

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1007 of 2015**

- Sanjay Chakradhari, aged 27 years, S/o Shri Basantlal, R/o village - Rajapur, Thana - Sitapur, District - Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station - Kapu, District Raigarh (C.G.)

---- Respondent

For Appellant	:	Shri Sumit Singh Rathore, Adv.
For Respondent/State	:	Shri Vikash Shrivastava, P.L.

**D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt Justice Rajani Dubey**

Judgment On Board**26.02.2019****Per Manindra Mohan Shrivastava, J**

01. The appellant has filed this appeal assailing the legality and validity of the impugned judgment of conviction and order of sentence dated 10.04.2015 passed by 1st Additional Sessions Judge, Raigarh in Sessions Trial No.89/2010 by which the appellant has been held guilty of commission of offence under Sections 364 and 302 IPC and sentenced him to undergo life imprisonment and pay fine of Rs.2,000/-, R.I. for seven years and pay fine of Rs.2000/- respectively, plus default stipulation.

02. A report was given in the police station by Krit Singh (PW/14), on

which, police registered an FIR in Ex.P/25 on 10.12.2009. In the FIR, it was recorded that when FIR informant was sitting in his house in the night, some persons came in a vehicle. When he came out, he was called and assaulted. Those persons were armed with weapon and had their faces covered. Thereafter, they asked some other villagers to take them to the house of Brijlal and then Brijlal was taken out of his house and kidnapped. After recording FIR, the police was trying to find out the kidnapped person, however, dead body of Brijlal was, later on, found near a *nala (canal)*. Dead body was sent for postmortem and Dr. B.L. Bhagat (PW/13) conducted postmortem and prepared his report in Ex.P/22. Based on his examination, he found that the deceased had sustained injuries and died. According to him, the death was homicidal in nature.

The appellant, who was suspect of the alleged commission of offence, was taken into custody along with other four accused of the case, and further case of the prosecution is that, a memorandum of the appellant was recorded, and on the basis of disclosure given by the appellant, mobile of the deceased was recovered. The weapon kept by the accused persons were also seized on the basis of the said memorandum from different persons. Further case of the prosecution is that the present appellant and other accused persons were put to identification and were identified by the members of the family of the deceased, neighbours and villagers. Charge sheet was filed and the appellant and other persons were charged of having committed the offences under Sections 147, 148, 323/149, 506 (B), 364, 397, 396 IPC or Sections 302, 402 IPC and 25 of the Arms Act. The appellant and

other accused persons abjured guilt and were put to trial. In order to prove its case, the prosecution examined number of witnesses including those who claimed to have identified the appellant and other accused as also the witnesses of seizure including the Investigating Officer. Though, all other accused were acquitted, the appellant was convicted by the learned trial Court mainly on the ground that he was identified on the dock by number of witnesses as the person who had come in the night and that a mobile phone, said to be belonging to the deceased was recovered from his possession.

04. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the evidence of identification and recovery, both are not at all reliable because all the witnesses of so called identification have clearly stated that prior to conducting identification parade, all of them were taken to the police station and there they were shown the accused including the present appellant. He would further argue that even in the Court statement, the witnesses have admitted that faces of all the accused were covered, it was dark in the night and also that they could not identify because of the darkness. Therefore, the dock identification completely loses its evidentiary value. He further argued that as far as recovery part is concerned, the independent witnesses of memorandum and recovery of mobile phone, said to be owned by the deceased, have also turned hostile, therefore, the entire case of the prosecution as against the present appellant, is highly doubtful and the learned trial Court ought to have acquitted the present appellant also by giving him benefit of doubt.

05. On the other hand, learned counsel for the State would argue that even though, there was some defect in the identification parade conducted by the police, the witnesses have clearly identified the present appellant Sanjay on the dock during trial and, therefore, their evidence have rightly been relied upon by the learned trial Court. He would further argue that, though, the independent witnesses of memorandum and recovery may not have supported the case of the prosecution, the Investigating Officer K.L. Yadav (PW/18) has clearly stated regarding recording of memorandum and seizure of mobile phone. He would further submit that the mobile phone seized from the possession of the appellant has also been identified by the prosecution witness as belonging to the deceased.

06. In order to involve the appellant in the alleged commission of offence, the learned trial Court has relied upon the evidence of dock identification and recovery of mobile from the present appellant. Therefore, it has to be seen whether the prosecution has succeeded in proving the identification and recovery beyond reasonable doubt. If we look at the FIR (Ex.P/25), which was lodged by Krit Singh (PW/14), while it has been stated therein that those who had come, had their faces covered, it has also been stated therein that the FIR informant would identify them. Krit Singh (PW/14) is one of the important prosecution witness because he is the FIR informant, injured and the neighbour of the deceased. He has deposed that on 09.12.2009 at about 9.00 PM, a vehicle came and when he extended wish, they assaulted due to which he fell down. When he got up after 10 minutes, he was threatened that he would be killed. He was asked to go home

and sleep and due to fear he went back home. He then states that those who had come could not be identified. He then deposes that those who had come, they had taken Brijlal Yadav out of his house and, later on, he was murdered. This witness has been declared hostile as he did not support the case of the prosecution on material aspect. In his cross-examination by the prosecution, he has stated that identification proceeding was conducted by Tahsildar of Kapu Tahsil in which he identified the present appellant along with other accused. In his cross-examination, he has admitted that it was all dark in the night and those who had come, had covered their faces with cloths and none of the faces were opened. This fact, he has stated more than once in his cross-examination. He deposes that all accused except the present appellant are known to him because he was the resident of their village. Nowhere in his evidence, it has been stated that the face of the present appellant Sanjay was open and, therefore, this witness was in a position to identify him. In the FIR lodged by him, it has been recorded that all the faces were covered. This fact has been stated by him not once but more than once in his evidence before the Court. If this witness states that all the faces were covered and it was dark in the night, then how could he identify the appellant, has not been stated by him. It is not a case where, though, the faces were covered, he was able to identify the present appellant on some other peculiar signs or any other identifying feature in his personality. Therefore, his evidence becomes doubtful in so far as identification is concerned.

07. Smt. Jamuna Bai (PW/1), mother of deceased Brijlal, has deposed that when door was opened on the call given by villagers

Shyamsundar and Muniram, one person was found standing at the door and he was holding a gun and there were other five persons. They kidnapped her son. In para 4 of her evidence, she states that as it was dark in the night, she could not identify the person who was holding gun. She has further explained that her vision is low, therefore, she would not be able to identify.

08. Muniram (PW/2) states that the person holding gun had come to his door step and he identified the present appellant Sanjay saying that he was the person. He states that there was panel-light in which he had seen the accused. This witness deposes that an identification proceeding was drawn in which he had identified the present appellant also. In his cross-examination, while stating that he had never seen the appellant before, he admits that those who had come to his house in the night, all of them had their faces covered with cloths. This witness further states that when he was called for identification proceeding, before that when he was taken to police station, the appellant was found sitting in the police station and the appellant, along with accused were also shown to him and then all of them were brought to Tahsil office for identification. He admits that all the accused including the present appellant were brought from police station to Tahsil office. He further admits that when he had gone to the house of Brijlal in night, there were no lights on and it was all dark. He further states that in identification proceeding, the present appellant was shown in hand handcuffed position.

09. Smt. Phoolwati Yadav (PW/7), wife of the deceased, has deposed that when she came out of the house in the night on the call

given by Ramsunder and Muniram, her husband was kidnapped by the appellant. She claims to have identified the appellant in the Court. However, in her cross-examination, she admits that she was taken to police station where all the appellants including the present accused who were kept in the lock-up, were shown to her and others and her signatures were taken. She further states that when the appellant and other accused were being shown, they were handcuffed. Finally, in para 17 of her evidence, she states that she could not identify anyone at the time of incident because it was all dark in the night and those who had come, had covered their faces with cloths and, for the first time, she had seen the accused when she was taken in the police station.

10. Lalita Bai (PW/9), sister of the deceased, in her cross-examination, claims to have identified the appellant saying that he was one of the dacoit, who had come to the house in the night and taken her brother out. However, in her cross-examination, this witness also admits that when she was taken to the police station for identification of mobile phone, the accused including the present appellant were kept in the lock-up room which she had seen, and on that basis only, she is deposing involvement of the present appellant.

11. The analysis of the aforesaid evidence, therefore, leads to conclusion that as far as the identification part is concerned, the evidence of the prosecution is far from being satisfactory and serious doubt has crept in because all the witnesses of identification have admitted in their cross-examination that they were taken to police station and in the police station itself, the accused were shown to them

when they were in the lock-up. The identification proceeding was only subsequent to that. Not only this, the prosecution witnesses have also admitted that the faces of the accused were covered with cloths and it was all dark in the night. Therefore, the submission of learned counsel for the appellant that the assailants who had come in the night had their faces covered, it was all dark in the night, therefore, nobody could identify, but only on the basis of accused having been shown in the police station, prior to identification and dock identification, the witnesses claimed to have identified the appellant. The evidence of identification, therefore, could not be proved beyond doubt by the prosecution.

12. The other incriminating evidence sought to be used against the appellant and made a basis by the learned trial Court to hold guilty is recovery of mobile phone, which is said to be seized from the possession of the present appellant. This mobile phone is said to be owned by the deceased. However, the witnesses to memorandum and seizure have not supported the prosecution case. The prosecution claims that memorandum statement of the appellant was taken in Ex.P/15, in the presence of two independent witnesses Narayan Pradhan (PW/12) and Rafiq Mohammad Khan (PW/17) and on that basis the mobile phone was seized vide Ex.P/10 from the possession of the appellant. However, we find that these two witnesses PW/12 and PW/17 have not supported the prosecution case, both on the aspect of recording memorandum of the accused/appellant and the seizure of mobile phone. The only evidence is that of the Investigating Officer K.L. Yadav (PW/18) regarding recording of memorandum and

seizure of mobile phone.

13. Thus, we conclude that two sets of evidence, one of identification and other of recovery, both could not be proved by the prosecution beyond reasonable doubt, and the prosecution case has become extremely doubtful and it would not be safe to convict the appellant on the basis of aforesaid evidence. Therefore, we are of the opinion that the appellant is entitled to be acquitted by giving him benefit of doubt. We, accordingly, do so.

14. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is hereby set aside and the appellant is acquitted of the charges levelled against him by extending him benefit of doubt. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge