HIGH COURT OF MADHRA PRADESH AT JABALPUR
DIVISION BENCH

PRESENT : Hon'ble Shri Justice Shantanu Kemkar.
Honb'e Shri Justice R.S. Jha.

Criminal Appeal No.2174/2008

Ramvallabh @ Ballo S/o Shri Kamlashan Tripathi

Versus

The State of M.P.

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Shri S.C. Datt, learned Senior Counsel with Shri Siddharth Datt, learned counsel for the appellant.
Shri Y. D. Yadav, learned Panel Lawyer for the respondent/State.

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JUDGMENT

(Delivered on this 20th day of November, 2015)

Per : Shantanu Kemkar, J.

This appeal under Section 374 of the Code of Criminal Procedure is directed against the judgment dated 14/08/08 passed by Sessions Judge, Rewa in Sessions Trial No.241/07 whereby convicting the appellant under Section 302 of the Indian Penal Code and Section 25(1A) & Section 27 of the Arms, 1959 Act and sentencing him for life imprisonment, three years R.I. and seven years R.I. respectively for each offence.

2. In brief the prosecution case is that on 18/08/07 at about 6:00 PM the appellant, deceased Virendra Yadav and Bhaiyalal Yadav had gone to Sirmor Market on a Motor Cycle. They returned to their village Gahnawa at about 8:30 PM. After returning back to their village Bhaiyalal Yadav went to his house, whereas deceased Virendra accepted the offer of the appellant and accompanied the appellant to his house to

have 'Kheer' (a sweet) at his home. On hearing a loud noise at about 10:00 PM from the appellant's house Heeralal (PW/4), Kusumkali (PW/6) mother of the deceased rushed to the appellant's house, where they found Virendra in the injured condition was lying on the floor in the appellant's room and blood was oozing from his face. They asked the appellant's father Kamlasan (DW/2) who was present there as to how Virendra got injured, on which he told Heeralal (PW/4) and Kusumkali (PW/6) that the appellant has caused gunshot injury to Virendra. By that time Bhaiyalal also reached the spot hearing the loud noise. When Virendra was asked as to how he sustained the injury he alleged that the appellant had caused bullet injury to him. Virendra was then lifted and was taken to his house where he succumbed to the gunshot injury. After completion investigation of the Dehati Nalis Ex.P/4, Merg Ex.P/5 and FIR Ex.P/12 the police filed the charge-sheet against the appellant for the aforesaid offences.

3. The appellant abjured his guilt and pleaded false implication. In order to prove the charges, the prosecution examined as many as 13 witnesses. In rebuttal the appellant accused examined two witnesses.

4. The trial Court after recording the evidence led by the prosecution and the defence, held the appellant guilty and sentenced him as above. Feeling aggrieved the appellant has filed the appeal.

5. Shri S.C. Datt, learned Senior Counsel has argued that the trial Court having disbelieved the prosecution case about the oral dying declaration made by the deceased to Heeralal (PW/4), Bhaiyalal (PW/5), Kusum Kali (PW/6) and Praveen Kumari (PW/7) has committed gross illegality in convicting the appellant on the basis of circumstantial evidence, of which the chain is not complete. He also argued that the appellant and the deceased were close friends, they had gone together to Sirmor market. After returning from the market the appellant had invited

the deceased to his home to have 'Kheer' prepared at his home. After reaching home when the appellant had gone to answer the call of nature in the field, at that time the deceased got injured by his own katta while he was trying to repair it. He submits that in the absence of any motive to kill the deceased, the conviction of the appellant is not sustainable. He also submits that the presence of the deceased in the house of the appellant being close friends was natural. There was no grouping of blood in the FSL report and no finger print was taken from the katta, seized at the instance of the appellant. In these circumstances on the basis of such weak circumstantial evidence the judgment of conviction which has been passed against the appellant is liable to be set aside.

6. On the other hand learned Panel Lawyer appearing for the respondent-State has supported the impugned judgment and has argued that as the chain of circumstantial evidence being completed, the trial Court has rightly convicted the appellant.

7. We have considered the submissions made by the learned counsel for the parties and perused the record.

8. The conviction of the appellant is based on the circumstantial evidence. It is well settled that in order to hold the accused guilty in case of circumstantial evidence the circumstances should be of a conclusive nature and tendency. 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. Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused the accused is undoubtedly entitled to the benefit of doubt. The principle has special

relevance where the guilt or the accused is sought to be established by circumstantial evidence. ***[See : Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622].***

9. It has also been observed by the Supreme Court that when it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused, and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt. ***[M.G. Agrawal Vs. State of Maharashtra, AIR 1963 SC 200].***

10. In a criminal trial suspicion no matter how strong cannot, and must not be permitted to take place of proof. In a case of circumstantial evidence, the judgment remain essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused. ***[See : Sujit Biswas Vs. State of Assam, 2013 Cr.L.R. (SC) 589, Hanumant Govind Nargundkar & another Vs. State of M.P., AIR 1952 SC 343, Ramesh Harijan Vs. State of U.P., AIR 2012 SC 1979]***.

11. Keeping in view the aforesaid legal principles it has to be seen as to whether the prosecution was able to prove the charges against the appellant that it is the appellant only who has committed the crime. Dr. R.K. Ojha (PW/11) in his postmortem report (Ex.P/14) as also in his

deposition has clearly stated that the deceased had suffered firearm wound which was 1 cm diameter rounded in shape situated on the left side of the face joint later to left eye. Wound was irregular with margins inverted bleeding from the wound part. An area of blackening of 1.5 cm found around the wound. On opening left eye cornea not found and the direction of the wound is medially postenly and slightly upward piercing the roof of orbit rcachy left frontal lobe, piercing it crossing midline piercing right parietal lobe and present as a lacerated wound 1½ " x 1/2' on the right parietal surface. He had opined that the death was due to gunshot injury to the brain, resulting in the comma. He further deposed that such injury could have been caused to the deceased while he was inspecting or handling the katta. He also deposed that looking to the injury the deceased must have immediately gone into comma and must not be in a position to speak. In view of this categorical statement made by Dr. R.K. Ojha, (PW/11) we find that the trial Court has committed no error in disbelieving the version of the prosecution witnesses namely Heeralal (PW/4), Bhaiyalal (PW/5), Kusumkali (PW/6) and Praveen Kumari (PW/7) about oral dying declaration.

12. Now coming to the circumstantial evidence of recovery of dead body of the deceased in the house of the appellant, seizure of clothes containing human blood from the appellant and seizure of katta at his instance from his house, we find that on these three circumstances the appellant has been convicted. However, in our considered view these circumstances have also not been proved by the prosecution. The presence of the dead body of the deceased in the house of the appellant has been duly explained by the appellant and as per the prosecution case itself both of them were the friends and after returning from the market the appellant had offered the deceased to have 'kheer' prepared at his house, so the presence of the deceased in the house of the appellant was

natural. As regards the human blood being found on the clothes of the appellant, admittedly as per the report of the serologist though the clothes were stained with human blood, but blood group was not indicated in the FSL report. Dimentions of blood stains on clothes are also not given in the report. The evidence of blood group is only conclusive to connect blood stain with the accused. In the absence of grouping of blood no reliance could have been placed on his circumstance. ***[See : Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507]***. Merely to say that blood was detected on an exhibit is not enough. It may well lead to miscarriage of justice, if the conviction is based on the report that blood was found without their being any grouping. ***[See : Prabhu Babaji Navle Vs. State of Bombay, AIR 1956 SC 51]***. As regards seizure of katta from the house of the appellant we find that Hanuman (PW/1) in his cross-examination had stated that on the date of incident on hearing a loud noise he rushed to the spot, where he found Virendra was lying on the floor and had received gunshot injury. A katta was in his hand. Kamlasan (DW/2) had stated that when his son (appellant) and the deceased reached home, the appellant had told his wife to serve the food and thereafter he went to the field to answer the call of nature. He also deposed that when he went inside the room, where the deceased was sitting, he saw the two bowls of 'Kheer' were kept by the wife of the appellant. He also stated that he saw deceased was doing something with the katta, which was in his hands. On seeing this he scolded the deceased and asked him not to handle the katta in such a manner. In reply the deceased had told him that it is jammed and he is trying to repair it. On this he told the deceased to do whatever with it but at his home. After telling this he went to his room. After sometime hearing a loud noise from the room where deceased Virendra was sitting, he rushed inside and found the deceased lying on the floor and the blood was oozing from his left eye and the

katta was in his hand. This evidence clearly proves that the katta was of the deceased himself. The trial Court by overlooking such material evidence has recorded a finding of guilt against the appellant. The circumstances on which conviction has been ordered in our considered view cannot be said to have formed a complete chain to record a finding that it is the appellant who has killed the deceased. Keeping in view the aforesaid material infirmary in the impugned judgment, the conviction of the appellant cannot be sustained.

13. Apart from this in the present case motive has also not been proved by the prosecution. It is also now well settled that where prosecution relied upon circumstantial evidence the proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eyewitness account of the occurrence. That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the Court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye-witnesses. ***[See : Sheo Shankar Singh Vs. State of Jharkhand & another, 2011 AIR SCW 1845].*** In the case of ***State through CBI Vs. Mahender Singh Dahiya, 2011 AIR SCW 1916*** the Supreme Court again observed that in case based on circumstantial evidence, motive assumes significance and the absence of motive puts Court on guard to scrutinize evidence closely. In the present case as already observed the prosecution has utterly failed to prove the motive of the appellant to commit the murder of the deceased and as already noticed the other circumstances have also not been proved by the prosecution. Thus there is no clinching evidence against the appellant.

14. So far as the conviction of the appellant for the offence under Section 25(1A) & 27 of the Arms Act is concerned, in view of the evidence of Hanuman (PW/1) and Kamlasan (DW/2) as has been scrutinized earlier the deceased himself was carrying katta and the same was not of the appellant. That apart we find that no evidence has been led by the prosecution so as to hold that the katta was of appellant. Therefore, the conviction of the appellant for offence under Section 25(1A) & 27 of the Arms Act is also not sustainable.

15. Accordingly, the impugned judgment of conviction is set aside. The appeal is allowed. Appellant be released from jail forthwith, if not required in any other case.

(Shantanu Kemkar)
JUDGE

(R.S. Jha)
JUDGE

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