AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 441 of 2004

Ram Adhin @ Ramdin @ Charaka

---- Petitioner

Versus

State Of Chhattisgarh

---- Respondent

For Petitioner Shri Vishnu Koshta, Advocate

For Respondent/State Shri Majid Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Judgment On Board

03/01/2017

Prashant Kumar Mishra, J.

1. The appellant has preferred this appeal against his conviction by the trial Court under Sections 302 and 201 of the Indian Penal Code ('the IPC' in short) and sentence of life imprisonment and five years R.I., respectively for committing the murder of Shyamkaran (since deceased).

2. According to the prosecution, the deceased was working as Fire Watcher in the Forest Department. On 09.09.2003 the villagers

were celebrating *Karma* Festival, therefore, the deceased, like other villagers, had gone to meet the fellow villagers, but he did not return his house. He could not be traced on 10.09.2003 also. The first informant Jagdish Prasad was informed by one Surendra that he has seen a dead body in the knee deep water of a nearby dam. Jagdish went towards the dam along with Shyamdhar Yadav, Krishna Kumar & Satyanarayan to witness that it was the dead body of Shayamkaran. It is also mentioned in the FIR (Ex-P/16) that the wrist watch of the deceased was misplaced about 8 months back, which was found in possession of appellant's wife. On 06.09.2003 one Urmila had brought back the wrist watch and handed over the same to the wife of the deceased. Due to this incident, the appellant was suspecting on his wife that she has illicit relation with the deceased. He had also raised quarrel with his wife and due to this reason the deceased has been killed by Ramdin, Nandu, Badshah, Gorelal & Ramsharan.

3. In course of investigation, memorandum statement of the appellant was recorded vide Ex-P/4 on 12.09.2003, pursuant to which knife was recovered from the thatched ceiling of the appellant's house vide Ex-P/5; towel belonging to the deceased was recovered from the indicated place vide Ex-P/6 and the

baniyan belonging to the appellant was recovered vide Ex-P/7.

4. During postmortem the deceased was found to have sustained four stab wounds, one each below both the eyes; one on left cheek just latero inferior to left eye; and one below the left mandible just lateral to chin. In addition neck was swollen with multiple abrasion all over the body and the deceased was found to have sustained fracture of thyroid bone. The postmortem report (Ex-P/9) concluded that the deceased died on account of asphyxia due to throttling, strangulation and cardio respiratory arrest. Death was homicidal in nature.

5. After recording the case diary statements of the witnesses, charge sheet was filed against the appellant and co-accused Nand Kumar @ Nandu @ Nandlal, however, at the end of trial the co-accused Nand Kumar has been acquitted for lack of evidence against him. The trial Judge convicted the appellant on the basis of his memorandum statement and consequent seizure coupled with the FSL report finding blood stains over the knife, towel & baniyan recovered at the instance of the appellant.

6. Assailing the appellant's conviction, Shri Vishnu Koshtha, learned counsel appearing for the appellant, would submit that the sole

evidence of memorandum statement and seizure is not sufficient to convict the accused unless the chain of circumstantial evidence is so complete that it eliminates all other hypothesis of innocence of the appellant. He would place reliance on **Vijay Thakur v. State of Himachal Pradesh**[1], **State of Haryana v. Ram Singh**[2], **Mani v. State of Tamil Nadu**[3], **Govindaraju alias Govinda v. State by Sriramapuram P.S. & Anr.**[4], **State of U.P. v. Arun Kumar Gupta**[5] and **Khilawan Kumar v. State of C.G.**[6].

7. Per contra, Shri Majid Ali, learned counsel appearing for the State, would submit that the evidence of memorandum statement and seizure is fully corroborated by the positive FSL report, therefore, coupled with the motive attributed to the appellant, the chain of circumstantial evidence is complete and the conviction of the appellant is well founded.

8. Before proceeding to marshal the evidence adduced by the prosecution, it would be apt to remind the principle on which the prosecution can succeed in a case based on circumstantial evidence. In **Sharad Birdhichand Sarda v. State of Maharashtra**[7] the Supreme Court has underlined the conditions,

1 2014 AIR SCW 5625
2 AIR 2002 SC 620
3 AIR 2008 SC 1021
4 AIR 2012 SC 1292
5 AIR 2003 SC 801
6 2009 (3) CGLJ 14 (DB)
7 AIR 1984 SC 1622

which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under :

> "152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:
>
> 'certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and must be' is long and divides vague conjectures from sure conclusions.'
>
> (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 except 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."

9. In **Sujit Biswas v. State of Assam**[8], the Supreme Court has held that suspicion, however, strong cannot take place of proof. Para 6 is quoted below :

"6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that `may be' proved, and something that `will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between `may be' and `must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between `may be' true and `must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive

8 AIR 2013 SC 3817

> appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State through CBI v. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)".

10. Yet again in **Kanhaiya Lal v. State of Rajasthan**[9] (supra), the Supreme Court has held thus in para 15 :

> 15. The theory of last seen--the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan.

11. We shall now consider the evidence on the touchstone of the above principle to find out as to whether the prosecution has established the case against the appellant.

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9 (2014) 4 SCC 715

12. It is the case of the prosecution that the watch belonging to the deceased was misplaced about 8 months back, which was later on found in possession of the wife of the appellant, therefore, the appellant was having suspicion that the deceased is having illicit relation with his wife. This doubt nurtured by the appellant over his wife is not supported with any evidence in the statement of prosecution witnesses. Nobody has ever seen the deceased in the company of the appellant's wife nor it is the case of the prosecution that the appellant found his wife in the company of the deceased, much less in any unpleasant or compromising possession. The evidence of motive is not available against the appellant in the entire prosecution case. Mere doubt raised by the appellant over the character of his wife without ever seeing both of them in the company of each other would not be such strong motive for committing the murder of the deceased.

13. PW-3 Ramesh Kumar and PW-13 Shyamdhar have proved the memorandum statement and consequent seizure of knife, towel & baniyan. There is nothing in the statement of these two witnesses, which would discredit them to hold that the evidence of memorandum statement and seizure is shaky. However, the fact remains that in a case where the prosecution has failed to prove

motive of the appellant in commission of crime, some more cogent and reliable corroborative evidence is required to complete the chain. The conviction for committing the murder cannot be based solely on the strength of recovery of some articles at the instance of the accused.

14. In **Vijay Thakur v. State of Himachal Pradesh**[10], the Supreme Court held thus in paras 13 to 16 :

> 13. It is to be emphasized at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against these two appellants. It is a case of blind murder. There are no eye-witnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. Insofar as these two appellants are concerned, there is no circumstance attributed except that they were with Rajinder Thakur till Sainj and the alleged disclosure leading to recoveries, which appears to be doubtful. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.
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> 14. In Mani v. State of Tamil Nadu, (2008) 1 SCR 228 : (AIR 2008 SC 1021 : 2008 AIR SCW 576), this Court made following pertinent observation on this very aspect:

10 2014 AIR SCW 5625

> "21. 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...."

15. There is a reiteration of the same sentiment in Manthuri Laxmi Narsaiah v. State of Andhra Pradesh, (2011) 14 SCC 117 : (AIR 2011 SC (Supp) 73 : 2012 AIR SCW 2234) in the following manner: (Para 2 (c) of AIR, AIR SCW)

> "6. 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".

16. Likewise, in Mustkeem alias Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724 : (AIR 2011 SC 2769 : 2011 AIR SCW 4410), this Court observed as under:

> "24. In a most celebrated case of this Court, Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, in para 153 (AIR 1984 SC 1622), some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185)

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;

(ii) 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;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) 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".

25. With regard to Section 27 of the 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".
>
> It is settled position of law that suspicion, however strong, cannot take the character of proof.

15. In the case at hand also, except for the evidence of memorandum statement and consequent seizure of articles, there is no other circumstance proved by the prosecution against the appellant to complete the chain of circumstantial evidence, which is so intricately connected to each other that it only points towards his involvement.

16. On careful examination of the evidence, we are not satisfied that the prosecution has proved the case against the appellant on the basis of circumstantial evidence.

17. In view of the above, we are unable to sustain the judgment of conviction and order of sentence imposed by the trial Court upon the appellant.

18. As a sequel, the appeal is allowed. Conviction and sentence imposed on the appellant under Sections 302 & 201 of the IPC are hereby set aside and he is acquitted of the said charges. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a

period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Anil Kumar Shukla

Gowri