

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.538 of 2010**

Adhar Singh S/o Phool Singh Shyam, aged about 25 years, R/o Village
Barvasan, Police Station Gaurela, Bilaspur (CG) -----Appellant

Versus

State Of Chhattisgarh, Through Police Station Gaurela, District Bilaspur
(CG) -----Respondent

For Appellant	:	Mr. Rakesh Pandey, Advocate
For State	:	Mr. Lalit Jangde, Dy. G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board by Manindra Mohan Shrivastava, J.

03/03/2021

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 30.07.2010 passed by Learned Additional Sessions Judge (FTC) Pendra Road, District Bilaspur (CG) in Sessions Trial No.44/2009, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Life imprisonment with fine of Rs.100/- and in default of fine further R.I. for 1 month.
Under Section 201 of IPC	RI for 7 years with fine of Rs.100/- and in default of fine further RI for 1 month. Both the sentence to run concurrently.

2. The prosecution story, as unfolded from the impugned judgment and records of the case, is that on 14.07.2009, Ram Singh lodged a report in the

Police Station that his father Jagat Singh has gone missing since 09.07.2009. Two days thereafter, when attempts were being made to search, a dead body was found in a well and when it was taken out, it is said that dead body was that of Jagat Singh. It was sent for postmortem after preparing inquest and in the postmortem, though the body was fully decomposed and skeletal remaining, the doctor opined that neck bone was found broken and it was possibly be a case of homicidal death. The appellant and two other accused being suspect were taken into custody and it is the case of the prosecution that on memorandum, it was disclosed that the appellant and two accused, because of property dispute, had killed the deceased and his dead body was tied with a rope on a wooden plank and dragged to the well which was about 2 kilometers from the place of incident and it was thrown therein. After registration of FIR, investigation was carried out and charge-sheet was filed against the appellant and two other accused persons. Learned Trial Court framed charges against the appellants for commission of offence under Section 302, 201 of IPC and appellants having abjured guilt, were put to trial. The case of the prosecution rested only on circumstantial evidence. While acquitting other two accused, learned Trial Court held the appellant guilty of commission of offence on the circumstantial evidence of motive, recovery of wooden plank and rope on the memorandum of the appellant.

3. The argument of learned counsel for the appellant is that the conviction is founded on evidence of circumstantial nature which is neither proved nor sufficient to draw inference against the appellant nor that in all probability, the appellant alone must have committed the offence. In order to record a finding of motive, the trial Court has placed reliance upon the evidence of Kalyan Singh (PW2), Sultan (PW3) & Motilal (PW6) which hardly makes out any case of motive much less strong motive for the appellant to kill the deceased. As far as recovery part is concerned, it is argued that mere recovery of wooden plank and rope without anything more, does not connect it with the accusation because the rope and the wooden plank do not contain any blood stains or any other incriminating circumstance that such recovery and discovery of fact would be relevant to draw inference of guilt in support of his submission, learned counsel for the appellant has relied upon the judgment of the Supreme Court in the case of **Musheer Khan @ Badshah Khan & Anr Vs. State Of Madhya Pradesh, 2010 (2) SCC 748.**

4. Per contra, learned State counsel, supporting the judgment of conviction and sentence argued that though there are no eyewitnesses, the circumstantial evidence of motive and recovery form a complete chain. He would submit that

there is evidence to the effect that in respect of property which belong to one Ganesh, the appellant's father Ful Singh was interested in purchasing and as deceased Jagat Singh was coming in the way, he was eliminated. He would further submit that recovery of wooden plank from an open place and recovery of a rope from the house of the appellant taken together, leads to discovery of fact stated in the memorandum and statement of present appellant that after killing the deceased, his body was tied with rope and the wooden plank and dragged few kilometer away and thrown into a well.

5. The circumstantial evidence relied upon by the learned Trial Court to convict the appellant, in our considered opinion, are not sufficient to draw inference of guilt beyond reasonable doubt for reasons which are stated infra.

6. Learned Trial Court has relied upon the evidence of Kalyan Singh (PW2), Sultan (PW3) & Motilal (PW6) to record a finding of motive.

7. Kalyan Singh (PW2) has only stated that once Jagat Lal, Adhar, Durjan Singh got particular piece of land measured which belonged to Ganesh Lal. He then states that in the night he, Durjan, Ghasi Ram and Jagat came together purchased Bidi and left and after few days, wife of Jagat Singh disclosed that Jagat Singh had gone missing. The evidence of this witness read as it is, discloses nothing as far as alleged motive is concerned.

8. The evidence of Sultan (PW3) does not support the case of the prosecution as far as motive part is concerned.

9. Durjan Singh (PW5) states that he was called by Ganesh and informed that Patwari had come for measurement and at that spot, along with him Kalyan Singh, Jagat Singh and other persons had come and many other arrived. At that time, Patwari called appellant Adhar Singh enquiring about his father and why they were cultivating the land to which Adhar Singh disclosed that they are possessed of old documents which is kept with his father and he had to go to Lalpur and thereafter he left the place. In para 2 of his evidence, he has further deposed that deceased Jagat Singh was negotiating with Ganesh for purchase of Badi (open land). Ganesh in para 3 of his evidence states that he had no suspicion on any one. From his evidence, all that can be said is that the land belonging to Ganesh was measured but there is nothing to show that Adhar Singh, the appellant, only on that ground had developed any strong motive so as to go to the extent of killing

Jagat Singh.

10. The evidence of Motilal (PW6) is that at the time when land was measured, Ful Singh had disclosed that Jagat Singh (deceased) got the land demarcated and he will see who will purchase and who has got money. This witness in the cross-examination states that he does not know whether Ful Singh had raised any objection that the Badi (enclosed open land) belongs to him. He has stated that measurement was being done at the instance of Ganesh. This evidence also gives a very fade picture that Ful Singh probably stated that measurement was got done by Jagat Singh and that it will be seen who has got money and who is able to purchase. There is nothing in the evidence of the witness to show that present appellant, son of Ful Singh had entered into any serious dispute with the deceased Jagat Singh much less holding out any threat to him. The land belonged to Ganesh. Measurement was done at the instance of Ganesh. Ful Singh was interested in purchasing the land from Ganesh. There is nothing on record to show that the deceased was also interested in purchasing the same land and due to that reason, there was some dispute between the Ful Singh, Adhar Singh on one side and deceased Jagat Singh on the other side. The evidence of the aforesaid witnesses hardly constitutes any evidence of motive that because of measurement done, Ful Singh had developed any enmity with the deceased and for that reason, Adhar Singh the appellant planned to murder. If we may say so, this is too far fetched story of the prosecution. Where the prosecution comes out with the circumstantial evidence to prove commission of offence, the motive, as alleged, is not only required to be proved by leading cogent reliable evidence but at the same time, the motive has to be so strong that inference may be drawn that such motive must have driven to the accused to go to the extent of killing.

11. As far as recovery part is concerned, if the motive is not found proved, only on the basis of recovery of wooden plank and rope, which was not found stain with any blood cannot by itself, constitute circumstantial evidence by itself to hold a person guilty of murder. During scrutiny of the evidence of the witnesses as above, we find that on the fateful day, in the evening, the deceased was found in company of many other persons and very next day, he eloped. It is not even a case that the deceased was last seen with the appellant in the night and was seen going along with the appellant. What is said to have been recorded in the memorandum of the appellant is also not coherent but a different story has been brought in the memorandum with regard to the relationship between the deceased and the appellant and his father.

In the case of Musheer Khan @ Badshah Khan (supra), the legal position with regard to evidentiary value of recovery was enunciated as below :

“56. The Privy Counsel in [Pulukori Kotayya vs. King Emperor](#), [AIR 1947 PC 67] held that [Section 27](#) of the Evidence Act is not artistically worded but it provides an exception to the prohibition imposed under the preceding sections. However, the extent of discovery admissible pursuant to the facts deposed by accused depends only to the nature of the facts discovered to which the information precisely relates.

57. The limited nature of the admissibility of the facts discovered pursuant to the statement of the accused under [Section 27](#) can be illustrated by the following example:

Suppose a person accused of murder deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, but as a result of such discovery no inference can be drawn against the accused, if there is no evidence connecting the knife with the crime alleged to have been committed by the accused.”

12. In the result, the conviction is found to be unsustainable in law and therefore set aside. The appeal is accordingly allowed. The appellant be set at liberty forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge