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IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

CRIMINAL APPEAL NO. 497 OF 2003

APPELLANT
(IN JAIL)

: Krishna Ram, son of Mansharam,
aged about 30 years,
Occupation-Agriculturist
resident of Village Vyas Kongera,
Police Station and District-
Kanker, (C.G.)

373/03

01/4/03

Bharat Raghav
Advocate

V E R S U S

R to D.R. (J)
RESPONDENT
01/4/03

: State of Chhattisgarh,
through District Magistrate,
District Kanker, (C.G.)

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374(2)

OF Cr.P.C.



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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

**Coram: HON'BLE MR.T.P.SHARMA &
HON'BLE MR.R.N.CHANDRAKAR, JJ.**

Criminal Appeal No.427 of 2003

Appellant
(In Jail)

Krishna Ram

Versus

Respondent

State of Chhattisgarh

**(CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE, 1973)**

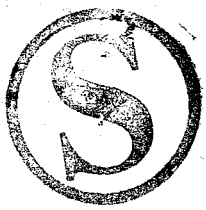
**Mr.B.D.Guru, counsel for the appellant.
Mr.Akhil Mishra, Dy.Govt.Advocate for the State/respondent.**

JUDGMENT

(Passed on 31st October, 2012)

Per T.P.Sharma, J.:-

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 27.2.2003 passed by the Second Additional Sessions Judge (F.T.C.), Kanker, in Sessions Trial No.02/2003, whereby & whereunder the Second Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of deceased Shriram, his uncle convicted him under Section 302 of the IPC and sentenced to undergo imprisonment for life.
2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, the appellant, nephew of deceased Shriram, went inside the house of deceased Shriram on 16.10.2002 at about 5 a.m. at morning, he was holding cricket bat, he badly assaulted Shriram and caused his instantaneous death, thereafter he came out from the house and went to the house of his sister Pramila (PW-1) and brother-in-law Hiralal (PW-2) where he stayed for sometime, thereafter



(2)

he left the bat which he was holding in their house and fled from their house, Hiralal (PW-2) tried to apprehend him but he did not succeed. Incident has been witnessed by Pushpa Bai (PW-5), daughter-in-law of the deceased and his son Lagnu (PW-4). Vishakha (PW-6) also immediately came on the spot, but she has not seen the incident. Lagnu (PW-4) went to Police Station Kanker and lodged the F.I.R. vide Ex.P/7A and merg vide Ex.P/7. Investigating officer left for scene of occurrence and prepared spot map vide Ex.P/8. After summoning the witnesses, inquest was prepared over the body of the deceased vide Ex.P/10. Bloodstained & plain soil were recovered from the spot vide Ex.P/11. Four bloodstained teethes were seized from the spot vide Ex.P/12. Dead body of the deceased was sent for autopsy to Government Hospital, Kanker vide Ex.P/5. Dr.Jalam Singh Sahu (PW-3) conducted autopsy vide Ex.P/5 and found following injuries:-

- (i) Lacerated wound on left eye brow of 5 cm. x 1 cm. bone deep.
- (ii) Lacerated wound of 3 cm. x 1 cm. on 1st maxilla.
- (iii) Lacerated wound of 2 cm. x 1 bone deep.
- (iv) Lacerated wound on left side to chin of 4 cm. x 1 cm. bone deep.
- (v) Lacerated wound on left angle of mouth of 4 cm. x 2 cm.
- (vi) Lacerated wound on lower lip of 2 cm. x 1 cm. bone deep
- (vii) Abrasion on right side to lower part of sternum of 3 cm. x 2 cm.

Cause of death was shock and death was homicidal in nature. During the course of investigation, the accused was taken into custody, he made disclosure statement of cricket bat vide Ex.P/3, same has been recovered at his instance vide Ex.P/4. Bloodstained clothes of the appellant were seized vide Ex.P/13. Sealed clothes and cricket bat were seized after receiving report from the doctor vide Ex.P/16. Same were sent to FSL vide Ex.P/17 and presence of blood was confirmed vide Ex.P/18.

4. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. and after completion of investigation, charge sheet was filed



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before the Court of Chief Judicial Magistrate, Kanker, who in turn committed the case to the Court of Sessions, Bastar at Jagdalpur, from where the Second Additional Sessions Judge (F.T.C.), Kanker received the case on transfer for trial.

5. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as eight witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
6. After providing opportunity of hearing to the parties, learned Second Additional Sessions Judge convicted & sentenced the appellant as aforementioned.
7. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
8. Learned counsel for the appellant vehemently argued that the present case is based on circumstantial evidence. In order to prove the guilt of the accused/ appellant on the basis of circumstantial evidence, as held by the Supreme Court in the matter of **Kusuma Ankama Rao v. State of A.P.**¹, the prosecution is under obligation to satisfy the following tests;
 - (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' 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

¹2008 AIR SCW 4669



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- (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.

In the present case, the prosecution has utterly failed to prove complete chain of circumstances sufficient to establish the fact that only the appellant has committed the offence and exclude the possibility of innocence of the appellant. By leaving cricket bat in his sister's house stained with blood by itself is not sufficient to prove the complete chain of circumstances. Pushpa Bai (PW-5), daughter-in-law of the deceased has not identified the appellant, there was dark and there was every likelihood of mis-identity of the person, who has caused injuries to the deceased. Evidence adduced on behalf of the prosecution is not sufficient to prove the complete chain of circumstances and to prove the case beyond shadow of doubt.

9. On the other hand, learned State counsel supported the judgment impugned and argued that evidence of Pushpa Bai (PW-5) who is eyewitness is sufficient to prove the guilt of the appellant. Her evidence is well corroborated by the evidence of Pramila (PW-1) and Hiralal (PW-2), close relatives of the appellant and are sufficient to prove the fact that the appellant has mercilessly caused fatal injuries resulting into death of the deceased. Learned State counsel further argued that the trial Court has rightly convicted and sentenced the appellant as aforementioned.
10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.
11. In the present case, homicidal death of as a result of fatal injuries found over the body of deceased Shriram have not been substantially disputed on behalf of the appellant, even otherwise, same is also established by the evidence of Dr.Jalam Singh Sahu (PW-3) and autopsy report Ex.P/5 and death of deceased Shriram was homicidal in nature.

12. As regards the complicity of the appellant in the crime in question, although the trial Court has convicted the appellant on the basis of circumstantial evidence and the prosecution has tried to establish the following circumstances;

- (i) the appellant entered into the house of the deceased, he was holding cricket bat,
- (ii) he was identified by daughter-in-law of the deceased and sister-in-law of the appellant by his voice and the fact that he was not unknown to her,
- (iii) After incident the appellant went to the house of his sister Pramila (PW-1) and Hiralal (PW-2), brother-in-law where he stayed for sometime and left his cricket bat and thereafter rushed from their house.
- (iv) Aforesaid cricket bat was stained with blood.

13. As per evidence of Pushpa Bai (PW-5), daughter-in-law of the deceased who was also living in the same house, the appellant came to her house, he shouted "bade dai, Bade baba", then she replied that they did not wake up. The appellant used to address her mother-in-law and father-in-law "bade dai, Bade baba", at that time he was holding cricket bat, after pushing her the appellant went inside the room of the deceased, then she frightened, she woke up her husband and informed that the appellant has assaulted her father-in-law, she along with her husband went to the room of father-in-law where he was lying with injuries and nobody was present. The appellant has assaulted her father-in-law 4 to 5 times by bat. In para 4 of her evidence she has admitted that on account of dark and the fact that she was not identified the person who has entered into the room, she has not told the name of the appellant to Visakha (PW-6), but she has specifically admitted that the appellant has entered into the room of her father-in-law, she identified him on the ground of his voice, the appellant was not unknown to her. Defence has suggested nothing in her cross-examination to show that she has not witnessed the incident or she was not knowing the appellant and she has not identified on the basis of voice and the fact that the appellant was not unknown to her.

14. As per evidence of Pramila (PW-1) and Hiralal (PW-2), sister and brother-in-law of the appellant, the appellant went to their house at 5 a.m., he stayed for sometime, he left cricket bat and rushed from their house, Hiralal (PW-2) tried to apprehend him but was not succeeded. There was no propriety for going to the house of these witnesses at 5 a.m. at morning, even there was no propriety for leaving cricket bat in their house. Alleged cricket bat has been examined by FSL stained with human blood vide Ex.P/18, although the trial Court has convicted the appellant on the basis of circumstantial evidence, but even otherwise, unrebutted para 3 of evidence of Pushpa Bai (PW-5) coupled with para 2 of her evidence by itself are sufficient to prove the fact that only the appellant was author of the crime. The appellant is her brother-in-law (*devar*), he was not unknown to her and there was conversation, the appellant shouted "bade dai, Bade baba" to deceased and his wife. This witness has replied that they did not wake up, thereafter by pushing her appellant entered into the room of the deceased. These evidences by itself are sufficient to prove the fact that the appellant whom this witness has identified has entered into the room of the deceased, he assaulted the deceased by cricket bat, which he has left inside the house of his relatives Pramila (PW-1) and Hiralal (PW-2). These evidences are sufficient to establish the fact that the appellant has caused homicidal death of the deceased.

15. As regards the question of motive, in case of direct evidence motive loses its importance, even otherwise, motive only aids in criminality and can be inferred on the basis of nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only person concerned would be in a position to explain that what was his intention or motive behind commission of any act.

16. In the present case, the appellant has caused multiple injuries by cricket bat, that too at morning after entering into the house of the deceased. There was no propriety for such trespass and causing homicidal death of the deceased. This fact is sufficient to establish that the appellant has caused homicidal death of the deceased with intent to cause his death.



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17. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned.
18. On close scrutiny, we do not find any illegality in the judgment impugned warranting any interference.
19. Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
T.P. Sharma
Judge

Sd/-
R.N. Chandrakar
Judge