

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 647 of 2013**

- Lebiram S/o Lakhon Prasad Sinha Aged About 36 Years R/o Thankhamhariya, Police Station Thankhamhariya, Civil District Durg, Revenue District Bemetara, District Bemetara (CG)

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Bharamdev, District Kabirdham (CG)

---- Respondent

For Appellant
For Respondent /State

Mr. Mahesh Pandey, Advocate
Mr. Pawan Kesharwani, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Judgment On Board by Prashant Kumar Mishra, J.****8/1/2020**

1. Heard.
2. Challenge in this appeal is to the judgment dated 12.6.2013 passed by the Additional Sessions Judge, Kabirdham (Kawardha) (CG) in ST No.65/2012 convicting the accused for committing offence under Sections 364, 302 & 201 of IPC and sentencing him to undergo RI for 10 years, imprisonment for life and RI for 7 years and to pay fine of Rs.500/-, Rs.500/- and

Rs.500/- respectively with usual default stipulations.

3. The appellant has allegedly committed murder of deceased Manharan Sinha during the period from 25.7.2012 to 2.8.2012. The deceased was the co-brother (*Sadhu*) of the appellant. The *Dehati* Merg Intimation was lodged by the appellant himself at 7:05 hours on 2.8.2012. The appellant informed the Police that he had called and engaged the deceased in the fruit vending business 3 years ago. He had illicit relations with his sister-in-law Rukmani (PW-4), who happens to be the wife of deceased Manharan. Due to the presence of Manharan, he was finding it difficult to maintain illicit relations, therefore, he decided to eliminate the deceased and was looking for an opportunity. On 22.7.2012, the deceased had gone on *Bol Bum* journey to Bhoramdev temple with other villagers. On 23.7.2012, he called Manharan over his mobile phone, on which, he informed that he has already reached Bhoramdev temple. The deceased requested him to come to Bhoramdev temple, on which, he later on reached there and met him near the temple at a *Puri Sabji Bhandara*. After eating *Puris*, he took the deceased to the forest and purchased liquor at Chilphi. Later, they went within the forest at Chilphi- Bodla road and he committed murder of the deceased by hitting him over his head and neck by means of beer bottles. He removed the SIM from the mobile phone and threw the mobile phone and SIM at different places. The appellant's memorandum statement was recorded vide Ex.P/8 at 7:30 hours on 2.8.2012 reiterating the same sequence of

events which are mentioned in the *Dehati* Merg Intimation -Ex.P/17. *Dehatinalisi*-Ex.P/20 was lodged at the instance of PW-1 Dilharan at 15:05 hours on 2.8.2012

4. The disposable tumbler, wrapper of mixture, lid of Goa Whiskey Bottle, broken pieces of beer bottle, empty bottle of Goa Whiskey, blood stained soil, plain soil and one wooden piece was recovered vide Ex.P/10 from the place of occurrence. Since the dead body was not identifiable, the bone parts of the dead body was sent for DNA profiling by matching it with the blood of his father Puniram Sinha and brother Dilharan Sinha (PW-1). Vide DNA report-Ex.P/35., the identity of the dead body was established.
5. During investigation, Ganesh (PW-6) informed the Police that he had seen the deceased and the appellant together when they were eating *Puri Sabji* near Bhoramdev temple and thereafter, they moved together on a motorcycle. Based on this evidence of last seen together, recovery of dead body and other articles at the instance of the appellant from the forest, the charge sheet was filed for the offence punishable under Sections 364, 302 & 201 of IPC. In the course of trial, the prosecution examined 12 witnesses to bring home the charges.
6. The appellant abjured the guilt and pleaded innocence and false implication. However, he did not examine any defence witnesses. The trial Judge has convicted the appellant, hence, this appeal on submission that the evidence adduced by the

prosecution does not complete the chain of circumstantial evidence to establish that the appellant has committed the murder.

7. Mr. Mahesh Pandey, learned counsel for the appellant, has argued that the witnesses to the last seen together having turned hostile, there is absolutely no evidence that the appellant was seen in the company of the deceased at Bhoramdev temple or near the place of occurrence. He would submit that in any case, the conviction is not permissible only on recovery of the dead body at the instance of the accused. He refers to the judgment rendered by this Court in Criminal Appeal No.615/2012 (**Shiv Prasad Sahu Vs. State of Chhattisgarh**) and other connected appeals, decided on 28.8.2019 and the judgment rendered by the Supreme Court in the matter of **Bakshish Singh v The State of Punjab**¹.
8. Per contra, Mr. Pawan Kesharwani, learned Panel Lawyer for the State, would submit that the call details - Articles A1 to A5 have found tower location of the appellant's mobile and that of the deceased's mobile at the same place. The same coupled with recovery of the dead body at the appellant's instance is sufficient to establish his guilt. He would submit that the appellant has a strong motive for commission of crime as he was having illicit relations with the wife of the deceased and was thus, interested in eliminating him.

9. In the case at hand, the *Dehati* Merg Intimation-Ex.P/17 was

¹ AIR 1971 SC 2016

lodged by the appellant himself at 7:05 hours on 2.8.2012 confessing before the Police that he has committed the murder of the deceased at a forest near Chilphi-Bodla Road. The memorandum statement was recorded subsequently at 7:30 hours on the same day vide Ex.P/8, based on which, the recovery of the dead body was made vide Ex.P/1 at 9:20 hours. If the Police had been informed by the appellant by way of lodging the mereg intimation, the subsequent statement under Section 27 of the Evidence Act may not be admissible in evidence as the Police already had the information about the place where the murder has been committed and the dead body has been left along with other articles.

10. If for the sake of the argument, it is treated to be admissible in evidence, the fact remains that the conviction only on the basis of recovery of the dead body at the instance of the accused is not permissible in view of the law laid down by the Supreme Court in **Bakshish Singh (supra)**, wherein, the following has been held in para 8 :

“8. Therefore the only incriminating evidence against the appellant is his pointing the place where the dead body of the deceased had been thrown. This, in our opinion, is not a conclusive circumstance though undoubtedly it raises a strong suspicion against the appellant. Even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Further, as mentioned earlier, at the bank of the river where the dead body was thrown into the

river, there were broken teeth and parts of the human body lying. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place.”

11. In an earlier judgment also rendered by the Supreme Court in the matter of **Kanbi Karsan Jadav Vs. State of Gujarat**², the following has been held at para 9:

“9. The mere fact that the dead body was pointed out by the appellant or was discovered as a result of a statement made by him would not necessarily lead to the conclusion of the offence of murder. But there are other circumstances which have to be considered. The discovery of the buttons with bloodstains at the instance of the appellant is a circumstance which may raise the presumption of the participation of the appellant in the murder. In *Wasim Khan Vs. State of Uttar Pradesh*, 1956 SCR 191: (AIR 1956 SC 400), it was held that the recent and unexplained possession of stolen property would be presumptive evidence against a prisoner on a charge of robbery as also of a charge of murder. But it must depend upon the circumstances of each case. The third piece of evidence to be considered is the recovery of the pania, i.e., scarf. No doubt there is no statement by the approver that the scarf in which the dead body was taken was that of the appellant. But a scarf has been found which the High Court has held as belonging to the appellant and hairs both of the deceased as well as of the appellant were found on that scarf. It was argued that the finding of the hairs was of no consequence and at least the Chemical Examiner was not the proper expert who could depose as to the similarity or

² AIR 1966 SC 821

otherwise of the hairs. The writers on medical jurisprudence, however, have stated that from the microscopic examination of the hairs it is possible to say whether they are of the same or of different colours or sizes and from the examination it may help in deciding where the hairs come from. In Taylor's Medical Jurisprudence (1956 Edn.) Vol. I, at p. 122, some cases are given showing that hairs were identified as belonging to particular persons."

12. In the case at hand, the prosecution has examined 12 witnesses to bring home the charges, however, none of the witnesses have seen the appellant in the company of the deceased on the date of the occurrence.
13. PW-6 Ganesh was presented as a witness who has last seen the appellant and the deceased together near Bhoramdev temple when they were eating *Puri Sabji* but this witness has not supported the prosecution on this count and has turned hostile.
14. PW-1 Dilharan is the brother of the deceased, who was present at the time of recovery of the dead body vide Ex.P/2. He is also a witness to the *Talashi* Panchnama vide Ex.P/6. His blood samples were obtained vide Ex.P/7 for DNA profiling of the bones of the dead body. PW-2 Khorbahara is also a witness to Ex.P/1. According to this witness, the appellant has denied to have gone to Bhoramdev temple on the date of the incident. The appellant informed him that he has not gone to Bhodramdev temple for last 2-3 years. He is a witness to the memorandum statement- Ex.P/8, recovery of certain articles

from the place of occurrence vide Ex.P/10 and recovery of motorcycle and registration papers of the motorcycle vide Ex.P/11. PW-3 Jagdish is the father-in-law of the appellant as well as of the deceased. He had accompanied the police party who recovered the dead body. He denied that the appellant has made any statement to the Police in his presence. He also states that it was the appellant who had provided work to the deceased and that they had good relations. Similarly, PW-4 Rukhmani, wife of deceased Manharan, has also not stated that there was any illicit relations between her and the appellant or that the relation between the appellant and the deceased were not cordial. Thus, both these witnesses namely PW-3 Jagdish and PW-4 Rukhmani are not supporting the prosecution in so far as 'motive' for committing the crime is concerned.

15. PW-5 Raja @ Krishna is a witness, who had travelled with the deceased to Bhoramdev temple as a member of *Bol Bum Yatra* team. This witness was carrying clothes of the deceased in his bag which he had returned to the deceased's family members upon finding that the deceased had not returned with *Bol Bum Yatra* team. This witness has also been declared hostile. PW-6 Ganesh was a witness of last seen together but has not supported the prosecution. PW-7 Chandrakant Tiwari obtained call details from the service provider and has proved the same as Article A1 to A5, however, the call details are not accompanied with or have been filed as a part of the report

submitted by the Service Provider. There is no certificate of the Nodal Officer as required under Section 65-B of the Evidence Act. Thus, even if this witness had obtained the print out of the call details from the SP office, the same would not be admissible unless it is proved by the Nodal Officer appointed by the Company who has rendered the mobile service. The call details does not carry any certificate that the mobile numbers were in the name of the deceased or the appellant. It may have helped the Police in investigation but the same cannot be treated as a circumstance against the appellant in the absence of the call details having been proved in accordance with law.

16. PW -8 N.D. Sahu is the Investigating Officer, whereas, PW-9 Dr. Shivnarayan Manjhi has conducted the postmortem and submitted the report vide Ex.P/18A. He could not determine the cause and duration of death. Thus, there is no proof as to on what date from 23.7.2012 to 2.8.2012, the deceased was murdered.

17. The above discussion would demonstrate that the only evidence against the appellant is that of recovery of the dead body at his instance, however, that alone is not sufficient to convict the appellant as held by the Supreme Court in **Bakshish Singh** (supra) and **Kanbi Karsan Jadav** (supra).

18. In our considered view, the chain of circumstance is not so complete against the appellant so as to establish the hypothesis of the guilt of the appellant to the exclusion of any

other person who could have committed the offence.

19.If the call details are not proved and PW-6 Ganesh is not supporting on the aspect of last seen together, there is absolutely no evidence that the appellant had visited Bhoramdev temple on the date of the incident, which is at a distance of 50 km from the appellant's village Thankhamariya.

20.Accordingly, the appeal is allowed and the impugned judgment of conviction and sentence is set-aside.

21. The appellant is in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Gautam Chourdiya)

Judge

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