

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1225 of 2013**

Pappu @ Chetan Chandrakar S/o Late Bhagchand Chandrakar Aged About 38 Years R/o Village Kokna, PS Kirnapur, Distt. Balathat M.P. At Present R/o Narbada, PS Gurur, Distt. Balod (C.G.) **---- Appellant**

Versus

State Of Chhattisgarh Through SHO, Police Of PS Ranitarai, Distt. Durg (C.G.) **---- Respondent**

CRA No. 210 of 2017

Dular Singh Nishad S/o Samaru Ram Nishad, Aged About 28 Years R/o Village Narbada, Police Station Gurur, District Balod, Chhattisgarh

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Ranitarai, District Durg, Chhattisgarh **....Respondent**

For Appellants : Mr. B.P. Singh and Mr. Ashok Patil, Advocates for respective appellants
For State : Ms. Fouzia Mirza, Additional A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board by Manindra Mohan Shrivastava, J.****03.01.2019**

Heard.

1. Both the appeals are directed against impugned judgment of conviction and order of sentence dated 13.12.2013 passed by learned Sessions Judge, Durg, District Durg (CG) in Sessions Trial No.151/2013, whereby and whereunder, the appellants have been held guilty of commission of offence and sentenced as described below:

Conviction	Sentence
Under Section 302 read with Section 34 of IPC	Imprisonment for life and fine of Rs.5000/-, in default of which, additional S.I. for 1 year.

2. The prosecution case is that Mohan Murari Sahu (PW1) gave an information regarding dead body of father found in open field, upon which, a morgue intimation was recorded in Ex.P/1 and an FIR was also taken in Ex.P/2 at the instance of Mohan Murari Sahu (PW1). After preparation of inquest, the dead body was sent for postmortem. Dr. Thakur Ajay Singh (PW9) conducted postmortem and prepared a report in Ex.P/20. According to the postmortem report, the deceased had sustained number of injuries and they were compressed injuries on his head. The opinion of the doctor was that it was due to shock and hemorrhage as a result of head injury and other injuries and according to him, it was homicidal in nature. During investigation, the police claimed to have recorded memorandum statement of the appellants and it is said that in the said memorandum, the appellants disclosed commission of offence and also disclosed that the weapon, knife and shoes, used in the commission of offence were kept by them in the respective houses and according to the police, these articles were recovered on the basis of the disclosure statement in the presence of witnesses. At the instance of Pappu @ Chetan Chandrakar, knife, allegedly used for commission of offence was recovered and on the disclosure given by appellant Dular Singh Nishad, shoes said to be bloodstained were recovered. These articles were sent for FSL and serological report both. The police filed charge-sheet alleging that two appellants, while taking the deceased to his village, on way, assaulted him and thrown his dead body in the open field. The appellants having abjured guilt, were put to trial. The prosecution led evidence of last seen and recovery of bloodstained shoes, clothes and knife on the disclosure statement of the appellants which were made basis by the learned Trial Court to hold that it is the appellants who committed the offence leading to their conviction.

3. Learned counsel for the appellants in the aforesaid two appeals, made common submission that the conviction of the appellants is founded on extremely weak and that too, doubtful evidence of last seen. It is argued that reliance placed on the evidence of Pannalal Sahu (PW5) to prove that the appellants were last seen is in ignorance of the evidence of this witness that the appellants first left the deceased in his village Karela and, thereafter, they proceeded to their own village. It is next contended that the last seen evidence, otherwise, loses significance because there is no proximity between the time of death and the time when the appellants are said to have been last seen. He would argue that according to the prosecution case itself, appellant had gone with the deceased to drop him in his village Karela at about 8:00 p.m. in the night on 27.01.2013 whereas, dead body of deceased was found next day in the afternoon at 15:20 hours. Next submission of learned counsel for the appellants is that so called recovery of shoes and knife on

the disclosure statement of the appellants does not by itself, constitute incriminating circumstance because the knife was not found stained with any blood and the shoes though stated to be stained with human blood of group and origin 'A', the prosecution has not come out with any evidence as to what was the blood group of the deceased. Therefore, the chain of circumstances is not complete. Otherwise also, it is argued, the recovery on the alleged disclosure statement itself becomes doubtful because the sole independent witness of recovery Vanij Kumar Sahu (PW2) has stated in his evidence that he had not gone to Village Narbada and the manner in which he has deposed, renders statement highly doubtful. As there is no motive proved, recovery being highly doubtful and in any case, not establishing live link between the commission of alleged crime by the appellants, what is left is a doubtful last seen evidence which could not be made a basis to convict the appellant. In support of their submission, learned counsel for the appellants placed reliance upon the various judgments in the case of **Lokesh Alias Nutan Yadav Vs. State of C.G., 2018 (4) CGLJ 278 (DB), Anjan Kumar Sharma & Ors. Vs. State of Assam, 2017(2) Crimes 426 (SC), Navaneethakrishnan Vs. State by Inspector of Police, 2018 SAR (Criminal) 1012 SC, Sonvir @ Somvir Vs. State of NCT of Delhi, 2018 SAR (Criminal) 1045, judgment in Criminal Appeal No.578 of 2012 (Kartik Ram Devangan Vs. State of Chhattisgarh, decided on 09.12.2017 and CRA No.97 of 2011 (Kheduram Soni @ Rabi Soni and another Vs. State of Chhattisgarh, decided on 22.06.2018.**

4. On the other hand, learned State counsel supported the judgment of conviction and order of sentence by submitting that, though, there can be no quarrel with the settled legal position that last seen, by itself, could not be made a basis to order conviction when the case is rested only on circumstantial evidence, in the present case, in addition to the evidence of last seen, the prosecution has firmly established recovery of bloodstained shoes at the instance of appellant Dular Singh Nishad which has been found to be stained with human blood of group 'A'. Learned State counsel would argue that the very proof of shoes stained with human blood which remained unexplained by the accused in their 313 statement or from evidence otherwise appearing on record constituted incriminating circumstance and additional link to involve the appellant in the alleged commission of offence.

5. Learned counsel for the State would further submit that the evidence of last seen proves that in the night at about 8:00 p.m. deceased had left along with the appellants for being dropped in his village Karela but his dead body was found in village Bijabhata, a kilometer before Karela. The appellants ought to have

explained as to how and when they parted with the company of the deceased. They have not made any statement to explain the circumstance which also provides additional link and constitutes incriminating circumstantial evidence. Learned counsel for the State would argue that it is not the requirement of law that in all cases the bloodstained must necessarily establish to be of the group and origin of the blood of the deceased. In appropriate case, non-explanation as to how bloodstained was found in the articles recovered at the instance of the accused, coupled with other circumstances, could lead to conviction and the accused cannot claim benefit of doubt only on that ground. In support of her submission, learned counsel for the State placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Gura Singh Vs. State of Rajasthan, 2001(2) SCC 205, Kiriti Pal vs. State of West Bengal and other connected cases, 2015(11) SCC 178 and Kishore Bhadke vs. State of Maharashtra, (2017) 3 SCC 760** and various other decisions of the Supreme Court referred to and relied upon in the aforesaid decisions.

6. We have heard learned counsel for the parties and perused the records. The conviction of the appellants is based only on circumstantial evidence. There can be no quarrel with the settled legal position in a situation where the case of the prosecution rests only on circumstantial evidence, the Court must adopt a very cautious approach and should record conviction only if all the links in the chain are complete, pointing towards the guilt of the accused. All the links forming complete chain must be firmly established by the prosecution. It has also been settled that each link, taken separately, may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the accused. It has been reiterated time and again that all the circumstances must be firmly established and must be consistent only with the hypothesis of the guilt. The aforesaid legal position is well established in plethora of decision and we need not burden our decision with all those judgments.

7. In the present case, the conviction of the appellant is based only on two sets of circumstances. One is that the appellants were last seen with the deceased and the other is that from the possession of the appellants that on the disclosure statement given by the appellants, the knife and the shoes was recovered and the shoes was found to be stained with a human blood of group 'A'. The learned Trial Court has also held that the holes in the prosecution case are filled by the failure on the part of the accused appellants to offer any explanation with regard to when and how they parted with company of the deceased and how human blood was found in the shoes recovered at the instance of appellant Dular Singh Nishad.

8. Pannalal Sahu (PW5) has deposed that on 26.01.2013, he went to different places along with Pardeshi Chandrakar, Manoj Chandrakar, Pappu Chandrakar and Dular Singh Nishad in motorcycle in search of suitable match for marriage of Manoj, resident of his village. According to him, they first reached village Palari and then from there, they proceeded to village Jamgaon Dighari where his relatives resided. Finally, they reached the house of Prahlad Sahu(the deceased) and from there, they went to village Karela along with the appellants Pardeshi and Manoj. He deposes that when they all gathered in the house of Prahlad and after sometime, he along with Manoj, Pardeshi, Prahlad and appellants went to village Navagaon Patan and from there they all proceeded towards village Pandar. After reaching village Pandar, as deposed by this witness, he himself, Manoj and Pardeshi stayed back in village Pandar and the two appellants along with Prahlad proceeded at about 8:00 p.m. to drop Prahlad in his village Karela. In the cross-examination, he has admitted that there was no quarrel or dispute amongst them, including the deceased and the appellants during the time they stayed together and has also admitted that there was no previous enmity between the appellant and deceased Prahlad. A suggestion that Prahlad had gone to his house alone has been denied. From the evidence of this witness what is proved is that during the course of search of suitable bride for villager Manoj, this witness along with deceased and many other including appellant had travelled together from one village to other and finally in village Pandar, this witness along with Manoj and Pardeshi stayed back and appellants and the deceased proceeded ahead towards village Karela so that Prahlad could be dropped his village and the appellants to further proceed to their own village. Learned counsel for the appellants argued that the statement of this witness proves that the deceased Prahlad first left his village by two appellants and thereafter, two appellants parted with company and proceeded to their own village. Therefore, it does not constitute last seen evidence. Learned counsel for the State on the other hand has emphasized that this was only a plan known to this witness but he had actually not seen the two appellants leaving the company of Prahlad. We have carefully perused the evidence of this witness. We find that this witness in para 4 has clearly stated that he along with Manoj and Prahlad stayed back in village Pandar whereas Prahlad and the appellants expressed that they would be going back to their villagers. What this witness says is that when they left Prahlad, was to be dropped in his village Karela. As this witness stayed back in village Pandar, it is wholly improbable that he would have seen the appellants dropping Prahlad in his village Karela and thereafter proceeding ahead. There is nothing in this evidence to show that any of them had actually gone up to village Karela.

9. Therefore, in so far as the last seen evidence is concerned, we find that the

deceased Prahlad was last seen in the company of the appellants at about 8:00 in the night.

10. This takes us to the next incriminating circumstance led by the prosecution i.e. recovery of knife and bloodstained shoes and clothes at the instance of appellants. Vanij Kumar Sahu (PW2), S/o deceased Prahlad has been examined by the prosecution to prove memorandum of the appellants and recovery of knife, clothes and shoes on such disclosure. There are, however, contradictory statements made by this witness in his evidence. While in para 4, 5,6 & 7 of his evidence, he states that during the course of interrogation of the appellants, their memorandum recorded and Dular Singh Chandrakar stated regarding commission of offence and keeping the clothes and shoes in his village Narbada and those articles recovered from his house vide seizure memo Ex.P/7, in para 12 of his cross-examination, he states that after the incident, he did not visit village Narbada. He has stated that he had put all signatures in the police station. Not only this, he has also stated that in his presence, police did not record anybody's statement. In further evidence, this witness, however, states that he had gone to village Narbada.

11. While the knife allegedly used in commission of offence and seized on the basis of disclosure statement given by the appellant Pappu @ Chandrakar is not found to have contained any blood, the shoes allegedly recovered on the disclosure statement of appellant Dular Singh Nishad, as per serological report Ex.P/30 is found to be stained with human blood of group 'A'. We however, find that the prosecution has not come out as to what was the blood group of the deceased and on this aspect, the prosecution has not led any evidence whatsoever. The question which now arises for consideration is if the recovery is proved to have been made on the basis of disclosure statement given by Dular Singh Nishad, despite non-matching of the blood, could it be used as an incriminating piece of evidence along with incriminating circumstantial evidence of last seen to bring home the guilt of the appellant beyond reasonable doubt.

12. This aspect came up for consideration by the Supreme Court in various decisions which have been cited before us by learned counsel for both the parties. In the case of Gura Singh (supra) while examining the contention that as the origin of the blood could not be determined, the appellant accused was entitled to be acquitted, the legal position was examined thus :

“18. Learned counsel for the appellant submitted that as the origin of the blood could not be determined, the appellant was

entitled to be acquitted, as according to him the prosecution has failed to connect the accused with the commission of crime. In support of his contention he relied upon the judgment of this Court in [Prabhu Babaji Navle v. State of Bombay](#) [AIR 1956 SC 51], [Raghav Prapanna Tripathi v. State of Uttar Pradesh](#) [AIR 1963 SC 74], [Shankarlal Gyarasilal Dixit v. State of Maharashtra](#) [1981 (2) SCR 384], [Kansa Behera v. State of Orissa](#) [AIR 1987 SC 1507].

19. The effect of the failure of the serologist to detect the origin of blood due to disintegration in the light of the Judgments in Prabhu Babaji and Raghav Prapanna Tripathi cases was considered by this Court in [State of Rajasthan v. Teja Ram & Ors.](#) [1999 (3) SCC 507] wherein it was held:

"25. Failure of the Serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood in unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

"26. Learned counsel for the accused made an effort to sustain the rejection of the abovesaid evidence for which he cited the decisions in [Prabhu Babaji Navle v. State of Bombay](#) [AIR 1956 SC 51] and [Raghav Prapanna Tripathi v. State of U.P.](#) [AIR 1963 SC 74]. In the former, Vivian Bose, J. has observed that the chemical examiner's duty is to indicate the number of bloodstains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships felt that "blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the judgment". In the latter decision, this Court observed regarding the certificate of a chemical examiner that inasmuch as the bloodstain is not proved to be of human origin the circumstances has no evidentiary value 'in the circumstances' connecting the accused with the murder. The further part of the circumstances in that case showed that a shirt was seized from a dry-cleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for dry-cleaning, it was not bloodstained.

27. We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood, the circumstances arising from recovery of the weapon would stand relegated to disutility. The observations in the aforesaid cases were made on the fact situation existing therein. They cannot be imported to a case

where the facts are materially different."

13. Their Lordship further held that enunciation of legal position as propounded in the case of **State of Rajasthan V. Teja Ram, (1999) 3 SCC 507**, it cannot be said that in the absence of report regarding origin of blood, the trial Court could not have convicted the accused. In another decision, in the case of *Kishore Bhadke (supra)*, it was held that absence of report regarding origin of blood cannot be fatal to the prosecution. In that case concurrent finding of conviction was sustained on account of failure of accused to offer explanation coupled with proof of other circumstantial evidence.

14. In an earlier decision in the case of **Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra [AIR 2008 SC 1184]**, this very aspect was examined and it was held in para 23 as below :

"**23**.....The credibility of the evidence relating to recovery is substantially dented by the fact even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder."

15. The earlier decision of the Hon'ble Supreme Court which have been referred to in para 19 of the judgment in the case of Gura Singh (*supra*) have concluded that the certificate of a chemical examiner that inasmuch as the bloodstain is not proved to be of human origin, the circumstance has no evidentiary value 'in the circumstances' connecting the accused with the murder.

16. In one of the recent decision in the case of **Sonvir @ Somvir Vs. State of NCT of Delhi [2018 SAR (Criminal) 1045]**, where even the blood group of the blood samples matched from the bloodstained shirt recovered from the accused was held to be inconclusive to hold that the appellants had been necessarily involved in the commission of crime, in the background that the prosecution failed to prove that the house wherefrom bloodstained bedsheets were recovered, could not be proved to be in the exclusive possession of the accused.

17. Upon survey of the aforesaid decision of the Hon'ble Supreme Court, what is borne out is that presence of bloodstains groups, origin and group of blood or even matching of the blood is not a conclusive piece of evidence by itself. Moreover, it would require appreciation in the light of the entire circumstances of the case in hand to find out whether it could be used as an incriminating piece of

evidence against the accused so as to involve him in the alleged commission of offence. In the present case, the knife allegedly recovered from the possession of the appellant Pappu @ Chandrakar is not found to be stained with any blood. As far as shoes which are said to be recovered on the disclosure statement of Dular Singh Nishad have been found to be stained with human blood of group 'A'. With the serological report of such precaution indicating even the blood group, in our opinion, the prosecution ought to have come out with the evidence as to what was the blood group of the deceased. It has to be noted that present is not a case that mere human blood has been found. It is a human blood with a group 'A' specification. We cannot ignore that the other evidence led by the prosecution i.e. last seen by itself is a weak evidence. In order to bring home to guilt of the accused, the appellant and that too beyond reasonable doubt, the chain of circumstance could not be said to be completed for want of prosecution evidence as to what was the blood group of the deceased. We also find that the allegation is of giving assault on the deceased on his head resulting in compressed injuries in the head which is said to be caused by shoes. Ordinarily, shoes cannot be said to be such a hard object that too, used by villagers, that it by itself, would cause depressed fracture in the skull resulting in damage of the brain matter. Therefore, a doubt is definitely created over the prosecution story in so far as use of shoes in alleged commission of offence is concerned. We have also discussed herein above that the recovery of shoes itself is doubtful because the only independent witness of recovery of shoes at the instance of the appellants has not remained firm in his cross-examination. Vanij Kumar Sahu (PW2) has not been examined and he has gone to the extent of saying in his cross-examination that after the incident he never went to village Narbada and he has also stated that no disclosure statement was given in his presence. This all, taken together, causes serious dent to the prosecution story with regard to recovery of very incriminating articles which become doubtful because of lack of matching of blood group. We must hasten to add here that we do not mean to say that in all circumstances, matching of blood would be necessary, but in the aforesaid background which we have discussed, the prosecution was required to come out with the clinching evidence of incriminating nature which would be compatible only with the hypothesis guilt of the appellants. In the present case, we could not find any motive. Even according to the story of the prosecution, deceased and the appellants along with many others had gone to different villagers in search of suitable bride for one Manoj. In cases where the prosecution case rests on the circumstantial evidence, motive also assumes importance and when there is no motive aspect, the prosecution burden to prove its case beyond reasonable doubt based on other circumstantial evidence becomes much higher. In the case of **Sunil Clifford Daniel Vs. State of Punjab [2012 (11) SCC 205]**, it was held :

“33. In a case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof.

34. [In Subedar Tewari v. State of U.P. & Ors.](#), AIR 1989 SC 733, this Court observed as under:

“The evidence regarding existence of motive which operates in the mind of an assassin is very often than (sic) not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin.”

35. Similarly, in [Suresh Chandra Bahri v. State of Bihar](#), AIR 1994 SC 2420, this Court held as under:

“In a case of circumstantial evidence, the evidence bearing on the guilt of the accused nevertheless becomes untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime. Therefore, if the evidence on record suggest sufficient/necessary motive to commit a crime it may be conceived that the accused had committed it.”

18. What then leaves us is only with the last seen circumstantial evidence of the deceased having gone along with the appellants. The decisions placed before us by learned counsel for the appellants is that last seen evidence, by itself, could not be made a basis to rest conviction. On this legal position, learned State counsel would also submit that only on the basis of last seen evidence, there could not be any conviction sustained under the law.

19. As an upshot of aforesaid discussion, we are inclined to hold that the prosecution has failed to establish its case beyond reasonable doubt and the benefit of doubt must necessarily go to the accused and we accordingly do so. In the result, the impugned judgment of conviction and order of sentence is set aside and appellants are acquitted of the charges and they be set free.

20. Both the appeals are allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge