

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 416 of 2011**

- Bhaiyalal Sahu, S/o Harinath Sahu, aged about 35 years, R/o Village Tendua, Thana- Patna, District Koriya, C.G.

----Appellant**Versus**

- State of Chhattisgarh, through the District Magistrate, Koriya, District Koriya, C.G.

---- Respondent

For Appellant	Mrs. Indira Tripathi, Advocate.
For Respondent/State	Mr. K.K. Singh, Government Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Gautam Chourdiya****20/05/2020**

1. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 28.04.2011, passed by the 1st Additional Sessions Judge, Manendragarh at Baikunthpur, District Koriya, C.G. in S.T. No.13/2011, whereby and whereunder the appellant stands convicted for the offence punishable under Sections 302 and 201 of the IPC and sentenced him to undergo imprisonment for life and fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 6 months; and imprisonment for 7 years and fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 6 months respectively.

2. Case of the prosecution in brief is that merger intimation Ex.P-1 was lodged by Nand Kumar Panika on 11.12.2010 informing that one unknown dead body of a man was found near the culvert in injured condition. Thereafter, Ex.P-2 Dehati Nalishi was lodged by Nand Kumar Panika on 12.12.2010 against unknown person. FIR Ex.P-28 was registered on 12.12.2010 under Sections 302 and 201 of IPC against the unknown person. After summoning witnesses, inquest on the dead body of the deceased was prepared vide Ex.P.24. The recovered dead body of the deceased was identified by PW-5 Ramrati (wife of the deceased). The dead body was sent for postmortem examination to Primary Health Center, Patna, District Koriya, C.G. where PW-9 Dr. A.K. Sharma, conducted postmortem and found following injuries:-

1. Incise wound present on middle of nose & left side of face size 2 ½" x 1 ½" x bone deep.
2. Incise wound present on right side of face and parotid regions, transverse situated size 6" x 2" x bone deep.
3. Incise wound on right side of chin size 2 ½" x ½" x bone deep.
4. Incise wound on right side of face just below injury No.2 (1 ½" below) size 3" x ½" x 4".
5. Incise wound on right side of neck size 5" x 2" x bone deep muscle, blood vessels, nerve are cut.
6. Incise wound on left wrist size 2 ½" x 2" x left ulna cut & fractured out.
7. Incise wound at left palm at hypothenar eminence size 3" x 1" x bone deep.
8. Incise wound on left palm at outer size & middle size 2" x 1" x bone deep.
9. Incise wound on left palm outer size & dorsal surface & metacarpal bone is cut.
10. Multiple abrasion present on middle of chest.
11. Two incise wound on right side of chest size 3 ½" x ½" x 1.
12. Incise wound on left side of back at thoracic region, size 1 ½" x ½" x ½".

13. Abrasion on right side of back at lumber region size 3" x 2".

He opined that injuries present on body of the deceased were caused with sharp and cutting object and ante-mortem in nature. He also opined that cause of death is syncope due to severe haemorrhage & shock which is produced by multiple injuries on neck & face, time passed since death within 36 to 48 hours and death was homicidal in nature. The postmortem report is Ex.P-15. During investigation, spot map was prepared by PW-10 Chandrika Prasad Paikra (Patwari) vide Ex.P-5. Memorandum of the accused was recorded vide Ex.P-9 and one chopper knife (Gandasa) was recovered from the accused vide Ex.P-10. Clothes of the accused were recovered vide Ex.P-11. Blood stained soil and plain soil were seized from the place of occurrence vide Ex.P-4. Seized article, soil and clothes of the accused were sent for FSL vide Ex.P-25. The appellant was arrested vide Ex.P-12.

3. Statements of the witnesses were recorded and charge sheet was filed against appellant under Sections 302 and 201 of the IPC followed by framing of charge by the trial Court accordingly. The accused/ appellant denied the charges framed against him and prayed for trial.
4. So as to hold the appellant guilty prosecution has examined as many as 16 witnesses i.e. PW-1 Nandkumar, PW-2 Sonmat, PW-3 Bhagirathi, PW-4 Dharmapal, PW-5 Ramrati, PW-6 Shivkumar, PW-7 Arun Patel, PW-8 Budhram, PW-9 Dr. A.K.

Sharma, PW-10 Chandrika Prasad Paikra, PW-11 Chitrabhan Singh, PW-12 Manoj Kumar Minj, PW-13 Rajman, PW-14 Ramdulare, PW-15 Rajesh Paikra, PW-16 O.P. Kujur. The accused/appellant was examined under Section 313 of the Cr.P.C., in which, he denied the circumstances appearing against him and stated that he has been falsely implicated in the case. However, no defence witness has been examined by him. After completion of trial, the appellant was convicted and sentenced as mentioned in para 1 of this judgment.

5. Learned counsel for the appellant submits that the appellant has been convicted and sentenced on the basis of suspicion that the deceased was 'last seen' with the appellant, but no 'last seen' and 'motive' was proved by the prosecution nor any reliable witness has been produced in this regard and further, there are contradictions and omissions in the statements of the witnesses. Learned counsel for the appellant submits that only on the basis of memorandum and seizure, trial Court has wrongly convicted the appellant. He further submits that looking to the statement of PW-5 Ramrati, it is clear that she was not a witness of last seen nor any statement of this witness under Section 161 Cr.P.C. was recorded by the police regarding last seen of the appellant with the deceased. He also submits that though the seized articles were sent for chemical examination to the FSL but no FSL report is there on record connecting the said articles with the crime in question. He further submits that the chain of circumstantial evidence is not so complete to conclusively prove the guilt of the

appellant. Therefore, trial Court has wrongly convicted and sentenced the appellant under Sections 302 and 201 of the IPC.

6. On the other hand, supporting the impugned judgment learned counsel 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.
7. We have heard learned counsel for the parties, perused the judgment impugned and the evidence on record.
8. Homicidal death of the deceased is not in dispute. Even otherwise from the evidence of PW-9 Dr. A.K. Sharma, Autopsy Surgeon, the postmortem report Ex.P-15 and the inquest report Ex.P-24 which is proved by PW-13 Rajman, the prosecution has successfully proved that the death of the deceased was homicidal in nature.
9. PW-1 Nandkumar has proved this fact that dead body was found near the culvert. This witness saw blood stains in his field and thereafter he informed about the same to Sukhlal. When they followed the trail of blood stains, it went up to the culvert. Thereafter, they informed about the incident to village Kotwar. After that, merger intimation Ex.P-1 & Dehati Nalishi Ex.P-2 were lodged. This witness also proved the seizure Ex.P-4 of plain and blood stained soil from the place of occurrence but they were not challenged in the cross-examination. This witness also proved the spot maps Exs. P-3 and P-5.

10. PW-2 Sonmat & PW-3 Bhagirathi only supported this fact that they had seen the dead body of the deceased. PW-4 Dharampal has proved the seizure memo of Ex.P-4 whereby the police had seized some grass covering the dead body, plain and blood stained soil.
11. PW-5 Ramrati stated that her husband i.e. deceased had gone with accused/appellant in evening but that fact is not mentioned in her police statement. According to the information given by this witness as per Ex.D-1, no person was last seen on the date of incident i.e. 10.12.2010 in the evening or night along with the appellant.
12. PW-6 Shivkumar only stated that he had seen the dead body of the deceased. But this witness has not supported the seizure and memorandum. PW-10 Chandrika Prasad Paikra is a Patwari, who prepared spot map vide Ex.P-5. PW-11 Chitrabhan Singh and PW-12 Manoj Kumar Minj have been declared hostile and not supported the prosecution case. PW-7 Arun Patel, PW-8 Budhram & PW-15 Rajesh Paikra have also not supported the prosecution case. PW-14 Ramdulare is the witness of inquest. He proved the identification memo Ex.P-23. PW-16 O.P. Kujur is the Investigating Officer, who has supported the prosecution case.
13. PW-13 Rajman is the witness of the inquest. He stated in para 3 of his deposition that deceased was smoking Ganja at 9:00 pm near the house of the accused/appellant and thereafter the deceased and the appellant went towards culvert. At that time

deceased and appellant had chopper knife/Gandasa and sickle. There is no such statement of this witness recorded under Section 161 Cr.P.C. and that fact is narrated by PW-13 Rajman for the first time in his court statement. In para 7 of his deposition, PW-13 Rajman stated that all these facts were disclosed to the police when his statement was recorded but police did not mention the same in his statement. Thus, for the first time this fact is mentioned by PW-13 Rajman and his statement under Section 161 Cr.P.C was not recorded by the police nor produced before the Court. Therefore, it is not safe to consider the evidence of this witness. PW-13 Rajman is only the witness of inquest and no other fact is disclosed by him to the police. Therefore, PW-13 Rajman is not reliable witness looking to his entire evidence.

14. Admittedly, there is no direct evidence in this case to prove complicity of the accused/appellant in crime in question and the entire case is based upon circumstantial evidence. In the matter of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***¹, the Hon'ble Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under:

“152.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’

1 AIR 1984 SC 1622

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 Vs. 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."

15. In this case the prosecution has utterly failed to prove that it is the accused/appellant who was last seen with the deceased. Further, the prosecution has not attributed any motive to the appellant for commission of the offence. This apart the witnesses namely PW-6 Shivkumar and PW-7 Arun Patel of the memorandum and seizure have also not supported the prosecution case and have been declared hostile, and further the prosecution has also not filed FSL report in this case.

16. Thus, considering the nature and quality of evidence adduced by the prosecution in light of the principles of law laid down by the Hon'ble Supreme Court in the matter of *Sharad Birdhichand Sarda*

(*supra*), this Court is of the opinion that the prosecution has miserably failed to prove the complicity of the accused in the crime in question on the basis of circumstantial evidence beyond all reasonable doubt. Being so, conviction of the accused/appellant under Sections 302 and 201 of IPC is not sustainable and he deserves to be acquitted of the said charges.

17. In the result, the appeal is allowed. The appellant is acquitted of the charges under Sections 302 and 201 of IPC. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.PC.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge