

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 430 of 2011**

- Lallu @ Sukhnandan Kurrey, aged about 19 years, S/o Devanand Kurrey, R/o Village – Padumtara, P.S. - Gumka, Tahsil and District Rajnandgaon (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, through P.S. - Gumka, District- Rajnandgaon (C.G.)

---- Respondent/State

For Appellant : Shri Rakesh Thakur, Advocate

For Respondent/State : Smt. Fouzia Mirza, Additional Advocate General

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Judgment**
(22.05.2020)**Per Gautam Chourdiya, J:**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 15.04.2011 passed by learned 2nd Additional Sessions Judge, Rajnandgaon, District Rajnandgaon (C.G.) in Sessions Trial No. 109 of 2009, whereby the appellant stands convicted under Section 302 of IPC for committing murder of Maana Bai on 26.10.2009 and sentenced to undergo life imprisonment & fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment for two months and under Section 450 of IPC for committing house trespass and sentenced to undergo rigorous imprisonment for five years & fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment for two months.
2. Case of the prosecution, in brief, is that as per information of PW-1 Mohini Bai (mother of deceased Maana Bai), *dehahti* merg (Ex.-P/14) at about 21:15 and *dehatinalishi* (Ex.-P/7) at about 21:30 hours were recorded at

village Padumtara, Gumka by police on 26.10.2009 that her daughter was killed by unknown person in her house. Numbered merge intimation (Ex.-P/15) was also registered at about 22:40 hours on the same day. On the basis of Ex.-P/14, Ex.-P/7 & Ex.-P/15, F.I.R. (Ex.-P/6) was lodged under Section 302 of IPC under Crime No. 162/2009 in Police Station Gumka, Rajnandgaon against unknown person.

3. The Investigating Officer reached the place of incident, gave notice to Panchas vide Ex-P/1 and prepared inquest (Ex.-P/2) on the dead body of deceased Maana Bai in presence of PW-2 Dewaram Sahu, PW-5 Kanak Kumar Sahu and other witnesses. The dead body of deceased- Maana Bai was sent for postmortem examination to District Hospital, Rajnandgaon vide Ex.-P/16, where the postmortem examination was conducted by a team of two Doctors namely Dr. Rajesh Sadaani (PW-14) and Dr. P. Bhalerao, who prepared their report Ex.-P/16A. As per postmortem report (Ex.-P/16A), they found following injuries on the body of the deceased:-

- i) Six incised wounds were on the body in size of 2.5 cm x 1.5 cm x muscle deep and sharp margins were present on back side of neck at middle & left side;
- ii) Incised wound in size of 6 cm x 1 cm x bone deep horizontally placed over occipital region with sharp margins;
- iii) Incised wound in size of 3 cm x 2 cm x 1 cm was present on the left of cheek above side of mouth;
- iv) Incised wound in size of 3 cm x 1 cm below the right eye;
- v) Incised wound in size of 2 cm x 2 cm x bone deep over the right side of forehead;
- vi) Incised wound in size of 2 cm x 1 cm over the right side of face and was present in front of ear;
- vii) Incised wound in size of 4 cm x 3 cm x bone deep at the base of right thumb with compo-dislocation;
- viii) Incised wound in size of 4 cm x 3 cm over right hand between 4th and 5th fingers;
- ix) Incised wound in size of 3 cm x 2 cm inside right arm;

- x) Incised wound in size of 2.5 cm x 0.5 cm over mid of the stomach;
- xi) Incised wound in size of 2 cm x 0.5 cm x bone deep over all four fingers of left hand;
- xii) Incised wound in size of 3 cm x 2 cm x 8 cm deep between waist and thigh deep into pelvic cavity;
- xiii) Incised wound in size of 3 cm x 2 cm x 5 cm over left side of vulva below previous injury.

Doctors opined that cause of death was haemorrhagic shock due to loss of blood from multiple wounds and caused by hard & sharp object. Duration of death was within 16-18 hours. They also opined that as far as rape is concerned, no definite opinion can be given, hence vaginal smear made and handed over to police constable for FSL examination. Dr. Rajesh Sadaani (PW-14) also examined the weapon of offence i.e. sickle and opined that injuries found on the body of the deceased could be caused by the said sickle and could cause death. He gave his report Ex.-P/18A.

4. During investigation, blood stained soil, plain soil, sickle and hairs of deceased were seized from the place of occurrence vide Ex.-P/3. Shirt and jeans of the appellant were seized vide Ex.-P/4. Spot map (Ex.-P/21) was prepared by PW-13 Anita Sagar, Investigating Officer. Ex.-P/10 is the seizure of clothes stained with blood and vaginal slide of the deceased from the Hospital. Seized articles were sent for FSL examination vide Ex.-P/12 and the report of which is received as Ex.-P/23 according to which blood was found on Articles- 'A'- blood stained soil; 'B'-plain soil; 'C1' *Salwaar*, 'C2' *Kurti*, 'C3' underwear & 'C4' *Samiz* of the deceased; 'E1' T-shirt & 'E2' pant of the appellant; 'F1' sickle and 'F2' hairs seized from place of occurrence and 'G' hairs of the deceased and human semen was found on Articles 'D1' and 'D2' slides. The blood stained articles were sent for their further examination to Serologist Laboratory, Kolkata and Article 'C1' *salwaar* of the deceased and Article 'E2' pant of the appellant were found stained with human blood of 'B' group. The Serologist report is Ex.-P/24.

5. During investigation, case diary statements of witnesses namely Mohini Bai (PW-1), Devaram (PW-2), Sukhdeo (PW-3), Jyotish (PW-4), Kanak Sahu (PW-5), Dayawati, Sonsai, Thakur Ram and others were recorded. The fact was revealed by Mohini Bai (PW-1) that on the date of incident she and her daughter Maana Bai were working in her field. At about 04-04:30 pm, accused/appellant Lallu @ Sukhnandan was crossing her field, when PW-1 asked Lallu as to where he was going, he told that he was going to catch the fish and she told Lallu not to come here. Thereafter, deceased Maana Bai went to her house. At about 06:00 pm PW-1 also went to her house, entered the house and saw that her daughter was lying in dead condition smeared with blood on the ground. PW-1 Mohini Bai in her case diary statement made allegation against the appellant that he has killed her daughter.
6. After completion of usual investigation, the charge-sheet was filed under Sections 450 & 302 of IPC against accused/appellant Lallu @ Sukhnandan and the trial Judge framed the charge under Sections 450 & 302 of IPC against him. In order to prove guilt of appellant, the prosecution examined as many as 14 witnesses namely Mohini Bai (PW-1), Devaram Sahu (PW-2), Sukhdeo (PW-3), Jyotish (PW-4), Kanank Kumar Sahu (PW-5), Manuram Devdas (PW-6), Sukhlal (PW-7), Jaiprakash (PW-8), Tikam Prasad (PW-9), Sitaram (PW-11), Ramnaresh (PW-12), Anita Sagar (PW-13) and Dr. Rajesh Sadaani (PW-14). Statement of appellant was recorded under Section 313 Cr.P.C. where he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. The appellant stated in his 313 Cr.P.C. statement that the police arrested him from his house, kept him in the police station for two days and beat him due to which he sustained injury and blood came out from his injury. No witness has been examined by appellant in his defence.
7. The trial Court after hearing the counsel for the parties in the matter and considering the material available on record, by the impugned judgment

convicted and sentenced the appellant as mentioned above in para-1 of this judgment, hence this appeal.

8. Learned counsel for the appellant submits that the prosecution has utterly failed to prove charge framed against the appellant under Sections 450 & 302 of IPC, as no connecting evidence was adduced by the prosecution. He further submits that in this case, there is no eyewitness; nor the appellant was last seen with the deceased near the place of occurrence. He submits that only on the basis of seizure of clothes of the appellant which he was wearing (Ex.-P/4) in the custody of police, put off by the police and seized by them on 27.10.2009 at police station Gumka, he cannot be convicted. He also submits that Mohini Bai (PW-1) has stated that on the date of incident about 04-04:30 pm, when she and her daughter (deceased) were working in her field, at time the appellant was crossing her field and when PW-1 reached her house at about 06:00 pm, she saw her daughter in dead condition on the floor smeared with blood, but no any witness has seen the appellant near her house where the incident happened. He also submits that the incident happened on 26.10.2009 at about 04-04:30 pm and on 27.10.2009, the clothes of the appellant stained with blood which he was wearing in the custody of police were seized on which 'B' group of human blood was found in serologist report (Ex.-P/24) and the same blood group was also found on the *salwaar* of the deceased, but the prosecution has failed to prove that the blood found on clothes of appellant and *salwaar* of deceased was of the appellant or the deceased. He further submits that the appellant has already taken the defence in his 313 Cr.P.C. statement that the police arrested him from his house, kept him in the police station for two days and beat him due to which he sustained injury and blood came out from his injury. He submits that unless the origin and group of the blood was proved, it cannot be presumed that the blood found on the *salwaar* of the deceased was that of the appellant. However, no evidence was adduced by

the prosecution regarding the origin and group of the blood of the appellant or the deceased. He placed reliance on the decisions of Hon'ble Supreme Court in the matter of **Subhash Chand Vs. State of Rajasthan, (2002) 1 SCC 702** and **Shankarlal Gyarsilal Dixit Vs. State of Maharashtra, (1981) 2 SCC 35**.

9. On the other hand, supporting the impugned judgment learned Additional Advocate General for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. She further submits that looking to the 'B' group of human blood found on the pant of appellant and the *salwaar* of the deceased, the trial Court has rightly convicted and sentenced the appellant in above manner. She placed reliance on the decision of Hon'ble Supreme Court in the matter of **Barku Bavrao Bhaskar Vs. State of Maharashtra, (2013) 14 SCC 745**.
10. We have heard the learned counsel for the parties and perused the evidence available on record.
11. The conviction of the appellant is based on the circumstantial evidence, FSL report and serologist report. The circumstances appearing against the appellant are that on the date of incident, he was seen crossing the field of PW-1 Mohini Bai when she alongwith her daughter (deceased) was working in her field at about 04-04:30 pm. After sometime the deceased left for her home and when PW-1 entered her home, she saw the deceased lying dead on the floor in the pool of blood. The other incriminating circumstance against the appellant is the seizure of his pant containing human blood of 'B' group which was also found on the *salwaar* of the deceased as per the FSL report and serologist report.
12. As per postmortem report (Ex.-P/16A), the postmortem examination was conducted by a team of two Doctors namely Dr. Rajesh Sadaani and Dr. P. Bhalerao who found multiple injuries on the body of the deceased. Dr.

Rajesh Sadaani has been examined as PW-14 but other Doctor i.e. Dr. P. Bhalerao has not been examined by the prosecution. Dr. Rajesh Sadaani (PW-14) has duly proved the injuries found on the person of the deceased. According to Autopsy Surgeon, the cause of death was haemorrhagic shock due to loss of blood from multiple wounds and the injuries were caused by hard & blunt object. Duration of death was within 16-18 hours. Dr. Rajesh Sadaani (PW-14) also examined the weapon of offence i.e. sickle and opined that injuries found on the body of the deceased could be caused by the said sickle and could cause death vide Ex.-P/18A. Inquest report (Ex.-P/2) has been proved by Mohini Bai (PW-1) who found the deceased in dead condition smeared with blood in her house. Thus, from the above medical evidence in the form of postmortem report (Ex.-P/16A), PW-14 Dr. Rajesh Sadaani and the inquest report (Ex-P/2) proved by PW-1 Mohini Bai, the prosecution has been successfully in proving that the death of deceased Maana Bai was homicidal in nature.

13. Now we consider the evidence adduced by the prosecution against the appellant. No memorandum of the appellant was recorded by the Investigation Officer, nor any discovery of fact or article is made from the appellant. Only clothes of the appellant which he was wearing while in the custody of police were seized on the next day of incident i.e. 27.10.2009 by the police. In the present case circumstance against the appellant is that on 26.10.2009 at about 04-04:30 pm, the appellant met Monhini Bai (PW-1) and her daughter (deceased) while crossing the field of PW-1 and the dead body of the deceased was found in the house of PW-1 at about 06:00 pm.

14. PW-1 Mohini Bai, mother of deceased Maana Bai, has stated in her deposition that on the date of incident at about 04.00 pm, she and her daughter were cutting paddy crop in her field, at that time appellant came there, then her daughter asked the appellant as to where he was going, on which he told that he was going for catching fish. Thereafter, she (PW-1)

sent her daughter to home and she (PW-1) went towards *kunwa* (well) *badi*. PW-1 has further stated that at about 05:30 – 06:30 pm she reached her home, the door of her home was locked and she shouted saying Maana and no reply came from inside the home. Thereafter, she went towards tank and returned to her home, again she shouted saying Maana, then she entered her home and saw that her daughter was lying in dead condition in the kitchen smeared with blood and the sickle stained with blood was also lying there. Mohini Bai (PW-1) admitted in para-10 of her cross-examination that her daughter went to her home at 05:00 pm from her field. No any other evidence was adduced by the prosecution that the appellant had any enmity or any reason to commit murder of deceased Maana Bai. Therefore, the prosecution has utterly failed to prove motive against the appellant, nor any previous dispute arose between the appellant and the family of the deceased.

15. PW-2 Devaram Sahu (brother of deceased) is the witness of inquest (Ex.-P/2), seizure of sickle from the place of occurrence (Ex.-P/3) and seizure of clothes of the appellant (Ex.-P/4). PW-2 has stated that in the morning of date of incident, he had gone for work and at about 08:30 pm he returned to his house, but his wife was not in the house, then neighbours informed him that his wife has gone to house of his mother. When he reached his mother's house, he came to know that his sister (deceased) has been murdered. PW-2 has further stated that his mother (PW-1) narrated about the incident.

16. PW-4 Jyotish has been declared hostile by the prosecution. He states that on the date of incident at about 06:00 pm when he was sitting in Manu Hotel (hotel of PW-6), the appellant was already sitting there and he (appellant) was in normal condition.

17. PW-5 Kanak Kumar Sahu is the witness of inquest (Ex.-P/2) and seizure of sickle from the place of occurrence (Ex.-P/3). PW-5 has stated that he came to know about the incident on telephonic call being made by Ramnath that

Maana Bai has been murdered and on information, he reached the house of Maana Bai and saw Maana Bai lying in the room smeared with blood. PW-5 has further stated that PW-1 narrated about the incident to him.

18. PW-6 Manuram Devdas was running tea and betel shop (hotel) in village Padumtara. He has stated that on the date of incident at about 05:00—6:00 pm, he was in his hotel at that time the appellant came there and drank water. PW-6 further stated that at that time, the appellant was in normal condition and he demanded *bidi*, after smoking the *bidi* he went away from there. PW-6 has also stated in para-2 that at that time Jyotish was also sitting in his hotel and the appellant stayed in his hotel on that day for about 30-45 minutes and after their departure, he (PW-6) heard that Maana Bai has been murdered by someone.

19. PW-8 Jaiprakash is the Head Constable, who after recording *Dehatinalishi* (Ex.-P/7) at village Padumtara, informed in police station and F.I.R. (Ex.-P/6) was registered by PW-11 Girdhardas Manikpuri. PW- 9 Tikam Prasad, Constable, after completing postmortem examination, gave the dead body of deceased to the family of deceased on *supurdnama* vide Ex.-P/8; proved seizures vide Ex.-P/10, Ex.-P/11 and sent the same for forensic examination. PW-10 Sitaram is the sweeper in police station Gumka and the witness of seizure Ex.-P/10. PW-11 Girdharidas Manikpuri is the Head Constable, who on basis of *dehati* merg (Ex.-P/14), registered merg intimation (Ex.-P/15) and has proved the same. PW-12 Ramnaresh, Head Constable, made seizure of sickle and clothes of the appellant vide Ex.-P/11 and has proved the same. PW-13 Anita Sagar is the Investigating Officer.

20. In this case, no memorandum statement of accused/appellant Lallu @ Sukhnandan was recorded, nor any article was recovered from him, only after putting off his clothes, the same were seized from him in police custody at police station vide Ex.-P/4 on 27.10.2009 whereas the incident happened on 26.10.2009. The pant allegedly seized from the possession of the

appellant was containing human blood of 'B' group, likewise *salwaar* of the deceased was also containing human blood of 'B' group. Since the blood groups were matching on the clothes of appellant and deceased, the trial Court only on the basis of presumption has convicted the appellant.

21. In *Subhash Chand* case (supra), it was held by the Supreme Court that :

“In the present case the age of the accused was about 21 years at the time of incident. On his arrest he was subjected to medical examination and found to be a potent and capable person. Presence of semen stain on underwear, assuming that the underwear belonged to the accused, though there is no evidence adduced in this regard, is not by itself an incriminating piece of evidence connecting the accused with the crime in question. So also the discovery of Group B bloodstain on the underwear cannot be treated as incriminating piece of evidence against the accused connecting him with the crime because there is no evidence that the underwear belonged to the accused and further the possibility of the underwear being stained with the blood of the person to whom it belonged, or the accused if he was wearing it has not been ruled out.”

22. In *Shankarlal Gyarashilal Dixit* case (supra), it was observed in para-28 of its judgment by the Supreme Court as under :

“**28.** The discovery of a blood-stain of the 'B' Group measuring 0.5 cm in diameter on the appellant's pant and of a dried stain of semen on his underpant are circumstances far too feeble to establish that the appellant raped or murdered Sunita. 'B' Group is not an uncommon group of blood and no effort was made to exclude the possibility that the blood of the appellant belonged to the same group. As regards the dried stain of semen on the appellant's underpant, he was a grown up man of 30 years and no compelling inference can arise that the stain was caused during the course of the sexual assault committed by him on the girl.”

23. In the present case, no evidence was adduced by the prosecution to prove the blood group of the appellant and the deceased and therefore, possibility of blood on the pant being of the appellant himself cannot be ruled out and as such, recovery of blood stained pant of the appellant cannot be considered as an incriminating circumstance against him.
24. Case diary statement (not exhibited) of PW-1 Mohini Bai (mother of the deceased) was recorded on 27.10.2009 in which she stated that on the date of incident i.e. 26.10.2009 appellant Lallu was roaming near her house and on suspicion she blamed against the appellant that the appellant entered into her house, tried to outrage the modesty of her daughter Maana, when her daughter resisted him, then he committed murder of her by means of sickle. However, the above facts have not been proved by this witness during her examination in the Court.
25. Suspicion howsoever strong cannot take place of actual proof of guilt of the accused. In the matter of ***Sujit Biswas v. State of Assam, AIR 2013 SC 3817***, the Supreme Court has held that suspicion, however, strong cannot take place of proof. Para 6 is quoted below :

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule

must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: *Hanumant Govind Nargundkar & Anr. v. State of M.P.*, AIR 1952 SC 343; *State through CBI v. Mahender Singh Dahiya*, AIR 2011 SC 1017; and *Ramesh Harijan v. State of U.P.*, AIR 2012 SC 1979)".

26. There was suspicion against the appellant as he was roaming near the house of PW-1 Mohini and met her (PW-1) while crossing her field where she and her daughter were working which was opposed by PW-1 and on that account the appellant might have committed murder of the deceased in her house. However, suspicion howsoever strong cannot take place of actual proof of guilt of the accused. In the present case, it has not come in the evidence of PW-1 Mohini Bai that there was any enmity between the appellant and PW-1 or her family members. According to her (PW-1), she only opposed the appellant's coming to her field. No cogent or legally admissible evidence was adduced by the prosecution to prove the motive. There is also no evidence against the appellant proving his involvement in the crime in question. Though the manner in which the incident occurred raises suspicion against the appellant but it is a well settled principle of law that graver the offence is, higher is the degree of proof and the suspicion howsoever strong, cannot take the place of proof.

27. To bring home the charge for committing murder on the basis of circumstantial evidence, the prosecution has to prove chain of circumstantial evidence which only proves the guilt of the accused to the exclusion of any other person who might have committed the crime. The principle has been succinctly laid down by the Supreme Court in ***Sharad Birdhichand Sarda v. 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 v. 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.”

28.In *Barku Bhavrao Bhaskar* (supra), blood group found on clothes of appellant and blood group of deceased was A. Appellant submitted that his blood group was not tested. The Supreme Court held that when at the instance of appellant, his shirt was recovered, there were absolutely no injuries on his body, question of bloodstains from body of the appellant to get transmitted to his shirt was ruled out. The Supreme Court further held that bloodstains found on shirt of the appellant could have been only that of deceased and none else and there was no valid explanation offered on behalf of appellant as to how bloodstains came to be found on his shirt, therefore, the appeal filed by the appellant was dismissed by the Supreme Court.

29.But in the present case, as per evidence of PW-1 Mohini Bai, on 26.10.2009 at about 04-04:30 pm the appellant was going for catching fish by crossing the field of Mohini Bai (PW-1) at that time he met PW-1 and thereafter he reached the hotel of PW-6 Manuram and was sitting in the hotel of PW-6 from 05:30 pm to 06:00 pm and during this period, appellant drank water. At that time the appellant was in normal condition and demanded *bidi* from PW-6 for smoking and after smoking *bidi*, he went away from the hotel of PW-6. Further, though PW-4 Jyotish has been declared hostile by the prosecution, but he has also supported this fact that on the date of incident at about 06:00 pm when he reached Manu Hotel (hotel of PW-6), the appellant was already sitting there and he (appellant) was in normal condition. Looking to the evidence of PW-6 Manuram and PW-4 Jyotish, it is clear that both witnesses have not stated in their evidence that when the appellant was sitting in the hotel, his clothes were stained with blood. In this case, the blood group of the appellant and the deceased were not tested so as to

prove that the bloodstains of 'B' group found on the pant of the appellant as well as *salwaar* of the deceased was that of the appellant or the deceased. So far as bloodstains of 'B' group found on the clothes i.e. pant of the appellant is concerned, the appellant has stated in his 313 Cr.P.C. statement that the police arrested him from his house, kept him in the police station for two days and beat him due to which he sustained injury and blood came out from his injury, therefore, the appellant has given valid explanation in his 313 CrPC statement. Having gone through the judgment relied upon by the learned Additional Advocate General for the State in the matter of *Barku Bhavrao Bhaskar* case (supra), we are of the opinion that the above judgment being distinguishable on facts is of no help to the State.

30. In view of the above discussions and keeping in view the above judgments in *Subhash Chand* and *Shankarlal Gyarsilal Dixit* (supra), we are not convinced that the prosecution has proved its case beyond reasonable doubt against the accused/appellant, as neither last seen of the appellant with the deceased is proved nor any motive is proved against the appellant, nor the origin and group of the blood of the appellant and the deceased were proved or the FSL report and serologist report connect the appellant with crime in question. He deserves to be acquitted of the charges by giving him benefit of doubt. Accordingly, we set aside the impugned judgment of conviction and acquit the accused/appellant of the charge under Sections 302 & 450 IPC. It is also stated that the appellant is on bail since 21.08.2012, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

31. In the result, the instant criminal appeal is allowed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge