

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 784 of 2013**

- Gudda Bhariya S/o. Samaru Bhariya Aged About 24 Years Vill. Kanainar, Bagadi Pendra Thana-Pendra, Present Res. At. Vill. Girwar, Thana-Gaurella, Distt. Bilaspur C.G

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. Pendra, Distt. Bilaspur C.G.

---- Respondent

For Appellant	:	Shri Yogendra Chaturvedi, Advocate
For State	:	Shri Suryakant Mishra, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board****Per Manindra Mohan Shrivastava, J.****18/03/2019**

This appeal is directed against impugned judgment of conviction and order of sentence dated 05/06/2013 passed by the Additional Sessions Judge, Pendra Road, District - Bilaspur in Sessions Trial No.24/2012 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 302 of IPC	Life imprisonment with fine of Rs.200/- (in default of payment of fine, additional R.I. of 1 month)
2	U/s 201 of IPC	R.I. for two years with fine of Rs.200/- (in default of payment of fine, additional R.I. of 1 month)

2. Prosecution case, which led to trial and conviction of the appellant is that on 07/02/2012, the appellant had arranged for Bakra Pujai (offering goat to divinity) in which, Mohitram (the deceased), his sons - Jeevanlal and Sukhsen, his grandson – Rahul and one Ratnu had come to Chaurasibandha, where they all gathered, cooked food and consumed liquor. Next day, the dead body of Mohit was found in the nearby canal. This having been informed to the family members of the deceased, morgue intimation in Ex.P/1 was lodged by Jeevanlal (PW1)- son of the deceased that he along with his father and other relatives had gone to Chaurasibandha and came back in the evening along with Ratnu and Gudda and on the next day, the dead body of his father was found in the canal, having sustained injuries. The dead body was sent for post mortem and the post mortem was conducted by Dr. Smt. J.S.Lakra (PW7) who found contusion on the lips, nose and mouth. The upper jaw was compressed and broken. There were lacerated wounds on the face. According to the doctor, the cause of death was internal injuries sustained by the deceased on his head. The FIR was also lodged at the instance of Jeevanlal (PW1) in which, it was recorded that the deceased had gone to attend the party on the invitation of the appellant. He had come back in the night along with his son Ratnu, leaving behind his father – Mohitram, brother – Sukhsen and Gudda (the appellant). Next day, the dead body of his father was found and that someone has assaulted his father, killed him and thrown the dead body in the canal. The needle of suspicion pointed towards the appellant and the appellant was taken into custody and his clothes were seized. The investigation eventually resulted in filing of charge sheet against the appellant on the allegation of he having committed murder of Mohitram. The appellant was tried for commission of offence. Though, there was no direct evidence, learned Trial Court, relying upon the evidence of the prosecution witnesses that when they were leaving the place of party, the appellant and the deceased – Mohitram were left behind and they had declared that they will be leaving the place together and that the

clothes of the appellant were found to be stained with blood, held him guilty of commission of offence as described above, giving rise to this appeal.

3. Learned counsel for the appellant would argue that the entire case of the prosecution only raises suspicion, short of clinching circumstantial evidence to prove the guilt of the appellant beyond reasonable doubt. He would argue that the evidence of the prosecution witnesses is very emphatic that the relationship between the appellant and the deceased were cordial and infact, the evidence is that it is the appellant who had invited the deceased and his family members for a party after offering goat to divinity. Next submission is that the prosecution evidence that while others leaving the place of party, the deceased and the appellant were left behind declaring that they will go together, is neither stated in the morgue intimation nor in the FIR nor in the respective case diary statements of the prosecution witnesses and entirely new story made out during the Court statement. It is also argued that nobody had actually seen the appellant and the deceased going towards canal and only on the basis that at the place of party, the appellant and the deceased had declared that they would leave together, it could not be said to be a case of last seen. Lastly, it is submitted that the clothes of the appellant alleged to have been recovered, are not found stained with human blood and there is explanation came out from the prosecution itself that the appellant had thrown a party by offering goat to divinity and it was slaughtered at the spot in the presence of the appellant. In the absence of there being evidence that the stains were of human blood, the said evidence could not be said to be clinching, so as to require the appellant to explain. Except the above, there are no other evidence to involve and particularly taking into consideration that there was no motive, conviction of the appellant is not sustainable in law.

4. On the other hand, learned State counsel supports the judgment of conviction

and order of sentence and argued that more than one witness of the prosecution, particularly the sons – Jeevanlal (PW1) and Sukhsen (PW3), grandson – Rahul (PW4), all have stated that after the party was over, they all left the place leaving behind the appellant and the deceased. Therefore, it was for the appellant to explain how the deceased sustained injury because the dead body was found in nearby canal and it was homicidal in nature. At the place of party, only the appellant and the deceased were left which is an incriminating circumstance. Learned State counsel would further argue that the stains found on the clothes of the deceased were required to be explained even if it is not found to be human blood. Evidence has come that goat was not slaughtered by the appellant but by some other persons.

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

6. First of all, we find that the prosecution has not come out with any motive as to why the appellant would kill Mohitram. None of the prosecution witnesses have stated that the appellant had any reason to be inimical with the deceased. On the contrary, there is evidence that their relations were cordial. This came out from the evidence of the prosecution itself, that it is the appellant who had invited the deceased and other witnesses who are sons and grandson of the deceased for the party and had extended them hospitality. Where the case of the prosecution is based on circumstantial evidence, absence of motive requires the prosecution to lead clinching and reliable circumstantial evidence to bring home the guilt of the accused.

7. The morgue intimation and FIR, both have been recorded at the instance of Jeevanlal (PW1) – son of the deceased – Mohitram, who has also proved having given morgue intimation and lodging FIR. If we look into the morgue intimation

(Ex.P/1), we find that in the morgue intimation, it has been disclosed that Jeevanlal (PW1) had gone to attend a party thrown by the appellant along with his father and other relatives and at about 7 PM, he came back along with one Ratnu.

In the FIR (Ex.P/2), it has been recorded that after attending party thrown by the appellant, Jeevanlal and his sons came back, leaving behind his father – Mohitram, brother-Sukhsen and Gudda (the appellant). Thus, there are contradictions in what has been stated in morgue intimation and FIR. According to morgue intimation, the appellant had accompanied this witness, whereas, according to the FIR, this witness left his father and the appellant as also Sukhsen at the place where party had taken place. In none of the documents, said to be recorded at the instance of Jeevanlal (PW1), there is any whisper that the appellant and the deceased – Mohitram declared that they would be leaving the place of party together.

8. However, in the Court statement, Jeevanlal (PW1) has stated for the first time that when he requested his father- Mohitram to come along, Mohitram stated that he would be coming along with the appellant. He admits that there was no enmity of the deceased with the appellant. Importantly, in his cross examination, he stated that he could not disclose to the police while giving statement that his father stated that they may proceed and he will be coming along with the appellant.

9. The story that when others were leaving, the appellant and the deceased had declared that they will be coming together, later on, as stated by Sukhsen (PW3) and Rahul (PW4) are also stated for the first time in the Court and both have been confronted with the respective diary statement in which this fact has not been stated by them. Therefore, it is found that this story of the prosecution that when Jeevanlal, Sukhsen, Rahul, who had attended the party and left the place after the party was

over, have come out with a new story which is complete improvement upon their respective diary statement. Importantly, this story is not there in the morgue intimation and FIR which was lodged at the instance of Jeevanlal (PW1). Therefore, this evidence of last seen is extremely unreliable and liable to be discarded.

10. The only other evidence against the appellant is that his clothes were found with blood stains. But then, the FSL report which we have looked into, does not contain any such report that the stains were of human blood. The prosecution witnesses have stated that at the spot, goat was slaughtered in the presence of the appellant. The appellant had invited all for a party. A suggestion has also been given that the blood stains could possibly come because of the presence of the appellant at the time of slaughtering of goat. Thus, the prosecution case on this count also becomes doubtful.

11. There is no motive why the appellant would kill Mohitram after giving party to him and his relatives. In our opinion, the prosecution has failed to prove its case on any clinching circumstantial evidence of incriminating nature to complete the chain of circumstances to warrant an inference that in all probability, it is the appellant and the appellant alone who must have killed the deceased. Therefore, the appellant has to be given benefit of doubt.

12. Accordingly, the impugned judgment of conviction and order of sentence is set aside. The appellant is acquitted of the charges and he be set at liberty forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge