

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.395 of 2013**

- Hirendra wrongly written Hirend @ Golu, S/o Dayaram Tondan, Aged About 27 Years, R/o Village Banjari, P.S. Kurud, Distt. Dhamtari, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh, through Station House Officer, Kurud, Distt. Dhamtari, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri K. P. Sahu, Advocate
Shri R. S. Baghel, Dy. AG

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Shri Prashant Kumar Mishra J.****03/01/2020**

1. Challenge in this appeal is to the judgment of conviction rendered by the Trial Court convicting the appellant for committing offence under Sections 450, 397 and 302 of IPC and sentencing him to undergo RI for 5 years, RI for 7 years and life imprisonment, respectively, with default stipulations vide the impugned judgment dated 28.09.2012 passed by the learned Additional Sessions Judge, Dhamtari, District Dhamtari in ST No.27/2012.
2. Appellant committed house trespass, loot and murder of deceased Sushila Bai between 2 am to 8:45 am on 23.02.2012 in the house of the deceased at Village Banjari, Police Station Kurud, District

Dhamtari. Before committing murder, the appellant looted 4 numbers of golden leaves (*Patti*), one pair of golden Khinwa, one golden nose pin, one pair silver anklet, one silver waistband (*Kardhan*) and one silver hair clip.

3. Dehatinalisi (Ex-P-2) was lodged by PW-1 Bhagiram, husband of the deceased Sushila Bai, at 10:30 am on 23.02.2012 itself informing the Police that he had gone for reciting *Bhagwat* to a different village from 10.02.2012 to 20.02.2012. He reached to his house at Village Satpara on 21.02.2012 and met his wife who had already reached there on 19.02.2012. In the morning of 22.02.2012, his wife Sushila left for Village Banjari for attending *Satsang*. He went to Village Banjari at about 7 am on 23.02.2012 and reached there at 8:45 am. When he entered the house, he saw dead body of his wife lying in a pool of blood in the *Parchhi* of the house. 4 golden leaves, out of 5 golden leaves embedded in golden neckless, were missing and similarly other ornaments like Khinwa, anklet, waistband, nose pin and hair clip were also missing. When he narrated about the incident to the villagers, he was informed that the deceased had attended *Satsang* till 1:30 am and reached back to her house at about 2 am. The Police prepared the dead body inquest vide Ex-P-5 and recovered blood stained soil, plain soil, one silver clip and golden neckless from the place of occurrence, the last two from the body of the deceased, vide Ex-P-7. One blood stained cotton towel was recovered from the house of Vishnu Tandon vide Ex-P-8. Appellant's memorandum statement was recorded on 12.03.2012 vide Ex-P-

11, consequent to which the razor blade used for cutting the throat was recovered from his possession vide Ex-P-12. Similarly, the looted ornaments were recovered from his possession vide Ex-P-13. 3 golden lockets, described as golden leaves in the Dehatinalisi, and the register of sale/purchase of ornaments were recovered from Prakash Gilhare (PW-4) vide Ex-P-14. One mobile of Micromax Company was also recovered from the appellant vide Ex-P-15.

4. Foot prints of the unknown accused was available at the place of occurrence, the photographs of which were taken vide foot steps panchnama (Ex-P-16). The purchase register of Balaji Jewellers, Abhanpur was recovered vide Ex-P-18 and P-18C. Sample foot prints of the accused were obtained vide Ex-P-19, P-20, P-21 & P-22. The seized articles were sent for FSL examination, the report whereof was sent vide Ex-P-60 finding blood stains on Articles A-1, A-2, B-1, C, D, E, F & G. These articles include blade and rapper, full pant, T-shirt and underwear recovered and belonged to the accused. It also includes the cotton towel. The foot prints comparison report was obtained and proved vide Ex-P-58 finding that the foot prints found on the spot belong to the accused. Identification of the articles was conducted vide Ex-P-10 and the articles were duly identified by PW-1 Bhagiram.
5. In course of trial, the prosecution examined 22 witnesses to bring home the charges and relied on the documents/exhibits, which are in the nature of identification of looted ornaments, foot prints of the accused found from the spot, his memorandum statement,

recovery of articles and FSL report. The Trial Court has found the offences proved against the appellant and has therefore convicted him for committing the alleged offences and sentenced him to undergo life imprisonment.

6. Learned counsel for the appellant would submit that there is no clinching evidence to connect the accused for commission of the subject crime. He would submit that the chain of circumstantial evidence is not so complete so as to establish the guilt of the accused. According to him, there are material contradictions and omissions in the statement of witnesses, including those who have proved the memorandum statement, recovery of articles etc., therefore, the appellant deserves to be acquitted.
7. Per contra, Shri R. S. Baghel, learned Dy. Advocate General, would submit that there is abundance of evidence properly connecting the accused in commission of crime and the accused has not offered any explanation as to the seizure of ornaments and sale of one ornament to the jewelery shop owner, which has been duly proved, therefore, the conviction is fully justified.
8. We have heard learned counsel for the parties at length and perused the record.
9. The case of the prosecution is mainly based on the circumstantial evidence proved by the prosecution against the appellant. The circumstances are in the nature of presence of the accused during *Satsang*, which was also attended by the deceased till 1:30 am in the night; memorandum statement of the accused; recovery of

blade and looted ornaments from his possession; his foot steps found from the place of occurrence; the positive FSL report finding presence of blood over the cloth of the accused as well as the blade and rapper; the sale register (Ex-P-18) carrying appellant's signature at the time of effecting sale of one of the looted ornaments to PW-4 Prakash Gilhare; identification of the looted ornaments by PW-1 Bhagiram vide Ex-P-10 and lastly positive foot prints report vide Ex-P-58.

10. Before proceeding to discuss the above circumstantial evidence, it is to be kept in mind the requirement as to when an offence is proved on the basis of circumstantial evidence.
11. In the matter of **Sharad Birdhichand Sarda vs State of Maharashtra**, reported in **AIR 1984 SC 1622**, the 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’ 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."

- 12. We shall now discuss the evidence to examine as to whether the test laid down by the Hon'ble Supreme Court in the matter of **Sharad Birdhichand Sarda** (supra) is satisfied by the prosecution to prove the guilt of the appellant.
- 13. PW-1-Bhagiram has proved the Dehatinalisi (Ex-P-2), seizure memo (Ex-P-7 & P-8) and identification of seized ornaments vide Ex-P-10. PW-2-Ratan Lal Manhare has proved the appellant's memorandum statement (Ex-P-11), seizure of blade vide Ex-P-12, seizure of ornaments vide Ex-P-13 and seizure of sale register of Balaji Jewellers vide Ex-P-14. He has also proved seizure of mobile vide Ex-P-15 and seizure of *gamchha* vide Ex-P-8. He has also proved seizure of obtaining sample foot prints of the accused vide Ex-P-16. The defence has not been able to elicit any material

from this witness during his cross examination. He stood firm during his cross examination as to the facts stated in his examination-in-chief. PW-3 Gorakhram Tandon has also proved and supported the prosecution in proving the seizure memo (Ex-P-8, P-12, P-13 & P-14) as also the foot prints panchnama (Ex-P-16). He has not supported the prosecution in so far as memorandum statement (Ex-P-11) is concerned; he has admitted his signature over the document. PW-4 Prakash Gilhare is the owner of the jewellery shop to whom the accused has sold 3 golden leaves out of 4 golden leaves of the golden neckless looted from the deceased. He has proved the register (Ex-P-18 & P-18C), which carries appellant's signature opposite the description of ornaments, which were sold to this witness. PW-5 Gaukaran Tandon was present at the *Satsang* where the deceased was also present and the appellant was seen distributing tea etc to the persons attending the *Satsang*. PW-6 Kulbul Ram Tandon is the person to whom PW-1 Bhagiram informed about the murder of his wife in the morning of 23.02.2012. He is also a witness to the inquest. PW-8 Amar Das Tandon also attended the *Satsang*.

14. PW-9 Dilip Gilhare is an important witness, as he is the person to whom the appellant requested for arranging sale of the looted ornaments and it is this witness who took the deceased to PW-4 Prakash Gilhare. This witness has clearly supported the prosecution by stating that about 2 months back, the appellant came to him and stated that he needs funds for treatment of his mother, therefore, he wants to sell some ornaments. On

appellant's request, he took him to Balaji Jewellers, Abhanpur where PW-4 Prakash Gilhare was available. 3 golden leaves brought by the appellant were sold to PW-4 Prakash Gilhare for Rs.7,500/- and the appellant put his signature over the sale register in his presence. PW-10 Smt. Chandrika Bai has also proved the fact of appellant's taking out polythene bag kept inside the sound box, in which the seized ornaments were kept by him. Thus, this witness has corroborated the facts revealed by the appellant in his memorandum statement. PW-11 Dinesh Banjare is also a witness who was present at the *Satsang*. He was the catering In-charge of the *Satsang* programme. He says that at that time, the appellant was wearing blue coloured t-shirt and blue coloured jeans pant. It is these two clothes which were worn by the appellant at the time of occurrence and have been subsequently recovered from him. This witness also says that foot print of the accused was available near the dead body and the photographs of the said foot prints were taken by the Police vide Ex-P-19 to P-21.

15. PW-15 - Rumesh Kumar Verma is the Tahsildar, who has conducted the identification of ornaments vide Ex-P-10. PW-20-Dr. B. P. Maithil had obtained the photographs of the foot prints available at the place of occurrence. He has also taken sample foot print of the appellant after his arrest and has examined both the foot prints. PW-21 - Dr. Prabhakar Rao has conducted the autopsy. He has proved homicidal death vide his postmortem report (Ex-P-47) finding the cause of death to be on account of

syncope and asphyxia due to cut of major vessels and trachea causing cardio respiratory arrest. PW-22 - S. K. Jain is the Police Officer who conducted the investigation.

16. The above evidence brought-forth by the prosecution clearly proves that after the appellant was taken into custody, he gave his memorandum statement revealing the fact of committing murder by cutting the neck of the deceased by means of razor blade and thereafter looting the ornaments. The ornaments and razor blade were recovered from the place which was indicated by the appellant in his memorandum statement. The witnesses have fully proved the memorandum statement and the recovery of articles. The foot prints available at the place of occurrence were found to be belonging to the appellant when sample foot prints were tallied and compared with the available foot prints. The foot prints at the place of occurrence occurred when the appellant committed murder and took the dead body to some distance. As blood had oozed out of the dead body, the appellant's foot fell over the blood causing foot prints of his entire foot. Moreover, the person to whom the appellant contacted for sale of ornaments namely, PW-9 Dilip Gilhare has proved the fact of actual sale of 3 golden leaves of the neckless belonging to the deceased to PW-4 Prakash Gilhare, owner of Balaji Jewellers, Abhanpur. The articles recovered from the appellant namely blade, rapper and his clothes were found blood stained in the FSL report (Ex-P-54). It is not a case where the recoveries were made after long lapse of time. The incident occurred between 2 am to 8:30 am on 23.02.2012

and the appellant was taken into custody on 12.03.2012. His memorandum statement was recorded on the same day and the recovery was made immediately thereafter. There is close proximity to the date of taking the appellant to custody and recovery of articles. The sale of ornaments was made by the appellant on 26.02.2012 i.e. immediately after 3 days of incident. This date is in close proximity to the date of commission of murder.

17. Considering the evidence on record, we are of the considered view that the prosecution has established the chain of circumstantial evidence, which only proves the hypothesis of the guilt of the accused to the exclusion of any other person committing the offence. The chain is so complete that it eliminates the possibility of any other person committing the crime.
18. For the foregoing, the judgment rendered by the Trial Court does not call for any interference. The appellant's conviction under Sections 450, 397 and 302 of IPC and sentences awarded to him are hereby affirmed.
19. Accordingly, the appeal is dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge