

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1402 of 2015

- Ashok Sonwani S/o Padumram Sonwani, Aged About 36 Years
R/o Nawapara, Kumharpara, Ward No. 13, P.S. Gandhinagar,
District Surguja Chhattisgarh. ----- **Appellant (in jail).**

Versus

- State Of Chhattisgarh, through Police Station Gandhinagar,
District Surguja Chhattisgarh. ----- **Respondent.**

For the Appellant :- Mr. Sunil Tripathi, Adv.
For the State :- Mr. Shubham Verma, PL.

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

Order on Board by Manindra Mohan Shrivastava, J.

01.03.2021

This appeal is directed against the judgment of conviction and order of sentence dated 30.09.2015 passed by Fourth Additional Sessions Judge, Ambikapur, District Surguja in Sessions Trial No.104/2014, whereby and whereunder the appellant has been held guilty for the offences as follows:-

Conviction	Sentence
U/s. 302 IPC	Life imprisonment with fine of Rs.300/-, further SI one month in case of default payment of fine.
U/s. 201 IPC	RI for 7 years, with fine of Rs.300/-, further SI for one month in case of default payment of fine. (both sentence to run concurrently)

2. The dead body of one Gharbharan was found in the morning of 19th of June, 2014. After recording *Merg* intimation at the instance of Shivnarayan Sarthi (PW-12), dead body was sent for postmortem and postmortem conducted by the doctor revealed that cause of death was head injury and strangulation and nature of death was

opined as homicidal. The appellant being suspect was taken into custody, memorandum was recorded and investigation was carried out. The investigation collected certain pieces of bricks and stones allegedly seized from the house of the appellant which were said to be stained with blood. Further case of the prosecution is that at the instance of the appellant and his memorandum a shoelace was also seized which is said to be used in strangulating the deceased. An added circumstantial evidence of last seen was also made a basis to file a charge-sheet against the present appellant. On the basis of the material contained in the charge-sheet, learned trial Court framed charges against the appellant. Appellant abjured guilt, demanded a trial. The prosecution examined as many as 13 witnesses and also led evidence of forensic expert in support of the charges. The accused was then examined under Section 313 Cr.P.C. and the appellant denied having committed any offence. No defence witness was examined.

3. Though it was not a case of eye witness, learned trial Court relied upon circumstantial evidence to hold the appellant guilty of commission of offence giving rise to instant appeal.

4. Learned counsel for the appellant argues that the conviction of the appellant is bad in law because the prosecution failed to prove beyond reasonable doubt the circumstantial evidence so as to form a complete to draw an inference that in all probability, the appellant and the appellant alone must have killed the deceased. He would submit that the evidence of last seen, mother of the deceased (PW-2), is not reliable in view of what has been elicited in her cross-

examination. Further it is contended that so called recovery of bricks and stones from the house of the appellant is not supported by independent prosecution witness Suraj Dev (PW-8) and any case, so called seized articles are not found stained with human blood, much less group and origin of that of the deceased. Lastly, it is submitted that the shoelace said to have been recovered from an open courtyard of the house of the appellant itself is highly doubtful because even according to the investigating authority, recovery of bricks and stones had taken place on 19th of June, 2014 but it is only after the postmortem was conducted that a memorandum was prepared on 24.06.2014 and then shoelace is said to have been recovered from the courtyard. It was not taken out from some hidden place by the appellant. Therefore, it is argued, more than one doubtful circumstantial evidence could not be added together to make out a case of conviction beyond reasonable doubt.

5. On the other hand, learned State counsel opposes and submits that the evidence of last seen, recovery of stone and bricks as also shoelace are reliable. He would argue that memorandum has been proved by another witness Shivnarayan (PW-12) and merely because he happened to be the brother of the deceased it could not be brushed aside. Further submission is that, though, the FSL report does not show presence of human blood, presence of any kind of blood required appellant to explain as to how the bricks and stones were blood stained. Thirdly, the shoelace is recovered only from the house of the appellant and the opinion of the doctor is that death could be caused by strangulation using the shoelace as a

rope. He would also submit that one of the prosecution witness Padum Ram (PW-9) who is the father of the appellant though has turned hostile, in his cross-examination by the prosecution, he has admitted that he had given an advice to his son that if he is committed murder he should go to the police station and surrender himself. Therefore, it is clear that the confession was made before him by the accused.

6. We have heard learned counsel for the parties, perused the material available on record and the judgment impugned.

7. The impugned judgment of conviction and order of sentence rests on three circumstantial evidence which are as below:-

- (a) last seen;
- (b) recovery of blood stained stone and bricks from the house of the appellant;
- (c) recovery of shoelace from the house of the appellant.

8. As far as, the evidence of last seen is concerned, though PW-2 – mother of the deceased states that when deceased Gharbharan was coming to take his meals, appellant met him on way and took him to his house and both of them consumed liquor, in Paragraph 3 of the cross-examination she admits that while Gharbharan had come to her house to prepare food, she had seen her and thereafter next day she saw his dead body. Further, she has been controverted with her case diary statement Ex.D-1 and she has stated that in the evening, one Sonu had come to her house but she denies that Gharbharan had gone along with the Sonu. In Paragraph 8 she has denied suggestion that she has not seen appellant calling the

deceased. Thus, from this evidence of last seen, it becomes doubtful whether the appellant was seen with the deceased while the deceased was coming to take meals from the house of his mother.

9. As far as, recovery of stone and bricks are concerned, it loses significance because in the FSL report it only talks of blood and not even human blood much less that of the group and origin of that of the deceased. When the prosecution comes out with circumstantial evidence, the circumstantial evidence must be clinching in nature and should be able to cross through the hurdle of suspicion. Further we find that the independent witness Suraj Dev (PW-8) does not support seizure of such articles from the house of the appellant.

10. Third circumstantial evidence with regard to recovery of shoelace from the house of the appellant is still more doubtful for the reason that though, according to police, the bricks and stones were recovered from the house of the appellant on 19th June itself, a memorandum of the appellant is said to have been recorded five days after the incident i.e. on 24.06.2014 and on that basis, the shoelace is said to be recovered from the same place where from the bricks and stones were recovered five days before. Recording of memorandum and seizure of shoelace is not supported by independent witness PW-8 and the prosecution case rests on the evidence of PW-12 – the brother of the deceased to support recording of memorandum and seizure.

11. The submission of learned State counsel that the father of the appellant has admitted that he had given a suggestion to his son that if he has murdered, he should surrender in the police station does

not amount to an evidence of extra judicial confession. This, at the most, would mean that the father had an impression. In his evidence Padum Ram (PW-9) has emphatically denied that any such extra judicial confession was made before him by his son.

12. Thus, all the circumstantial evidence led before the trial Court, viewed one by one do not inspire confidence. Doubtful circumstantial evidence taken together would not result in proving a case beyond doubt. In order to form a complete chain of circumstances to warrant conviction, each circumstantial evidence which is used to form chain, must be prove beyond doubt.

13. Therefore, in our opinion, the appellant is entitled to be acquitted by giving benefit of doubt.

In the result, the appeal is **allowed**. The conviction of the appellant is set side and he be acquitted set at liberty forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay