Kaur on 09.12.2011 between 9 to 11 am as under :-

Conviction	Sentence
Under Section 302 of IPC	Life Imprisonment, fine of Rs.5,000/-, in default thereof to suffer additional R.I. for 5 months.
Under Section 449 of IPC	Life Imprisonment, fine of Rs.5,000/-, in default thereof to suffer additional R.I. for 5 months.
Under Section 25(1)(b)(a) of the Arms Act	R.I. for one year, fine of Rs.1,000/-, in default thereof to undergo

	additional R.I. for one month.
Under Section 27 of the Arms Act	R.I. for seven years, fine of Rs.5,000/-, in default thereof additional R.I. for five months.

(All the substantive jail sentences were directed to run concurrently)

2. As per prosecution case, the appellant and the deceased with their children Jagjeet Singh and Indrajeet Singh were residing at MIG-2/33 Kabir Nagar, Raipur, C.G. The appellant is working as a Contractor at C.G. Ispat Factory, Siltara. Dehati merg Ex.P-1 was registered on the information of PW-1 Jasvir Singh that at about 8:30 am both the sons went to school and he went to the factory at 9 am. At 11 am he received phone call from his son Jagjeet Singh that some thief has entered the house and scattered the household articles and the deceased is lying unconscious over the bed. PW-1 Jasvir Singh rushed back to his house and found that his wife/deceased Gurmit Kaur was lying flat on the bed with her body covered with a blanket upto her chest. On removing the blanket, he saw injury marks with bleeding over the chest and she was dead. Her earrings and golden chain were missing. In the other room, almirah was open and other articles of the suitcase were lying scattered. A sum of Rs.2000/- belonging to her wife was also missing from her bag. Dehati Merg Ex.P-2 was also registered mentioning the same facts. PW-6 S.K. Jain, Fingerprints Expert was called and he obtained some fingerprints and palmprints over the handle of the almirah.
3. The appellant was taken into custody on 22.12.11 and his memorandum statement Ex.P-6 was recorded wherein he disclosed

that after firing gun shot over the deceased, he looted golden chain, golden earrings and Rs.2,000/- and the country made revolver (*katta*), three live cartridges, one empty cartridge, golden chain and earrings were concealed under the heap of sand. These articles were recovered from the indicated place vide Ex.P-7. Autopsy was conducted by PW-3 Dr. S.K. Bagh, who submitted his report Ex.P-10 opining that death is caused due to hemerage and shock as a result of firearm injury at thorax. The prosecution also obtained report of Fingerprints Expert PW-6 S.K. Jain, who recorded his opinion in the positive and thereafter the charge sheet was filed against the appellant.

4. The trial Court has convicted the accused on the basis of circumstantial evidence in the nature of positive opinion of Fingerprints Expert, the memorandum statement and consequent seizure of certain articles from the accused.
5. Learned counsel for the appellant would submit that the chain of circumstantial evidence is not so complete as to point towards the guilt of the accused eliminating the hypothesis that the crime has been committed by someone else. Therefore, the appellant deserves to be acquitted of the charges levelled against him.
6. Learned counsel for the State would submit that the Fingerprints Expert opinion is a very strong piece of evidence against the appellant. He would also submit that the memorandum statement and consequent seizure having been proved by PW-2 Sukhvinder Singh, these two circumstances complete the chain of circumstantial

evidence and the conviction is fully justified.

7. We have heard learned counsel for the parties and scrutinized the record carefully.
8. The case of the prosecution rests on circumstantial evidence as there is no eyewitness to the crime. As per material available on record, the deceased was married to PW-1 Jasvir Singh and had two sons from him. The appellant was working at a local Gurudwara. The appellant and the deceased had developed intimacy and the deceased had eloped with the appellant at least on three occasions. On the first occasion she remained with the appellant for about 7 days at Delhi and thereafter she stayed with him for about 4 to 5 months. There is evidence to the effect that 2-3 days prior to the present incident the deceased had received mobile call from one Mintu, who had threatened her that she will be paraded on the streets. However, this fact was not disclosed either by PW-1 Jasvir Singh or by deceased herself to any other relative. PW-1 Jasvir Singh had also not disclosed about this incident in his statement under Section 161 Cr.PC.
9. PW-1 Jasvir Singh was not present in the house, therefore, his statement is not of much relevance. PW-2 Sukhvinder Singh is the witness to the memorandum statement Ex.P-6 and the seizure memo Ex.P-7. He is cousin of PW-1 Jasvir Singh. PW-3 S.K. Bhag conducted the autopsy and he has not found any bullet in the body of the deceased. However, he has opined in his autopsy report Ex.P-10 that the death has taken place due to firearm injury. PW-5 Dinesh Kumar is the Armourer, who has examined the firearm, *Katta*.

However, his statement is inconclusive for the present offence for the reason that he has not examined the *Katta* and the empty cartridge nor did he report that the empty cartridge recovered from the spot was fired from the same *Katta*.

10. PW-6 S.K. Jain is the Fingerprints Expert, who has proved that the Fingerprints obtained from the Almirah at the place of occurrence are the fingerprints of the accused which were sent to him by Shri K.L. Rathore (not examined). PW-7 Falin Singh has registered the Dehati Merg and FIR. PW-8 S.K. Sahu has prepared the map. PW-9 Smt. Keja Bai is the mother of the deceased. She feigned ignorance about the threat given by one Mintu to the deceased. PW-10 K.K. Nag is the I.O.
11. From the above, it is apparent that the case of the prosecution rests mainly on the evidence of Fingerprints Expert, memorandum and seizure. It is settled law that for a conviction to sustain on the basis of circumstantial evidence the prosecution has to prove that the chain of circumstantial evidence is so complete that it eliminates all hypothesis of the innocence of the accused and points to only one conclusion that it is the accused who has committed the crime.
12. In its celebrated judgment in the matter of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***¹, the Hon'ble Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under:

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can

¹ AIR 1984 SC 1622

be said to be fully established:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahebrao Bobade Vs. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

- (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."

13. When we examine the circumstantial evidence available in the case vis-a-vis the defects in the investigation, it is seen that the report of the Fingerprints Expert though is positive for the prosecution but there is no proof as to who collected the finger prints from the spot. The prosecution has not filed the memo of obtainment of fingerprints from the spot. Similarly, the memo of obtaining the appellant's fingerprints during his custody, filed along with report Ex.P-13, does not carry the date on which such fingerprints were obtained from the appellant. This

document does not carry the signature of the appellant nor it is signed by the persons who classified and tested. There are two columns made for the signatures of the person who had classified and tested. The document records that impressions were taken by one Shri S.S. Thakur. However, the said Shri S.S.Thakur has not been examined. More importantly, if on the date of obtaining the impressions, the accused was in judicial custody, the said impressions could not have been obtained without order from the Magistrate. Thus, the document does not satisfy the test of legal and procedural sanctity in either of the terms. If on the said date the accused was in police custody then the document should carry the signatures of witnesses as well as the accused and if he was in judicial custody there should have been permission from the concerned Magistrate. Since, it is not proved that the admitted fingerprints said to be of the accused were obtained from him while he was in custody, the report of the Finger Print Expert is not such evidence which can be relied upon as one of the circumstances in the chain of circumstantial evidence to establish the guilt of the accused.

14. On the above aspect, it would be profitable to refer to the law laid down by the Hon'ble Supreme Court in the matter of **Mohd. Aman and Another Vs. State of Rajasthan** {(1997) 10 SCC 44} wherein the Supreme Court has held thus at paras-8 & 9:-

“8.....

 It is true that under Section 4 thereof police is

competent to take fingerprints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate.....

9.....

So far as the footprints are concerned, another reason for which we feel it unsafe to accept the evidence led in this regard is that the sample footprints were not taken before a Magistrate.....

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15. The other circumstance is the memorandum statement and seizure of articles from the accused. The memorandum statement records that at his instance one *Katta*, live cartridges, golden chain and empty cartridge were recovered. However, before recovery of this empty cartridge from the appellant, another empty cartridge was already recovered from the spot vide Ex.P-5 at about 1 am on 19.12.2011 itself which has been proved by I.O. PW-10 K.K. Nag. Moreover, the recovery has been made from the open place because the I.O. would himself state that the complex was under construction and it was open and accessible to all. In any case, conviction only on the basis of recovery of some articles is not permissible as has been held by the Hon'ble Supreme Court in *Sharad Birdhichand Sarda* (supra).
16. It is also to notice that the articles including the *Katta*, cartridges, golden chain and earrings were never produced in the Court during the

course of trial nor they have been marked as article. These articles have also not been identified in course of investigation.

17. The case of the prosecution is conspicuously silent about the alleged motive on the part of the appellant to commit murder of the deceased. Having considered the entire prosecution case, we also feel that the deceased being in love with the appellant and since she wanted to stay with the appellant, there was no reason for the appellant to commit her murder as both were enjoying each others' company. The Investigating Officer has not interrogated one Mintu, who made a call to the deceased about 2-3 days back threatening her that she will be paraded on the streets. When Jasvir Singh PW-1 made a statement to the police vide Ex.D-1 he made a passing reference that the appellant used to move with one Prakash Mintu but he did not inform the police that the deceased had received a threatening call from Mintu. This statement about threat was made for the first time in the Court. It is also to notice that if the deceased had received a threat call from one Mintu about 2-3 days back, the matter was not reported to the police nor the investigating officer obtained call details from the SIM card of the deceased to locate the person who made threatening calls to the deceased. These are other lacunas in the investigation which further weakens the case of the prosecution.
18. In our considered view, the prosecution has failed to knit together the chain of circumstantial evidence so as to lead to only one conclusion i.e. the guilt of the accused. The Trial Court has wrongly convicted the appellant for the offence of murder of the deceased.

19. In respect of the offence under Sections 25 and 27 of the Arms Act, it is to notice that the prosecution has neither obtained sanction from the District Magistrate to prosecute the appellant nor the *Katta* or the Cartridges have been produced in the Court. Therefore, conviction for either of the offence i.e. under Section 25 or Section 27 Arms Act is illegal.
20. For the foregoing, the appeal succeeds and is allowed. The impugned judgment is hereby set aside in respect of the accused/appellant. He is acquitted of the charges under Sections 302, 449 of IPC and Section 25(1)(b)(a) and 27 of the Arms Act. The appellant is reported to be in jail, therefore, he be released forthwith unless required to be detained in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of the CrPC. The appellant shall appear before the higher Court as and when directed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge

HEADLINES

Sample finger prints of accused not taken before or under the order of a Magistrate. Report of finger print expert against the accused cannot be read in evidence.

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Versus

State of CG

Judgment dated : 29.07.2019