AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 578 of 2012

Kartik Ram Devangan, Aged about 38 years, S/o Paltan Devangan , R/o Ward No. 11, Singhouri, Bemetara, P.S. Bemetara, Distt. Durg C.G.

---- Appellant

Versus

State Of Chhattisgarh Through - District Magistrate , Durg , Distt. Durg C.G.

---- Respondent

For appellant - Shri N. Naha Roy, Advocate.
For Respondent/State –Shri Ashish Shukla, G.A.

Web Copy
High Court of Chhattisgarh
Not Official

Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Sanjay Agrawal
Judgement

9/12/2017

Per Goutam Bhaduri, J.

Heard.

1. Instant appeal is against the judgement of conviction dated 24/02/2012 passed in Sessions Case No.67/2011 by the Additional Sessions Judge, Bemetara, Distt: Durg (C.G.) whereby the appellant has been convicted under Section 302 of IPC and has been sentenced to rigorous imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine, to undergo RI for 2 months.

2. Case of the prosecution, in brief, is that name of the deceased was Ripesh Kumar Dewangan. He was nephew of the present appellant. Deceased was residing alongwith his father Hiralal Dewangan, the complainant PW-1 and mother Smt. Jam Bai Dewangan PW-2. Along with them the present appellant, who was uncle of the deceased used to reside. It is case of the prosecution that all the aforesaid persons were

living together in their ancestral house at Ward No.11, Singhouri, Bemetara. The appellant was addicted to the liquor and used to consume frequently as such it was objected by the deceased Ripesh Kumar Dewangan. Consequently, for such objection, frequent quarrel used to take place in between them. In a result, being enraged, always threat was being extended by the appellant that he would commit murder of Ripesh Kumar Dewangan. The deceased and the family members were carrying on a grocery shop in the same premises where they used to reside. On 25/09/2011 Ripesh Kumar was sleeping alone in the shop, doors were open and in the adjacent room appellant Kartik Ram Dewangan was sleeping. The father of deceased namely Hiralal Dewangan and Jam Bai were sleeping in another room. In the morning at 6' O clock when Jam Bai mother of the deceased was sweeping/cleaning the premises and during such time when she went to the shop, she saw that Ripesh is lying dead in the pool of blood and injuries were inflicted on his head and abdomen. Primarily it appeared that injuries were inflicted by way of hammer. At that time, the appellant who was also inmate of the same house was missing. Having seen the incident, persons in the neighbourhood were called and initially doubt was created over the present appellant. Consequently, the merg intimation Ex.P-1 was registered on the same day followed by FIR Ex.P-4. Subsequently, police after reaching the spot prepared Naksha Panchayatnama Ex.P-3 and the body was sent for postmortem. In the meanwhile, preparation of the map of the site was also made by Ex.P-5. On the basis of the doubt, present appellant Kartik Ram Dewangan was taken into custody and thereafter his memorandum was recorded by Ex.P-9. When subjected to interrogation, the appellant revealed that since deceased was objecting to consuming of liquor by the appellant, as such he has committed murder of Ripesh Kumar by way of hammer and hammer was concealed in the varandah. The memorandum was recorded

Web Copy
High Court of Chhattisgarh
Not Official

by Ex.P-9 and consequent to it recovery was made by Ex.P-10. Thereafter, other recoveries were made from the spot and on the basis of investigation, statement of the witnesses charge sheet was filed under Section 302 IPC. After seizure of the articles, articles were sent to the FSL by Ex.P-19 and FSL report was received and was filed before the court alongwith the charge sheet under Section 302 IPC.

3. During the course of trial, appellant abjured his guilt and claimed to be tried and denied the entire allegation on him. The prosecution on their behalf had primarily relied on the statement of Hiralal Dewangan father of the deceased as PW-1, mother of the deceased Jam Bai as PW-2, memorandum and seizure witnesses Mahesh Sahu PW-6 and Kumar Verma PW-7. Apart from it few of the neighbours were also examined, apart from it to prove the nature of crime that it was homicidal in nature the witness Dr. Pawan Kumar PW-12 was examined who conducted the postmortem.

Web Copy
High Court of Chhattisgarh
Not Official

4. Learned court below after evaluating the entire evidence convicted the accused/appellant as aforesaid. Hence this appeal.

5. Learned counsel for the appellant would submit that entire case is based on circumstantial evidence. He submits that though murder is alleged to have been committed by way of hammer but the recovery itself is in doubt as the witness to the recovery PW-6 and PW-7 have not categorically established the fact that recovery was made at the instance of the appellant. He further submits that though the hammer and clothes were sent for FSL but the nature of blood which was in it has not been proved by the prosecution which should have been proved. It is stated though the FSL report had advised for match of the blood group but same was not done or was withheld by the prosecution. He further submits that motive as has been projected by

the prosecution was very weak type of evidence which cannot be wholly relied upon for conviction. Consequently, the conviction based on circumstantial evidence cannot be sustained and prayed that accordingly the same may be set aside.

6. Per contra, learned State counsel opposes the argument and submits that order passed by the court below is well merited which do not call for any interference.

7. Perused the documents and statement of the witnesses. The relationship inter-se between the deceased and the appellant is not in dispute that the appellant accused is the uncle of the deceased. Deceased died on 25/09/2011 is also been established by the prosecution which would be evident from the statement of doctor Pawan Kumar PW-12 who conducted postmortem. According to the postmortem report Ex.P-14 death was caused because of the head injury, as left parietal and frontal bone of the head were totally broken and brain was congested and the head was crushed. According to the doctor death was because of the injury to the head and fracture of the bone of the skull and excessive internal bleeding leading to shock which was homicidal in nature.

Web Copy
High Court of Chhattisgarh
Not Official

8. There is no eye witness to the incident. Prosecution case is based on circumstantial evidence. Circumstances which were enumerated by the trial court were as under:-

1. On the date of incident the appellant was sleeping adjacent to the room in the shop were deceased was sleeping.

2. In the morning he was absconding.

3. Dispute was existing in between the deceased and the appellant since deceased used to object consuming of liquor by the appellant for which frequent dispute used to take place and the appellant has extended threat to kill the deceased forthwith.

4. On the basis of memorandum one hammer which was used as weapon to commit offence was seized at the instance of the appellant from his house.

5. Blood stained shirt and pant which the appellant was wearing at the time of incident was seized by the police.

6. In the FSL report presence of blood was reported in the hammer and clothes which the deceased was wearing.

9. In the case of **State of Himachal Pradesh Vs. Raj Kumar** reported in **(2014) 14 SCC 39** court reiterated the law laid down in case of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116** wherein five principles as regards the proof of a case based on circumstantial evidence was reiterated which are as under:-

Web Copy
High Court of Chhattisgarh
Not Official

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis exept the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

10. If we turn to the instant facts of this case, it shows that there is no eye witness to the occurrence and the entire case is based upon circumstantial evidence. The normal principle is that in a case based on

circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

11. With respect to the evidence of memorandum and recovery the witness i.e. the memorandum witness PW-6 Mahesh Sahu has stated that after hearing the fact that someone had killed Ripesh he went to their house and saw that dead body was lying in pool of blood and father of the deceased Hiralal PW-1 told him that present appellant has killed his son Ripesh. At that time, one hammer was kept out side the room of the present appellant Kartik which was having blood and Kartik was not present there. Subsequently, he surrendered before the police. He stated that memorandum statement of appellant was obtained before him. Memorandum is proved as Ex.P-9. Memorandum would reveal that it was recorded at about 9.45 am on 25/09/2011. PW-6 Mahesh Sahu stated that before him while memorandum was obtained by the police, accused has stated that he has killed the deceased by way of a hammer since deceased was objecting to consuming of liquor by him and he has kept the hammer in his house. Thereafter, hammer was seized by Ex.P-10 which is seizure memo of hammer from the courtyard at the instance of the accused. In the cross-examination he stated that he reached to the Police Station at about 11 am and stayed there for about 15 minutes and admitted the fact that he had not went to the spot alongwith the accused and entire proceeding had already been conducted by the police before he reached to the Police Station. Therefore, perusal of the statement of PW-6 would show that at one time he has stated that he had not went to the place of incident alongwith the appellant whereas Ex.P-10 recovery of the hammer would show that it was seized on 25/09/2011 at about 10 am from the courtyard of the appellant where incident happened. Therefore,

Web Copy
High Court of Chhattisgarh
Not Official

the fact of seizure itself has been put to doubt. In the examination-in-chief witness further stated that when he went to the house he saw that hammer was already kept there out side the room of accused, therefore serious ambiguity exist as to the place and the time of recovery of the hammer which was alleged to be used in the offence.

12. Statement of PW-7 Kumar Verma another witness to the memorandum and the seizure would show that police has not enquired about anything from the appellant before him but it was disclosed by the police that the appellant himself has admitted that he has committed murder. He has further submitted that police had disclosed that the appellant told them that hammer which was used in committing offence was kept at the back of the door. However, memorandum Ex.P-9 and seizure Ex.P-10 which contains signature of Kumar Verma speaks otherwise that the memorandum was made at 9.45 and the seizure of the hammer was made at 10' O clock. Thereby this witness PW-7 would show that he has not supported the case of the prosecution.

Web Copy
High Court of Chhattisgarh
Not Official

13. With regard to Section 27 of the Evidence Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

14. As has been held in case of **Mani v. State of T.N**. reported in **(2009) 17 SCC 273** which is been reiterated in case of **Sangili alias Sanganathan Vs. State of Tamil Nadu Representated by Inspector of Police** reported in **(2014) 10 SCC 264** the discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a

serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. The judgement further reiterate the view of **Manthuri Laxmi Narsaiah v. State of A.P.** reported in **(2011) 14 SCC 117** wherein it was held as under:-

> "It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

Web Copy
High Court of Chhattisgarh
Not Official

15. In the instant case, the statement of the witnesses would show that prosecution has failed to prove the recovery, only circumstances which exist about motive and the presence of the blood in the hammer and the clothes of the accused. FSL report which is on record dated 31/01/2012 though is stated that hammer which was marked as article-I and one shirt of the accused which is marked as article-E was having blood but no serological report is on record to show that blood belong to the deceased. FSL report shows that full shirt, pant, under wear and the other garments of the deceased were seized and the report further shows that in order to arrive at a conclusion that whether similar blood group is present, same was sent to serum scientist but nothing is on record to show that any report was subsequently obtained and was placed to show that blood group of the deceased and blood which was found in the hammer and the shirt of the accused were same.

16. Now only circumstances remains that the appellant was absconding after the incident and motive as has been stated that the deceased used to object to the consuming of liquor by the accused.

17. It is settled proposition that often motive is indicated to heighten probability of offence, that accused was impelled by that motive to commit

the offence. Proof of motive only adds to weight and value of evidence adduced by prosecution. If prosecution is able to prove its case on motive, it will be a corroborative piece of evidence. Therefore, apart from the motive other circumstances should have been established as has been stated herein above to establish complete chain of circumstances against the accused. The very fact that only motive is attributed that deceased used to object consuming of liquor by the accused do not appear to have been established fully by the statement of PW-1 and PW-2 father and mother of the deceased. Only fact that the appellant was absent after the incident also cannot be held to be sole criteria in absence of the fact when the seizure itself has not been proved beyond reasonable doubt.

Web Copy
High Court of Chhattisgarh
Not Official

18. Recently as has been held by the Supreme Court in case of **Vijay Shankar Vs. State of Haryana** reported in **(2015) 12 SCC 644** when the chain of circumstances of the circumstantial evidence are absent and it is proved within all human probability the crime was committed and is incapable of explanation of any hypothesis other than that of the guilt of the accused, conviction cannot be sustained.

19. In view of the aforesaid discussion herein above, we are of the considered opinion that judgement of conviction passed by the court below cannot be sustained. In the result, appeal is allowed and judgement of conviction dated 24/02/2012 passed in Sessions Case No.67/2011 by the Additional Sessions Judge, Bemetara, Distt: Durg is set aside. The appellant is acquitted of the charges. The appellant is in jail. He be released forthwith if not required in any other case.

Sd/- Sd/-

(Goutam Bhaduri) (Sanjay Agrawal)

JUDGE JUDGE

gouri

Web Copy
High Court of Chhattisgarh
Not Official