

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 465 of 2012**

- Dilesh @ Dilip Son of Aatmaram Ratre, Caste – Satnami, aged about 28 years, Resident of Village Uslapur, Police Station Baloda, District Janjgir-Champa, CG. **---- Appellant**

Versus

State of Chhattisgarh through the Police Station Baloda, District Janjgir-Champa, C.G. **---- Respondent**

For Appellant : Shri Sumit Singh, Advocate
 For State/respondent : Shri Sanjay K. Agrawal, Govt. Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

Per Manindra Mohan Shrivastava, J.

02/08/2019

This appeal is directed against the impugned judgment dated 04.05.2012 passed by Sessions Judge Janjgir-Champa in Session trial No. 132/2011 whereby the appellant has been convicted and sentenced as hereunder:-

Conviction	Sentence
Under Section 302 of Indian Penal Code. For commission of murder of deceased Dilchand Satnami	Life Imprisonment and fine of Rs. 1000/- in default of payment of fine, additional R.I. for 3 months.
Under Section 302 of Indian Penal Code. For commission of murder of deceased Maniram Daharia	Life Imprisonment and fine of Rs. 1000/- in default of payment of fine, additional R.I. for 3 months.

2. The prosecution story, as unfolded from the impugned judgment and the record of the case is that dead bodies of one Dilchand and another Maniram were found lying near the village pond on

04.04.2011 which led to lodging of Merg intimations Ex.P-19 and Ex.P-20 by PW-7. The Police prepared inquest over the dead body and sent it for postmortem. Doctor (PW-6) conducted postmortem of Dilchand and Maniram vide Ex.P-16 and Ex.P-17 respectively. In the postmortem report, the doctor opined that cause of death was suspected poisoning and mode was asphyxia. An injury was also found in the occipital region in the head of deceased Maniram. After Merg inquiry, as the needle of suspicion revolved around the accused/appellant, offence was registered against him alleging commission of offence of murder of Dilchand and Maniram, vide FIR (Ex. P-27), recorded by the Investigating Officer (PW-11). It is further case of the prosecution that the appellant was taken into custody and a memorandum (Ex. P-7) was recorded, on the basis of which, it is said that some poisonous substance was seized from the house of the appellant vide Ex. P-8. Seizure of similar substance was also made from one Samaru Yadav, under Ex.P-9. Seized articles were sent for FSL examination and the FSL report revealed that the substance said to be seized from the possession of the appellant vide Ex. P-8 and from that of Samaru Yadav vide Ex.P-9 contained borax – one of the poisonous substances. After completion of investigation, charge-sheet was filed and the learned trial Court framed charges to the effect that in order to eliminate Maniram and Dilchand, appellant administered poison known as borax by mixing with the liquor consumed by the aforesaid two persons leading to their death. Appellant having abjured guilt, was put to trial.

3. In order to prove its case, prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded

under Section 313 Cr.P.C. wherein he denied all incriminating evidence and circumstances appearing against him and stated that he has not committed any offence and has been falsely implicated in the case.

4. Relying on the evidence led by the prosecution, particularly, the evidence with regard to call received from the appellant, appellant last seen, recovery of poisonous substance as also motive for commission of offence, learned trial Court held the appellant guilty of commission of offence.

5. Assailing legality and validity of the impugned judgment of the conviction and order of sentence, learned counsel for the appellant would argue that the circumstantial evidence led by the prosecution is not at all reliable much less forming complete chain so as to draw an inference that in all probability, it is the appellant and the appellant alone who much have committed the murder of Dilchand and Maniram. He argued that the evidence regarding call received by the prosecution witness is an improvement over the diary statement of the prosecution witnesses, mother Giran @ Kiran Bai Satnami (PW-1) and father Doojram Satnami (PW-7). Learned counsel would further argue that as far as Sukhchand Satnami (PW-9) is concerned, he himself claims that a phone call of the accused was received on his mobile phone but the prosecution has failed to prove that the SIM card on which he alleges to have received phone call was seized from him. It is next submitted that there is no clinching evidence of appellant last seen with the two deceased. Learned counsel would argue that the evidence of Sukhchand Satnami (PW-9) that he had seen the

appellant and the deceased together near the house of Vishal, in the evening of previous day, is a clear improvement upon his case diary statement as no such statement was made by him earlier. Next submission of learned counsel for the appellant is that as far as seizure of poisonous substance from the possession of the appellant is concerned, the same appears to be doubtful because in the cross examination the seizure witness Deviprasad Patel (PW-3) has stated that he cannot say as to on which document he had put his signature. His further argument is that even if the seizure is taken as it is, only on that basis, without any other clinching evidence, his conviction could not be sustained. His last submission is that even the motive on the part of the accused/appellant to commit the offence alleged against him has not been proved beyond doubt because there is nothing in the evidence of Gitabai that the appellant had ever expressed before her regarding elimination of the two deceased and, therefore, ingredient of motive is also absent. The evidence of other witnesses in this regard is only hearsay and, therefore, is not at all reliable.

6. On the other hand, learned State counsel, supporting the judgment of conviction and order of sentence, would submit that even though, the case is based only on circumstantial evidence, the prosecution has brought home the guilt of the accused by proving that on the date of incident, in the morning, the appellant had given a call and had talked to deceased Maniram and had invited near the pond. It is also submitted that the prosecution has proved that appellant had an attraction towards Gitabai (PW-5) which has been proved by the statement Gitabai also and the other witnesses have stated that the appellant was nurturing ill-will against Maniram and Dilchand under an

impression that these two persons were also entangled with Gitabai and, therefore, this was the motive for the appellant to commit murder of Dilchand and Maniram. The next submission of learned State counsel is that on the memorandum Ex. P-7 given by the appellant, which is proved from the evidence of Deviprasad (PW-3), poisonous substance borax (Suhaga) was seized from the house of the appellant and the FSL report proved that the poison which was found in the body of the deceased and the one which was recovered from the house of the accused/appellant under Ex.P-8 was of the same nature. Thus the chain of the circumstances proved from the aforesaid evidence makes it a foolproof case to draw an inference that it is the appellant alone who committed the offence and, therefore, the trial Court has not committed any illegality in convicting and sentencing him as mentioned above.

7. We have heard learned counsel for the parties and perused the record.

8. Before advertng to the evidence on record in order to find out whether the impugned judgment of conviction is sustainable in law or not, we consider it apposite at this stage to refer to settled legal position adumbrated by the Supreme Court in its celebrated decision in **Sharad Birdhichand Sarda Vs. State of Maharashtra**, (1984) 4 SCC 116 with regard to the requirement of law so as to prove guilt sustain based on circumstantial evidence. The five golden rules laid down by the Supreme Court in the aforesaid decision are as follows:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can 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 Sahabrao Bobade & Anr. v. State of Maharashtra](#)(¹) 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."

It was further held that :-

"154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *The King v. Horry*, thus:

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that up on no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression, morally certain by 'such circumstances as render the commission of the crime certain'.

157. This indicates the cardinal principle' of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (*supra*) was approved by this Court in [Anant Chintaman Lagu v. The State of Bombay](#)(²) Lagu's case as also the principles enunciated by this

Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases Tufail's case (supra), Ramgopals case (supra), Chandrakant Nyalchand Seth v. The State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19.2.58), Dharmbir Singh v. The State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in [Naseem Ahmed v. Delhi Administration](#)(1). [Mohan Lal Pangasa v. State of U.P.](#),(2) [Shankarlal Gyarasilal Dixit v. State of Maharashtra](#)(3) and [M.C. Agarwal v. State of Maharashtra](#)(4)-a five-Judge Bench decision.”

9. Keeping in forefront the aforesaid settled legal position, we shall now deal with the material on record.

10. From the First Information Report (Ex. P-27) it is revealed that the involvement of the accused/appellant in the crime in question is based on an affair between the accused and one Geeta (PW-5) and that appellant suspected relation of Geeta with two deceased persons. FIR also discloses that deceased Dilchand and Maniram had developed a liking towards the same girl namely Geeta and therefore, the motive has been attributed to the accused to eliminate them.

11. Gitabai (PW-5) has been examined as one of the prosecution witnesses and, though, she states in her evidence that the appellant was inclined to marry her, she has not stated anything in her evidence to prove that the appellant was carrying an impression that Dilchand and Maniram were also having inclination towards her and for that reason, there was any existing animosity or dispute between the appellant on one hand and Dilchand and Maniram on the other. In her cross examination, she stated that Dilchand and Maniram never had any objectionable behavior with her nor she ever talked to the accused regarding this nor she ever said that she had any relation with Maniram and Dilchand. This witness states that she had last

talked to the accused 3-4 months before and thereafter, she had left her place to earn her livelihood and there was no occasion for her to talk to the appellant again. The evidence of this witness shows that since three months prior to the date of incident, she did not even meet the appellant.

12. The evidence of other prosecution witnesses that there was a dispute between appellant and the deceased because of Gitabai is only a hearsay evidence. All the witnesses have stated that they heard a rumor in the village about the dispute between the accused and the two deceased person over their inclination towards Geetabai (PW-5) but, there is no evidence to prove that before any of these witnesses, either Maniram or Dilchand or Gitabai or the appellant himself ever disclosed such affair and existence of animosity amongst all of them. The prosecution evidence with regard to motive therefore, is not sufficient to prove that the appellant had any strong motive to kill Dilchand and Maniram.

13. It is only Sukhchand - brother of deceased (PW-9) who, in his examination in chief, has deposed that on the date of incident, at about 7-8 in the evening, he had seen the appellant along with his brothers Maniram and Dilchand near the house of one Vishal. However, in his cross-examination it has been elicited that no such statement was recorded. According to him, he had made statement before the Police but is not aware as to how it was not recorded by the Police. He had not made any such disclosure at the time of giving Merg statement. Therefore, this story of last seen in the evidence of PW-9 suffers from omission and in the absence of there being any

corroboration, it would not be safe to rely upon this evidence of last seen.

14. There is no other witness of the prosecution who has stated that prior to the incident, the appellant and the deceased were seen together going towards the pond or that they were found sitting by the side of pond consuming liquor.

15. The prosecution case has also been that on the date of incident, a call was given by the appellant to Dilchand and Maniram inviting them in the evening near pond, for enjoying liquor. Kiran Bai - mother (PW-1) and Doojram – father (PW-7) though, stated in their examination-in-chief that a call was given by the appellant in the morning, while Kiranbai says that phone was received by Maniram, PW-7 says that phone was received either by Maniram or by Dilchand. In their respective cross examination, however, it has been elicited that in their diary statements, such statement was not made. Thus this statement made in their examination-in-chief suffers from an important and material omission.

16. Sukhchand (PW-9), – brother of the deceased, has deposed in his evidence that in the morning, phone call was received from the appellant on his mobile phone which was given by him to Dilchand. In his cross examination, initially he says that mobile No. 9755733871 was seized by the Police in Police Station but subsequently, he changes his version and says that call was, in fact, received in mobile No. 9630426396. Though, he states that this SIM number was seized by the Police, there is no material on record to show that seizure of this SIM number was made by the police. The Investigating Officer

(PW-11) does not even say in his evidence that any SIM of the aforesaid number was seized from the possession of PW-9.

17. Therefore, analysis of the evidence of PW-1, PW-7 and PW-9 renders it highly doubtful that phone call was made by the appellant either in the mobile of PW-9 or that of Maniram or Dilchand. The prosecution has failed to come out as to who is the real owner of SIM number 9630426396.

18. What we are then left with, is only seizure of poisonous substance from the possession of the appellant. According to the prosecution, on the disclosure given by the appellant, memorandum Ex. P-7 was prepared. Deviprasad (PW-3) states that a memorandum was recorded in his presence in which the appellant stated that he had kept "*Kokdamaar dawai*" - an insecticide in his house and according to the prosecution, one such article is said to have been seized from the possession of the appellant. In the cross examination, however, this witness says that he cannot say where he signed the memorandum seizure and document. True it is that the FSL report proves that the substance was found to be a poisonous substance - Borax, we are of the considered opinion that when there is no other circumstantial evidence could be proved by the prosecution, only on the basis of recovery of alleged poisonous substance, it would not be safe to convict the appellant for the alleged commission of offence. In order to convict a person on the basis of circumstantial evidence, it is the requirement of law that all the circumstance, incriminating in nature, are required to be proved so as to form a complete chain to draw an inference that in all probability, it is the accused and the

accused alone who must have committed the offence. To us, this strict requirement of proof could not be fulfilled by the prosecution. Resultantly, the appellant is entitled to be given benefit of doubt. We accordingly do so.

19. In the case of Sharad Birdhichand Sarda Vs. State of Maharashtra (Supra), the requirement of proof in cases of murder by poisoning, based only on circumstantial evidence, the Supreme Court held as below:-

“164. We now come to the mode and manner of proof of cases of murder by administration of poison. In Ramgopal's case (supra) this Court held thus:-

"Three questions arise in such cases, namely (firstly), did the deceased die of the poison in question ? (secondly), had the accused the poison in his possession ? and (thirdly), had the accused an opportunity to administer the poison in question to the deceased ? It is only when the motive is there and these facts are all proved that the court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death."

165. So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

- (1) there is a clear motive for an accused to administer poison to the deceased,
- (2) that the deceased died of poison said to have been administered,
- (3) that the accused had the poison in his possession,
- (4) that he had an opportunity to administer the poison to the deceased."

20. In the result impugned judgment of conviction is set aside and the appellant be set at liberty, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge