

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 533 of 2011

Raj Kumar @ Chindi S/o. Late Gauriya, aged about 36 years,
Occupation Coolie Kabadi, R/o. Village Birjhapur, Police Station-
Dhamda, District Durg (CG)

---- Appellant

Versus

State of Chhattisgarh Through Police Station Bemetra, District Durg
(CG)

---- Respondent

For the Appellant :- Mr. D.K. Gwalre, Advocate appointed
through Legal Aid Committee.

For the respondent :- Mrs. Fouzia Mirza, Addl. Advocate General,

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgment on Board By Manindra Mohan Shrivastava, J.
15.03.2021

1. This is an appeal pending since 2011. When the case was called on repeatedly during the course of the day, the counsel engaged by the appellant did not appear in the Court nor any representation was made on his behalf. In these circumstances, this Court requested to Mr. D.K. Gwalre, Advocate present in the Court to assist the Court as amicus curiae.
2. One Nemkunwar wife of Santu Ram Nishad (PW-1) is said to have gone towards forest area in the outskirts of the village for grazing cattle. However, her dead body was found at the spot on 31.07.2009.

There were injuries found on the dead body and it was sent for postmortem. Merg intimation was also taken on record at the instance of the husband (PW-1). The postmortem report revealed that the death was not normal one but it was homicidal in nature as the deceased died due to asphyxia, as a result of strangulation. The needle of suspicion pointed towards the appellant because while making inquiry one of the witnesses Khilawan Nishad (PW-12) informed that the appellant was seen at the spot at around the time when the deceased was seen grazing cattle. The appellant being suspect was taken into custody and his memorandum was recorded in which he is said to have disclosed that he killed the deceased and looted her silver bangle (*aaithi*) and a locket of silver coins which were mortgaged with Parasmanl Jain (PW-3) to borrow loan of Rs. 1500/-. After completion of investigation, which included seizure of various articles, after conducting identification of the accused as well as the article allegedly looted and recovered on the basis of memorandum of the accused, charge sheet was filed and the appellant was tried for the offence punishable under Section 302 and 404 IPC.

3. Learned trial Court convicted the accused/appellant on proof of circumstantial evidence that the appellant was seen at the spot at around the time when the deceased was grazing cattle, an empty liquor bottle was recovered near the dead body on which the finger print of the appellant was found, recovery of looted silver coins from the moneylenders and the identification of the appellant as also the looted articles of the deceased identified by the husband of the deceased.

4. Mr. Gwalre argued that the circumstantial evidence which have been collected and said to be proved before the trial Court are essentially of weak nature and otherwise also they do not constitute a complete chain to warrant interference that in all probability the appellant and the appellant alone must have committed the murder. He would argue that it is not a case where the deceased and the appellant were either found interacting, quarreling or moving together at the given spot. Even according to the prosecution evidence, the deceased was grazing cattle alone and merely because in the nearby area the appellant was also seen, without anything more, would not qualify as incriminating evidence. His next submission is that the finger print of the appellant was found on the empty liquor bottle is also not an incriminating evidence as such because that only proved that the bottle was handled by the appellant but nobody has seen him consuming liquor at an around the place where the dead body was found. His next argument is that so-called recovery of silver coins being part of the silver locket would not constitute incriminating circumstance because the merg intimation lodged by the husband of the deceased did not say that his wife, before death, was wearing silver ornaments, which were found stolen. His further submission is that the identification of silver ornaments by the husband are not clinching in nature because such silver ornament are easy available in the market and from his evidence, it is clear that without any specific indication as to on what basis, he identified the articles of the deceased before the City Magistrate. The accused in his examination under Section 313 CrPC, he himself has claimed the ownership stating that the silver ornaments seized from the

moneylander belonged to him. He lastly submits that mere recovery of silver ornament at the most would be a case of some suspicion but there is nothing on record to draw an inference that the deceased was killed by the appellant.

5. On the other hand, learned counsel appearing for the State would submit that though the prosecution case rests only on circumstantial evidence, a complete chain is formed from the prosecution evidence that the appellant was seen at around the place where the dead body was found, on his memorandum looted articles was recovered from the moneylenders who has clearly deposed that on the date of incident itself the appellant had come to mortgage and borrow a loan of Rs. 1500/- which was given to him. Learned State counsel would further submit that presence of finger print on the liquor bottle which was also seized from an open place near the dead body further corroborates the evidence of Khilawan Nishad (PW-12) regarding appellant seen at the spot. Learned counsel for the State would further submit that the appellant having failed to account for valid authority of possession, is an additional link to support the prosecution case. Recording of memorandum statement of accused, recovery of looted articles from Parasmal Jain and from the house of the appellant all are supported by the prosecution witnesses and the husband of the deceased had also identified the silver ornament which were seized by the police, therefore, all the circumstantial evidence taken together formed a complete chain and the conviction does not warrant any interference.
6. The conviction of the appellant rests on circumstantial evidence, therefore, applying the well settled legal position, we are required to

examine whether the circumstantial evidence, taken into together, formed a complete chain to draw an inference that in all probability the appellant and the appellant alone must have committed the murder of the deceased.

7. One of the circumstantial evidence led by the prosecution is that the appellant was seen engaged in certain activities around the place where the deceased was grazing cattle. From the evidence of Khilawan Nishad (PW-12) in which he has stated that while he was coming from his field, he saw the appellant was sitting under a tree rubbing tobacco paste. He has stated that he has seen a cow and lady named Bedkunawar and thereafter he came back. He has further stated that when the lady who was grazing cattle did not come back then Santuram (PW-1) the husband of the deceased had gone for search and then it was revealed that she was found dead between *gasti* tree and the cremation ground. The witness stated that the appellant was rubbing tobacco under the *gasti* tree and identified the appellant in the Court.
8. Though an argument has been raised that the evidence of this witness creates doubt whether he had seen this very person or any other person with similar appearance, the argument cannot be accepted because this witness had identified the accused in the Court and secondly the evidence of Ashok Tiwari (PW-6) City Magistrate, proved that soon after the incident this particular witness had identified the appellant as the person who was seen near the spot.

Further the evidence of the prosecution witnesses with regard to recovery of an empty liquor bottle at a place nearby the dead

body was found to have contained the finger print of the appellant. This evidence of the prosecution witness has remained uncontrovered, therefore, this also fully corroborates the evidence of Ashok Tiwari (PW-6) regarding the appellant having been seen at around the spot when the deceased was grazing cattle.

9. The other clinching circumstantial evidence of the prosecution is that the incident being that of 31.07.2009, upon disclosure given by the appellant in his memorandum statement, silver ornaments recovered from Parasmal Jain (PW-3) the moneylender, this witness has clearly stated that on 31.07.2009 the appellant himself had come to mortgage fourteen pieces of silver coins and borrow loan of Rs. 1500/- from him. The recovery of fourteen pieces of silver coins which is used in the silver locket was recovered on the memorandum of the appellant. Parasmal Jain (PW-3), the witness of memorandum and seizure has fully supported the case of the prosecution that on the date of incident the appellant himself had come to Parasmal Jain to mortgage silver coins. Further more, silver bangle are seized from the house of the appellant.
10. Mr. Gwalre argued that the recovery is inconsequential and do not constitute clinching circumstantial evidence merely because coincidently on the same day where the death has taken place, the appellant is said to have mortgaged certain silver ornaments because the identification of these ornaments by Santu Ram Nishad (PW-1) husband of the deceased is without any specific indication as to on what basis, he identified the articles of the deceased. Secondly his submission is that when merg intimation (Ex.P-19) was lodged by

the husband he did not make specific allegation of there being any loot but only later on, the prosecution built up a case of its own.

11. The evidence led by the prosecution assumes importance in view of nature of incriminating evidence for three reasons. Firstly, the recovery of silver coins is made from Parasmal Jain (PW-3) on the basis of the memorandum of the appellant. Secondly, the evidence of PW-3 proved that on the date of incident appellant himself had contacted the moneylender and mortgaged the silver coins. This cannot be mere coincidence. Thirdly, the ornaments have been duly identified by the husband. True, it is that the husband has not been able to show any specific mark, but as he has stated that this belonged to his wife since long, identification of the silver coins by him cannot be said to be doubtful that the identification would not carry any incriminating value.
12. The evidence of the appellant seen at the spot on the day when the deceased died homicidal death, appellant's finger print found on the empty liquor bottle recovered a place near the spot, mortgaging of silver ornament on that very day and the test identification by the husband (PW-1), all formed a complete chain to draw an inference that in all probability the appellant and the appellant must have alone committed murder of the deceased. In various communications which has been made by the SHO to the Doctor as also in the application for postmortem, it has clearly come that the deceased was looted also. The husband has also stated in his evidence that his wife was wearing various articles on her body. Therefore, considering the totality of the aforesaid circumstantial evidence, the finding recorded by the trial Court that the

circumstantial evidence point towards the guilt of the appellant need not be interfered with. The appeal is therefore, dismissed.

13. We record our appreciation for the valuable assistance rendered by Mr. Gwalre, in the absence of the counsel for the appellant. Accordingly, this appeal is dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge