

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 620 of 2015**

1. Chitrang @ Karra @ Manish Dhruv, S/o Amarnath, Aged About 20 Years,
R/o Patharra, P.S. Lormi, District Mungeli, Chhattisgarh
2. Prabhushankar @ Lara, S/o Dilip Koushik, Aged About 19 Years, R/o
Patharra, P.S. Lormi, District Mungeli, Chhattisgarh ---- **Appellants**

Versus

State Of Chhattisgarh, Through P.S. Bhatapara Rural, District Balodabazar-
Bhatapara, Chhattisgarh**Respondent**

For Appellants : Mr. V.C. Ottalwar with Mr. Ishwar Jaiswal, Advocates
For State : Mr. Suryakant Mishra, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board by Manindra Mohan Shrivastava, J.****04.04.2019**

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 30.04.2015 passed by learned Additional Sessions Judge Bhatapara, District Balodabazar (CG) in Sessions Trial No.H-09/2014 whereby and whereunder, the appellants have been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Imprisonment for life and fine of Rs.1000/-, in default of which, additional R.I. for 3 months. (for each appellants)
Under Section 394 of IPC	R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine, further R.I. for 3

	months. (for each appellants)
Under Section 397 of IPC	R.I. for 7 years and fine of Rs.500/-, in default of payment of fine, further S.I. for 3 months. (for each appellants)

2. The prosecution story, as is unfolded from the impugned judgment and records of the case, is that unknown dead body was found in the agriculture field of one Dhruv Kumar (PW2) and the matter having been reported to the police, the police of Police Station-Bhatapara arrived at the spot and recorded a dehati merg in Ex.P/15 and also spot FIR in Ex.P/16 because the dead body, apparently, was found having sustained number of injuries indicating, prima facie, homicidal death. After preparation of inquest over the dead body, it was sent for postmortem. Dr. D.P. Verma, (PW7) conducted postmortem. He found as many as 9 lacerated wound and large number of scratches over the body. He prepared his postmortem in Ex.P/19 and he opined that cause of death was excessive bleeding due to syncope. The deceased was found having sustained number of fractures also including fracture on different part of the head. On suspicion, the appellants were taken into custody and according to the prosecution, memorandum statement of the two appellants Chitrang and Prabhushankar was separately recorded in Ex.P/4 and Ex.P/5 respectively. According to the prosecution, on the basis of the memorandum of the appellants, two in number, seizure of various properties from different places was made. According to the prosecution, vide Ex.P/6, a mobile and lower wearing apparel was seized from Chitrang, vide Ex.P/7, a broken branch of tree said to be bloodstained, a T-shirt was seized from Chitrang, vide seizure memo Ex.P/8, one motorcycle Hero Honda (CG045246) also said to be seized from Chitrang.

3. At the instance of appellant Prabhushankar, a pocket diary and a small envelop is said to have been recovered near Bhatapara canal vide Ex.P/10. From

this appellant Prabhushankar, seizure of a wooden plank, said to be stained with blood, a jeans-shirt and jeans-pant was also seized vide Ex.P/11.

4. In addition, from the spot where the dead body was found, number of articles, namely, a jacket and a pair of shoes, belt, stole, small pieces of wood, one dot pen and bloodstained soil as well as simple soil was seized vide Ex.P/9. Further, the prosecution also claims to have seized vide Ex.P/3, a shirt, jeans, underwear, which was produced from the hospital. According to the prosecution where the clothes which were found on the body of the deceased and removed at the time of postmortem were seized upon the same being produced by Ashwani Verma (PW3).

5. The prosecution came out with the case of loot and murder of deceased by the two appellants and the entire case of the prosecution was based on memorandum of the appellants and recoveries of mobile, lower apparel, jeans, full pant, motorcycle, pocket diary, envelop and wooden stick said to be recovered either from the possession of the appellants or at their instance, on the basis of their memorandum. The FSL report in Ex.P/30 stated that the underwear, (Article C-4) found on the body of the deceased and a full pant (Article E-2) said to be seized from the possession of appellant Prabhushankar contained the same blood group i.e. 'O' group.

6. Learned Trial Court recorded a finding of guilt of the appellants and convicted them relying upon the evidence of the recovery of certain articles at the instance of the appellants and also some of articles from their own possession. Learned Trial Court relied upon the FSL report in Ex.P/30 also to connect accused Prabhushankar with the alleged commission of offence on the ground that the full pant (Article E-2) seized from his possession and underwear (Article C-4) which was owned by the deceased, contained the same blood group. Learned trial Court

also recorded a finding that the motorcycle which was recovered on the memorandum given by the appellant Chitrang belonged to the wife of the deceased as it was registered in her name.

7. Learned counsel appearing for the appellants would argue that the prosecution case was based only on circumstantial evidence and no eyewitness was relied upon. Therefore, it was incumbent on the prosecution to prove beyond reasonable doubt, incriminating circumstantial evidence so as to form a complete chain excluding any hypothesis that may be compatible with innocence of the accused and pointing only towards the guilt of the accused appellants. He would further submit that, even though, number of articles are said to be seized either from the possession of the appellants or recovered at the instance of the appellants at different places, the prosecution has failed to establish live link between recovery of those articles with the commission of offence by the appellants. According to him, mere recovery is not enough, unless, the prosecution leads clinching evidence that it involves the appellant in the alleged commission of offence. He further argues that out of all the recoveries, which are said to be seized either from the possession of the appellants or from different places on the basis of their possession on the memorandum/disclosure statement, prosecution has failed to prove the ownership of mobile phone as also lower apparel, which is said to be recovered from the possession of the appellant Chitrang. He would next submit that as far as recovery of motorcycle on the memorandum/disclosure statement of Chitrang is concerned, no evidence has been brought by the prosecution that this belongs to the deceased or even his wife. He would argue that during trial, an application for interim custody of the motorcycle was made on the basis of some registration certificate. He would also argue that it was not an admissible evidence collected during trial. Neither the wife of the deceased, Smt. Chaupal Dinker (PW9) nor the Investigating Officer led any evidence before the

Court during trial that the motorcycle allegedly recovered from bus stand at Mungeli, said to be on the disclosure statement of appellant Chitrang, belonged either to the deceased or to his wife or to any other person so related to the deceased that it would constitute an incriminating circumstantial evidence against the appellant Chitrang. Learned counsel for the appellants would submit that there was no occasion for the appellants to impeach the credibility of any oral or documentary evidence with regard to ownership of the motorcycle because it was not led in the evidence by the prosecution. He would further submit that even when, the accused was examined under Section 313 Cr.P.C., learned trial Court did not question the appellant nor offered him to explain by treating the said document of registration of vehicle as an incriminating evidence against the appellant. Therefore, recovery of motorcycle does not establish any live link.

8. The diary and envelope said to be recovered from an open place near a canal, would not constitute an incriminating evidence because the prosecution has not led any evidence of those articles belonging to the deceased and no one has identified that those documents belonging to the deceased nor has prosecution come out with any evidence to show that the contents of the diary were searched that it would by, itself, prove that it belonged to deceased.

9. Next submission of learned counsel for the appellants is that as far as other accused Prabhushankar is concerned, the only incriminating evidence sought to be used against him is that a full pant (Article E-2) said to be recovered at his instance from a bag was found stained with blood of 'O' group which matches with the group of blood found in the underwear (Article C-4) on the body of the deceased. It is argued that Heera Das (PW-4) has clearly stated that when they reached police station, a bag was already found kept in the police station and from that bag, the pant was taken out and it is said to be recovered at the instance of

the appellant Prabhushankar. Therefore, on such evidence, it cannot be held proved that pant was seized either from the possession of appellant Prabhushankar or recovered from a place on the basis of disclosure statement given by this appellant. Even otherwise, it is argued, in view of decision of the Hon'ble Supreme Court in the cases of **Debapriya Pal V. State of West Bengal, AIR 2017 SC 1246** and **Sonvir @ Somvir Vs. State of NCT of Delhi, 2018 SAR (Criminal) 1045**, in the absence of cogent and clinching evidence regarding the nature, group and origin of the blood of the appellants and the deceased, the said evidence of matching alone would not constitute incriminating evidence sufficient to involve the accused. Therefore, it is argued, the entire case of the prosecution is highly doubtful and the appellants are entitled to be acquitted by giving them benefit of doubt, particularly, when there is no eyewitness to the incident.

10. On the other hand, learned State counsel supporting the impugned judgment of conviction and order of sentence would submit that though there is no direct evidence, the prosecution has come out with clinching circumstantial evidence which point towards the guilt of the appellants. According to him, the prosecution has come out with the evidence of recovery of incriminating articles which established live link between the appellants and deceased in the alleged commission of offence inasmuch as a lower wearing apparel was seized from Chitrang which belonged to deceased. He would further argue that even the mobile stated to be that of the deceased. Learned State counsel would further argue that the motorcycle which was found standing in the bus stand at Mungeli was recovered on the memorandum of the accused and during trial, the vehicle was given on interim custody to the wife of the deceased on production of registration certificate which proves that the vehicle belonged to Smt. Chaupal Dinker (PW9), wife of the deceased. This is a clinching evidence to prove involvement of the appellants. He would further argue that the recovery of two

articles namely: a diary and an envelope at the instance of the appellants, from a place near a canal as stated in the memorandum of statement further proves the involvement of the appellants because the appellants have failed to prove as to how certain articles like diary and envelope were found at a place disclosed in their memorandum statement, therefore, this also points towards the guilt. He would next argue that the full pant (Article E-2) was seized from the possession of appellant-Prabhushankar, which is proved from the evidence of Investigating Officer and the witnesses of seizure and memorandum. This was also found bloodstains. It is argued that even a wooden plank which was found bloodstained, was also recovered. All these recoveries point clearly towards the guilt of the appellants, therefore, learned trial Court has rightly convicted the appellants based on strong circumstantial evidence pointing only towards their guilt.

11. We have heard learned counsel for the parties and perused the records.

12. The entire case of the prosecution is based on recovery of certain articles said to be made on the basis of memorandum/disclosure statements of the appellants. In addition, the prosecution has also come out with seizure of certain more articles said to be found in possession of the appellants. Obviously, entire case of the prosecution seems to be based only on circumstantial evidence of recovery and not based on any eyewitness account of incident. According to the prosecution, body of the deceased was found in an open field and it has been the case of the prosecution that the deceased was looted and, thereafter, murdered. Thus, it is alleged case of loot and murder and not a case where there was any motive of enmity between the appellants on one side and the deceased on the other.

13. The prosecution has come out with two memorandum statements; one Ex.P-4, said to be given by appellant Chitrang and another memorandum Ex.P-5

of the other appellant Prabhushankar. According to the memorandum Ex.P-4, while the appellants were waiting for lift in a vehicle, at about 12:30 in the night, near Bhatapara, they saw a motorcycle, whereafter, he along with the co-accused assaulted the rider. He was dragged towards the field, whereafter, he was assaulted with wooden plank. Branch of a tree was also pulled out and with that, he was also assaulted and then his purse, mobile, motorcycle and lower wearing apparel were looted. Rs.1,000/- was also taken from purse and diary was thrown near Bhatapara canal, motorcycle was left at Mungeli bus stand. According to him, looted mobile, lower wearing apparel belonging to the deceased was with him.

14. The memorandum of the other accused Prabhushankar with regard to the incident is similar to what has been recorded in the memorandum of Chitrang and according to him, lower wearing apparel of the deceased was kept by Chitrang, diary and purse was thrown near Bhatapara canal and motorcycle was left at Mungeli bus stand. Mobile was also kept by Chitrang. According to memorandum, the wooden plank used for giving assault was thrown near the place of incident. A pocket diary and his own clothes was said to be kept in bag.

15. A mobile and a lower wearing apparel is said to be seized from the possession of the appellant Chitrang. We, however, find that as far as these two articles are concerned, the prosecution has failed to come out with any evidence that either the mobile phone or the lower wearing apparel belonged to the deceased. Neither the bills of purchase of mobile cell contained specific IMEI number nor any Sim is said to be recovered, no call details have been produced in evidence to prove that it was being used by the deceased. We find that in the present case, the wife of the deceased, Smt. Chaupal Dinker (PW9) was also one of the prosecution witnesses. The prosecution has not come out with any

proceeding of identification of the mobile or the lower wearing apparel which is said to be seized from the possession of the appellants. We fail to see how recovery of these two articles from the possession of appellant Chitrang constitutes an incriminating material by establishing live link between the appellant Chitrang in commission of offence.

16. Vide Ex.P/7, seizure of a broken branch of tree is said to be recovered from a place which is an open place near the place of incident. We find that the dead body of the deceased was already recovered from an open field and inquest over the dead body was also prepared. That would mean that the place of incident was already seen by the police and number of witnesses. Recovery of a wooden plank from an open place near the place where the dead body was found, hardly constitute an incriminating circumstance against the appellants that it was so hidden and kept at a place that it's disclosure would be connected to the memorandum or disclosure statement of the appellants. Another articles said to be seized is a T-shirt but there is nothing in the FSL report to show that this T-shirt contained stains with blood of the group and origin of that of the deceased.

17. A motorcycle No.CG045246 is said to be recovered from Mungeli Bus Stand. We also find that in the memorandum Ex.P/4 of Chitrang, there is a mention regarding a motorcycle belonging to the deceased. However, the said motorcycle said to be recovered from Bus Stand Mungeli, could not be proved to be either belonging to the deceased or his wife.

18. We find that the learned Trial Court has recorded a finding that this vehicle belongs to Smt. Chaupal Dinker (PW9), wife of the deceased. For this finding, the learned trial Court has taken into consideration a copy of registration certificate filed before the learned trial Court by Smt. Chaupal Dinker (PW9) for taking interim custody of the motorcycle during trial. We also find that the learned Trial Court has

placed reliance upon the contents of the diary statement under Section 161 of Smt. Chaupal Dinker (PW9).

19. We also find that, though, certain articles like purse, diary and envelop are said to be recovered on the basis of the memorandum, however, none of these articles have been proved to be that of the deceased. There are no identification proceedings drawn by the prosecution that someone known to the deceased or his wife Smt. Chaupal Dinker (PW9) identified these articles as the belongings of the deceased.

20. Firstly, filing of a copy of registration certificate for the purposes of getting interim custody of the vehicle cannot be said to be evidence led by the prosecution. This document was not produced by the prosecution. Moreover, it is not a case that this document was produced before the Court by Smt. Chaupal Dinker (PW9), wife of the deceased during trial. Had this document been produced either by the prosecution or by the Investigating Officer or by the wife of the deceased Smt. Chaupal Dinker (PW9) during their examination, the accused would have got opportunity to effectively cross-examine these witnesses upon production of such documentary evidence as proof of the fact that the vehicle belonged to the wife of the deceased. Secondly, if the Court, at all thought, that it was an incriminating evidence which could be used against the appellant, the Court ought to have put a question while examining the accused under Section 313 Cr.P.C. seeking his explanation. Mere production of photocopy of document, only for the limited purposes for getting interim custody, cannot be said to be adducing evidence in support of the prosecution case. The appellant had no opportunity to rebut such document. Learned trial Court seems to have relied upon this document without the same having been admitted in evidence in accordance with law.

21. Recovery of full pant (Article E-2) from possession of co-accused Prabhushankar becomes extremely doubtful because one of the witness of seizure Heera Das (PW4), in para 10 of his cross-examination, has admitted that the bag from which the pant was taken out, was already kept in the police station. He admits that only one bag was lying there. This witness does not say that the witness denied the suggestion that the police seized the clothes which Prabhushankar was wearing. The witness has stated that the clothes were taken out of the bag. We fail to understand how seizure of those clothes could be used an incriminating circumstance against the appellant Prabhushankar. According to the witness, the bag was already lying there in the police station. Merely, because the accused Prabhushankar had taken clothes out of this bag and thereafter, seizure was effected, it would not amount to seizure of the pant either from the possession of the appellant Prabhushankar or a recovery on the basis of any disclosure statement given by the said accused. Once the seizure of pant, itself, becomes doubtful, FSL report of the bloodstain on this pant, matching with the blood group of the underwear found on the possession of the deceased, loses its significance and relevance.

22. What is then left is only suspicion against the appellant and nothing more. Where the entire case of the prosecution is based on circumstantial evidence and that to only certain recoveries. It is the duty of the prosecution to prove seizure of the incriminating articles from the possession of the accused and recovery of incriminating articles on the disclosure statement of the accused.

23. In a case, where it is based only on recovery, in the absence of reliable evidence of seizure/recovery on the memorandum and live link between such memorandum with the commission of offence by the appellant, in our considered opinion, the conviction of the appellant is not sustainable in law because in such a

situation, the prosecution case becomes highly doubtful and it is the accused who should be granted benefit of doubt.

24. In the result, the appeal is allowed. The impugned judgment of conviction and order of sentence is set aside. Appellants be set free forthwith.

**SD/-
(Manindra Mohan Shrivastava)
Judge**

**SD/-
(Rajani Dubey)
Judge**