

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1138 of 2014**

- Kanhaiya Yadav S/o Kartikram Yadav Aged About 25 Years R/o Village Dandasagarpara, Semariya, PS Kota, Rev. And Civil Distt. Bilaspur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Kota, Distt. Bilaspur C.G.

---- Respondent

For Appellant	:	Ms. Ranjana Jaiswal, Advocate
For State	:	Shri Jitendra Shukla, Panel Lawyer

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board**06/09/2021****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment of conviction and order of sentence dated 21/09/2010 passed by the First Additional Sessions Judge, Bilaspur, (CG) in Sessions Trial No.82/2010 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Life imprisonment and fine of Rs.500/- (in default of payment of fine, three months additional R.I.)

2. Son of Chaitram Maravi (PW2) had gone missing and later on, Chaitram, while searching for his son, came across the dead body of his son found in an open place. Upon being informed, the police reached the place of occurrence and *dehati nalishi*

was recorded at the spot and was prepared by the police on 06/01/2010 (Ex.P/3) and Naksha Panchayatnama was prepared in the presence of witnesses in Ex.P/5. The dead body was sent for post mortem which was conducted by Dr. Sandeep Dwivedi (PW9) who prepared report in Ex.P/14. wherein, he opined that probable cause of death was injury on vital parts of the body due to excessive bleeding internal and external both. Investigation was carried out and it is said that the appellant being suspect was taken into custody and his memorandum was recorded in Ex.P/9 wherein, he disclosed the murder of the deceased. Further case of the prosecution that at about 15 meters away from the spot, blood stained stone, axe and wooden plank were also found on the memorandum the appellant. Further case of the prosecution is that the police, thereafter, searched the house of the appellant and it is said that blood stained clothes were found from the house. The police also seized blood stained clothes of the deceased and also soil from the spot. Soil recovered from the house of the appellant, blood stained stone and axe were subjected to forensic examination and FSL report confirmed blood stains on the articles but it was not stated whether it was human blood much less group and origin of appellant.

3. The charge sheet was filed. The appellant abjured guilt and put to trial and the circumstances mainly revolved around recovery of axe, stone and clothes of the appellant which were found to be stained with blood. Relying upon the evidence of motive, learned Trial Court held the appellant guilty of commission of offence.

4. Learned counsel appearing for the appellant argued that the entire case of the prosecution except recovery of certain clothes from the house of the appellant, which are said to be stained with blood, there is no evidence whether it was human blood much less group and origin of the appellant and he has been convicted. It is stated that on such recovery alone, there is no evidence to form an opinion of involvement of the appellant particularly when the father and the brother stated that there was quarrel between the deceased and the other person, stone and clothes were

recovered from an open place. The seizure witnesses say that at the time, when the police reached the house of the appellant, the appellant was not present there. But according to the other person, he was made to sit at the police station and there is no motive as to why father and brother of the deceased would lie.

5. On the other hand, learned State counsel supports conviction and order of sentence and submits that from the memorandum of the appellant, it was disclosed that the appellant was suffering from mental illness and he killed the deceased. The appellant threw away the stone and axe nearby the pond and clothes were found to be stained with blood and even if it was not specific, it was human blood. The appellant admitted that the clothes belong to him and contained blood.

6. We have heard learned counsel for the parties and perused the records.

7. The entire case of the appellant revolves around the alleged recovery. There is motive of the appellant shown by the prosecution to kill the deceased. The FSL report proves presence of blood on the clothes of the appellant. The aforesaid circumstantial evidence have been made basis for conviction of the appellant in the alleged commission of offence.

8. We would first look into the evidence to find out whether the motive is reliable or not.

9. Chaitram (PW2), father of the deceased has deposed in his evidence that when he was asked by the police as to whether he suspect anyone, he had said that he was suspecting the appellant. A month before the incident, the appellant and the deceased entered into quarrel. However, in the cross-examination, when the police first came to the village in connection with investigation, he did not disclose about his name or suspected anyone else. In his cross-examination, omission in this regard was elicited by confronting him with case diary statement wherein this fact of quarrel

was not disclosed by him. Importantly, this witness has stated that at that time, the deceased had quarrel with other villagers Ajay, Uday and Saroj. He has admitted that no report of quarrel between the appellant and the deceased was reported in the police station and also admits that he had not seen the incident of quarrel regarding which he made statement but says that he heard about it.

10. Close scrutiny of the evidence of this witness, in so far as motive is concerned, falls short of the requirement of law. At first, in the cross-examination, he admits that when police came to the village, he had not disclosed the incident. Secondly, it appears that there was no serious incident because no report was lodged in the police station that quarrel had taken place. Apparently, that is why in the case diary, there is material omission. Therefore, the evidence of this witness as far as motive is concerned, is not reliable.

11. The other witness with regard to motive, Virendra Kumar, brother of the deceased, gave different story. He has stated in the cross-examination that he suspected the appellant because two days before, the appellant had threatened his sister in jungle and thereafter, two families were not in talking terms. In the cross-examination, he has stated that he had never heard about any quarrel between the appellant and the deceased. He then states that he does not know the dispute between Kanhaiyya and his sister and then, finally it has been elicited that he does not know any dispute between his sister and the appellant. This witness does not support quarrel between the appellant and the deceased, as stated by his father Chaitram Maravi (PW2). According to what has been stated by him in the earlier part of his evidence, the appellant had threatened his sister in the jungle. Even on this statement, this witness has not remained firm and stated that he does not know about this. Curious enough, when the witness is confronted with the case diary statement, that in the case diary, it was not disclosed that quarrel took place between the appellant and the deceased, near the pond, he says he does not know how it has not

been recorded in the case diary statement.

12. It would, thus, be seen that the statement of Virendra Kumar (PW7) is no less doubtful than the evidence of his father, with regard to motive. According to the prosecution, the weapon namely the stone and the axe were seized from an open place within 15 metres distance from the place of incident which is clear from the statement of seizure witness Ramesh Kumar Pendram (PW5) and Ratan Singh (PW6). Ramesh Kumar Pendram (PW5) has stated that when the police asked the appellant to go to the place of incident, then they had gone to the place of incident and recovered a *paata* (a wooden plank) from the spot. He has further deposed that at the instance of the appellant, one stone and *paata* was recovered which was seized as Ex.P/10 and Ex.P/11. It is clear from the case of the prosecution itself that the dead body was already recovered and that place was already known to everybody and the police, therefore, recovery of stone and other articles found nearby in an open place, based on memorandum of the accused, is of no aid to the prosecution as to form part of incriminating circumstances, towards completion of chain.

13. Ratan Singh (PW6), the other witness of seizure has admitted in the cross-examination that from the place of incident, a wooden plank and piece of stone were recovered, as stated by the appellant. He has also admitted that the stone and wooden plank was lying in an open place near culvert. This witness clearly stated that the appellant had not stated anything regarding axe.

14. This evidence of Ramesh Kumar Pendram (PW5) and Ratan Singh (PW6) does not prove that as far as axe, stone and wooden plank are concerned, such articles were recovered from the exclusive possession of the appellant that too, on the memorandum of the appellant. The place of incident was known to every body. The stone, axe and wooden plank, all were found lying in an open place near a pond.

Therefore, seizure witness also does not prove any incriminating circumstance to complete the chain of circumstances.

15. The two witnesses, however, prove that certain clothes were seized from the house of the appellant. In this regard, Ramesh Kumar Pendram (PW5) and Ratan Singh (PW6) both have stated that in the house, appellant's mother was present and certain wearing apparels were seized from the house of the appellant. The two witnesses have clearly stated that when such search was carried out, the accused was not present in the house. One of the witnesses has stated that the accused was kept in the custody in the police station.

16. FSL report in Ex.P/21 proves that the soil recovered from the spot, clothes of the deceased, wooden plank, stone, axe and T-shirt, *gamchha* (stole), were found. Out of these, two articles namely T-shirt and *gamchha* are said to be seized from the house of the appellant, in respect of which, statement has been made Ramesh Kumar Pendram (PW5) and Ratan Singh (PW6). But these articles, even if accepted as seized from the house of the appellant, there is nothing to show that there was human blood, which belonged to the group and origin of that of the deceased. As many as two witnesses namely Chaitram Maravi (PW2) and Ratan Singh (PW6), both have stated in the memorandum that there was a dispute between the deceased on one side and Saroj, Ajay, Uday on the other. Chaitram Maravi (PW2), father of the deceased has stated that on the date of incident, quarrel of his son with the villagers, Ajay, Uday had taken place at about 7 AM at the time of taking bath. This has been stated by Ramesh Kumar Pendram (PW5) wherein, he has stated that at the time of incident, a dispute had taken place between the deceased and Ajay. They were called by the police and query was made.

17. With the aforesaid evidence brought by the prosecution, particularly when there was a quarrel between the deceased with other villagers, in the absence of

there being any clinching evidence of motive, extra judicial confession or last seen or recovery of blood stained axe from the possession of the appellant, it would be unsafe to convict the appellant only on the basis of recovery of clothes, stone etc. without proof that it was human blood much less of the same group and origin of the deceased. In our considered opinion, learned Trial Court convicted the appellant on such a weak circumstantial evidence without forming a complete chain so as to come to a reasonable inference that in all probability, the appellant and the appellant alone must have killed the deceased.

18. The impugned judgment of conviction and sentence cannot be sustained and is set aside. The appellant is acquitted by giving benefit of doubt. The appellant be set at liberty forthwith. The appeal is, accordingly, allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge