

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 538 of 2011

[Arising out of judgment of conviction and order of sentence dated 25-6-2011 passed by the Additional Sessions Judge, Balod, District Durg, in ST No.64 of 2011]

1. Laxminarayan, S/o Bhukhan Lal Vishwakarma, aged about 37 years, R/o Khurshipar, Police Station Balod, Dist. Durg (CG).

---- Appellant

Versus

1. State Of Chhattisgarh Through Station House Officer, Police Station Balod, Dist. Durg (CG),

---- Respondent

For Appellant

Shri B.P. Singh, Advocate

For Respondent/State

Shri Pawan Kesharwani & Shri
Rajendra Tripathi, Panel LawyerHon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.Judgment on BoardByPrashant Kumar Mishra, J.9-12-2019

1. Appellant would call in question the legality and validity of the impugned judgment whereby the trial Judge has convicted the appellant for committing offence under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/- in default of payment of fine to further undergo RI for 3 months.

2. PW-3 Jagmohan, Moti Ram (since deceased) and Laxminarayan (appellant herein) had gone together on a motorcycle to village Tekapar to the house of one Mohan for searching mobile. On their return journey they consumed liquor at Balod. At this place an altercation took place between the appellant and the deceased after which the appellant became enraged and abused & threatened the deceased. The appellant left alone to Khurshipar whereas the deceased and PW-3 Jagmohan went together. The deceased was later on found dead in front of his house.
3. As per the postmortem report (Ex.P/8) the deceased had sustained (1) lacerated wound over left temporal region behind ear with fracture of left temporal bone; (2) contusion over right parietal region; (3) contusion, black eye of left side; and (4) bleeding from nose. PW-4 Dr. S.K. Soni opined that cause of death is shock due to head injury by impact of pointed hard & blunt object. Nature of death was homicidal.
4. After recording the case diary statements of witnesses and recording appellant's memorandum statement (Ex.P/11), consequent to which recovery of stone was made from him vide Ex.P/13, the charge sheet was filed before the competent Court.
5. The prosecution examined 8 witnesses to bring home the charges. The appellant abjured the guilt, but did not examine

any defence witness. On conclusion of the trial, the trial Judge convicted and sentenced the appellant, as stated *supra*, on the basis of statement of PW-3 Jagmohan & PW-2 Rekhabai.

6. We have heard learned counsel appearing for the parties and perused the record.
7. Admittedly, there being no ocular version of the crime. The case of the prosecution rests on circumstantial evidence in the nature of last seen together and recovery of bloodstained stone.
8. The principle as to when an accused can be convicted on the basis of circumstantial evidence has been propounded by the Supreme Court in the celebrated case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116***, wherein it has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-153 as under:

“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 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.”

9. In a recent judgment in *Nathiya Vs. State represented by Inspector of Police, Bagayam Police Station, Vellore, (2016) 10 SCC 298*, the Supreme Court has reiterated the above principles.
10. PW-3 Jagmohan clearly states that after he, the appellant and the deceased went together on a motorcycle for searching mobile in the house of one Mohan at village Tekapar and they were returning from there they consumed liquor at Balod and here quarrel took place between the appellant and the deceased. Importantly, PW-3 Jagmohan does not say that the appellant had assaulted the deceased at this point of time. After altercation, appellant left Balod alone and it is PW-3 Jagmohan and the deceased who came together to their village Khurshipar. Thus, as per the statement of PW-3 Jagmohan it is this witness who was last seen alone with the deceased and not the appellant.
11. Similarly, PW-2 Rekhabai, widow of the deceased, has not seen the incident, but would make hearsay statement only on the basis of suspicion.

12. Stone has been recovered at the instance of the appellant, but there is no FSL report finding traces of blood over the stone. There is absolute lack of credible and trustworthy evidence to convict the appellant. The appellant has wrongly been convicted by the trial Court and hence he deserves to be acquitted of the charge.
13. Accordingly, conviction and sentence imposed on the appellant are hereby set aside and he is acquitted of the said charge. He is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed
14. In the result, the instant criminal appeal is allowed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri