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समक्ष श्रीमान माननीय उच्च न्यायालय जबलपुर म. प्र.

C-14 448/97

बिमोहा आ. धनाजी धोबी उम्र 25 वर्ष
निवासी गोदुलमुंडा, ब्रू बेलोटा, थाना डौंडी
जिला दुर्ग म. प्र.

----- अपीलाधी,

विरुद्ध

म. प्र. शासन द्वारा थाना डौंडी
जिला दुर्ग म. प्र.

----- उत्तरवादी,

जेल अपील अंतर्गत धारा 383 दण्ड प्रक्रिया
संहिता ।

जेल अपील विरुद्ध निर्णय दिनांक 5-12-96

जो श्रीमान टी. के. झा, द्वितीय अपर सत्र

न्यायाधीश दुर्ग द्वारा सत्र प्रकरण क्रमांक

392/95 में पारित किया गया है ।

आदेश पत्रक

सामला क्रमांक

A. No. 448/92

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><u>DIVISION BENCH: -</u> <u>HON'BLE MR. L.C. BHADOO AND</u> <u>HON'BLE MR. V.K. SHRIVASTAVA, JJ.</u></p> <p><u>23-12-2005</u></p> <p>Shri Ratindra Mishra, counsel for the appellant.</p> <p>Shri U.N.S. Deo, Additional Public Prosecutor, for the State/respondent.</p> <p>Oral judgment.</p> <p>By this appeal, the accused/appellant has questioned the legality of the judgment of conviction and sentence dated 5-12-96 passed by the 2nd Additional Sessions Judge, Durg, in S.T. No.392/95 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Sections 302 and 201 of the I.P.C., sentenced him to undergo imprisonment for life and to undergo R.I. for 3 years respectively. It was further directed that both the sentences shall run concurrently.</p> <p>The case of the prosecution, in brief, is that on 24-4-95 PW-1 Chhattar Singh lodged report (Ex.-P/1) in the Police Station Dondi at 12 noon to the effect that today in the morning his son Ankalu Ram came in the forest and informed him that beheaded body of Dhanaji is lying in the kitchen garden. On hearing this, he came and saw that the body of Dhanaji was lying on the ground in the kitchen garden. It appears that the head has been chopped by sharp edged weapon. There is sign that the head has been chopped by a weapon like spade. There is small towel around the waist and one small towel on the shoulder. The efforts were made to trace out the head but the same could not be traced. It appears that Dhanaji has been murdered</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>by inflicting injury with the spade like weapon by chopping the head. The merg intimation Ex.-P/2 was recorded. After registering the case for commission of the offence under Section 302 of the I.P.C., S.H.O. P.S. S.P. Karosiya left for the scene of occurrence and he saw that the beheaded body of Dhanaji was lying in the Kothar. He gave notice (Ex.-P/21) to the Panchas, the body was inspected in the presence of Panchas, thereafter, prepared Panchanama (Ex.-P/5). The dead body was sent for postmortem examination under Ex.-P/17-A and it was sent to the Government Hospital, Chikhalakasa. The blood stained soil and plain soil were taken into possession under Ex.-P/22. During the investigation, it was found that there were signs of drops of blood from the place of occurrence up to the river. Panchanama (Ex.-P/23) to that effect was prepared on 26-4-95 in the presence of Prahlad and Pusru. The investigation was conducted from the accused on which he gave a memorandum Ex.-P/12 and he informed that he has kept axe, weapon of offence, on the Patao of his house. The accused took him to the place where he threw the head of the deceased but the head was not found at that place. One Lungi stained with blood was found and some stones stained with blood were also found there. They were taken into possession under Ex.-P/8. The stones were taken into possession under Ex.- P/9 and the axe was recovered at the instance of the accused under Ex.- P/13. The clothes of the accused were taken into possession under Ex.-P/10. The place where the accused is said to have thrown the head, Panchanama of that place (Ex.-P/11) was prepared. The recovered articles were sent to the Forensic Science Laboratory, Raipur under Ex.-P/26 and to the F.S.L., Sagar under Ex.-P/27. The report Ex.-P/30 was received from Raipur and Ex.-P/31 was received from Sagar. After completion of the investigation,</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Balod who in turn committed the case to the Sessions Judge, Durg from where learned 2nd Additional Sessions Judge received the case on transfer for trial.</p> <p>The prosecution in order to establish the charge against the accused/appellant examined 12 witnesses. On the other hand, the statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material evidence appearing against him and in the last he has stated that he is innocent and has been falsely implicated in the crime.</p> <p>We have heard learned counsel for the parties.</p> <p>Having heard learned counsel for the parties, we have perused the evidence and judgment of the trial Court. The whole case of the prosecution rests on the circumstantial evidence as there is no direct or ocular evidence in this case. In order to rest conviction based on the circumstantial evidence as per the settled principles of law laid down by the Hon'ble Apex Court in the matter of NESAR AHMED VS. STATE OF BIHAR reported in AIR 2001 Supreme Court 2416 in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.</p> <p>The trial Court in para-33 of its judgment based on the following circumstantial evidence convicted and sentenced the accused;</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>(1) The accused gave a memorandum to the police about the place where the head of Dhanaji was thrown but at that place the head was not found. The blood was found on the leaves of 'Goodmel' tree and the stones.</p> <p>(2) The accused gave a memorandum that by rubbing the axe on the stones he removed the blood of the axe and blood was found on the stone.</p> <p>(3) Blood was found on the Baniyan and sleeper of the accused.</p> <p>(4) Based on the memorandum given by the accused the axe, weapon of offence, stained with blood was recovered.</p> <p>(5) No plausible explanation was given by the accused that how the blood was found on the Baniyan, sleeper and axe.</p> <p>(6) The body was found in the kitchen garden of Dhanaji which was in possession of the accused.</p> <p>(7) When the villagers collected at the place of occurrence, the accused was in the house, but he had not made any effort to lodge the report and he had not shown any anxiety about the death of his father.</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>(8) There is no sign that the offence has been committed by anybody else.</p> <p>As far as point No.1 that the accused gave information regarding the place where he had thrown the head, blood was found on the leaves of 'Goodmel' tree and on the stone which were lying at that place is concerned, it is admitted position that memorandum (Ex.-P/12) was given by the accused regarding the place where he thrown the head but in pursuance of that the head could not be recovered from that place. As far as the question that blood was found on the leaves of 'Goodmel' tree and on the stone which were lying at that place is concerned, in this connection, the report of the F.S.L. (Ex.-P/30) is not to the effect that the blood was human blood, and that too was of the blood group of the deceased. Therefore, based on this circumstance the prosecution has not been able to connect the accused with the crime.</p> <p>As far as 2nd circumstance that the accused removed the blood of the axe by rubbing the same on the stone and blood was found on the stone is concerned, in the report of the F.S.L. (Ex.-P/30) it is mentioned that blood was found on the stone but there is no report that blood was human blood of the blood group of the deceased.</p> <p>As far as 3rd circumstance that blood was found on the Baniyan and sleeper which were taken into possession from the accused, sent to the F.S.L. and were marked as 'H' and 'I' is concerned, in respect of these articles also, report of the F.S.L. is similar that blood was found on these articles, but, there is no report that blood was human blood of the blood group of the deceased.</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>As far as 4th circumstance that the axe was recovered at the instance of the accused from Patao is concerned, as there is no report of the Serologist that the blood which was found on the axe was of the human blood of the blood group of the deceased. Such axe is available in every house of the rural area. Therefore, merely recovery of the axe from the house of the accused which is usually found in the house of every villager, the accused cannot be connected with the crime in question unless there is a positive evidence that blood which was found on the axe was human blood and that too, was of the same blood group of the deceased. Even PW-6 Prahlad in whose presence the axe is said to have been taken into possession has stated that there were 3 axe in the house of the accused and out of the 3, one axe was taken into possession.</p> <p>As far as 5th circumstance that no plausible explanation was given by the accused regarding the fact that how the blood was found on the Baniyan, sleeper and the axe which were taken into possession from his house is concerned, as has been mentioned above, since there is no Serologist's report that the blood which was found on the axe, sleeper and Baniyan was human blood and that too of the same blood group of the deceased, therefore, even no explanation was offered by the accused regarding the blood, based on the report of the F.S.L. the accused cannot be connected with the crime.</p> <p>As far as 6th circumstance that the body of Dhanaji was found in the kitchen garden of Dhanaji which was in the possession of the accused is concerned, as the matter was already reported by Chhattar Singh, cousin of the accused, unless there is other circumstantial cogent evidence connecting the accused with the crime, merely on the ground that the body was found in</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>the kitchen garden the accused cannot be held guilty for the murder of his father.</p> <p>As far as 7th circumstance that the report was not lodged by this accused is concerned, as the report was already lodged by Chhattar Singh, cousin of the accused, therefore, on this ground also the accused cannot be connected with the crime.</p> <p>As far as 8th circumstance that there is no evidence that somebody else had committed the crime is concerned, this cannot be taken as a ground for connecting the accused with the crime for the reason that under the criminal law, in the first instance, it is the duty of the prosecution to establish the crime against the accused, merely on the ground that there is no evidence regarding commission of the crime by some other person, the accused cannot be held guilty and connected with the crime.</p> <p>The prosecution has not been able to produce any legal and clinching circumstantial evidence to connect the accused with the murder of his father. As has been discussed above, the circumstances which have been taken into consideration by the trial Court connecting the accused with the murder of his father are not sufficient to connect the accused, as the head was not found on the place where the accused gave information and most of the other articles which were recovered on which it is stated that blood was found, but in connecting the accused with the murder of his father based only on these circumstances unless Serologist's report is produced that the blood which was found on the axe, sleeper, Baniyan, stone and leaves was human blood and that too was of the same blood group of the deceased, the accused cannot be connected with the crime. There is no other circumstantial evidence connecting the accused with the crime. Therefore, we are of the</p>	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -१-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	<p>considered opinion that the prosecution has not been able to establish the crime against the accused/appellant based on the principles laid down by the Hon'ble Apex Court in the matter of connecting the accused with the crime based on circumstantial evidence because none of the circumstances relied upon by the trial Court is conclusive in nature and there is no unimpeachable legal evidence on record to connect the accused with the murder of his father. The circumstantial evidence produced by the prosecution has not stood up to the test laid down by the Hon'ble Apex Court in the above cited judgment.</p> <p>Since the prosecution has not been able to prove the offence against the accused/appellant under Section 302 of the I.P.C., therefore, offence under Section 201 of the I.P.C. automatically goes away.</p> <p>For the foregoing reasons, the finding of the trial Court convicting the accused for the commission of murder of his father cannot be sustained.</p> <p>In the result, the appeal of the appellant succeeds and the same is allowed. The conviction and sentences imposed on the accused/appellant are set aside and he is acquitted of the charge under Sections 302 and 201 of the I.P.C.. The accused/appellant be set at liberty forthwith, if not required in any other case.</p> <p style="text-align: center;">Sd/- L.C.BHADOO Judge</p>	<p style="text-align: center;">Sd/- V.K. Shrivatava Judge</p>

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1.4.08