



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1387 OF 2012**

HANSRAJ

...APPELLANT(S)

VERSUS

STATE OF CHHATTISGARH

...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. The appellant Hansraj is a convict for offence under Section 302 IPC¹ for murdering Ramlal of village Ghotha Sakulpara Bhanupratappur, District Kanker, Chhattisgarh and has been awarded life imprisonment and fine of Rs.1000/-.

¹ Indian Penal Code

- 2.** The order of conviction and sentence of the Trial Court dated 19.12.2002 has been confirmed by the High Court in appeal by the impugned judgment and order dated 30.07.2010.
- 3.** The appellant preferred the Special Leave Petition with delay of 653 days which was condoned and leave to appeal was granted. Since the appellant had remained in jail for over 10 years, he was directed to be released on bail by this Court.
- 4.** The case of the prosecution is based only on circumstantial evidence and there is no eyewitness to the incident.
- 5.** The argument of the learned counsel for the appellant is that it is a completely false case and that even the circumstances have not been proved conclusively to hold the appellant guilty and there are stark contradictions in the testimonies of the prosecution witnesses.
- 6.** The incident is of 28.03.2002. It is alleged that the appellant was residing with the deceased and was assisting him in his work for the last over two months. On the fateful day the appellant at 7:00 am in the morning left for his native place on cycle with a bag but is set to have returned at around 9:00 am claiming that his cycle got punctured. He therefore asked

for money from Budhiyarin Bai (PW-5) the wife of the deceased, to get the puncture repaired. Budhiyarin Bai told him that she had no money readily available at home and that he can take paddy and sell it in the market, but he refused. So, Budhiyarin Bai herself went to the market to sell the paddy, leaving the appellant and her husband at home. When she returned at about 9:30 am, she saw the appellant fleeing with a *farsi* (Ex P/6) in his hand and discovered that her husband is lying on the floor, profusely bleeding with his neck severed. She therefore raised an alarm and upon hearing her cries her neighbours Jogeshwar (PW-3) and Jhadu Ram (PW-4) came and they also saw her husband lying dead. The neighbours informed another villager namely Jogi Ram (PW-1) who also came on the spot and thereafter proceeded to the Police Station Bhanupratappur to lodge an FIR. He lodged the FIR at 11:15 am on the same day.

7. It is alleged that the relationship of the appellant with the deceased was strained probably on account of non-payment/untimely payment of his wages. The appellant was the person last seen in the company of the deceased and that

the weapon of recovery i.e., *farsi* was recovered at his pointing out. The injuries sustained by the deceased were opined to have been caused by the weapon recovered. In these circumstances, the prosecution asserts that the evidence on record proves beyond reasonable doubt that the appellant alone is the person who committed the offence and that he has been rightly convicted and sentenced by the two Courts below.

8. Undisputedly, the case of the prosecution is based on circumstantial evidence and there is no eyewitness to the commission of the offence in as much as the wife of the deceased, Budhiyarin Bai, was also not present at the time of the commission of the offence and had discovered that her husband was lying on the floor bleeding profusely with neck severed upon returning from the market. She probably saw the accused fleeing from the scene of crime.
9. The law with regard to a case based purely on circumstantial evidence stands crystalised by the decision of this Court in the case of ***Sharad Birdhichand Sarda vs State of***

Maharashtra² wherein five golden principles known as *panchsheel* proof of a case based on circumstantial evidence were enshrined namely **(i)** the circumstances from which the conclusion of guilt is to be drawn should be fully established crafting out a distinction between ‘may be’ established and ‘must or should’ be established; **(ii)** the facts established should be consistent with the hypothesis of the guilt of the accused; **(iii)** the circumstances should be of a conclusive nature; **(iv)** the circumstance should exclude every other possible hypothesis except the one to be proved i.e., the guilt of the accused; and **(v)** there must be a chain of evidence so complete as not to leave any reasonable ground for conclusion that the accused is innocent and must show that in all human probability the act must have been done by the accused.

- 10.** In other words, the chain of events leading to the prosecution of the convict must conclusively be established with certainty

² (1984) 4 SCC 116

and there shall not be any room for any second opinion which may lead to the innocence of the accused.

- 11.** The appellant is said to have a motive to kill the deceased. The alleged motive being that he was living as a servant of the deceased for the last two months and there was some discord between him and the deceased in connection with non-payment/untimely payment of wages. However, such a discord is not of such a nature of extent which may lead to such a drastic action on part of the appellant to kill the deceased. The issue of non-payment of wages is hardly material and is so trivial a matter so as to compel anyone to take an extreme step of committing a crime of such a grave nature. Moreover, there is no material evidence to prove any discord between the two.
- 12.** In so far as the last seen theory is concerned, that the appellant was in the company of the deceased at the time when Budhiyarin Bai (PW-5) the wife of the deceased went to the market to sell paddy also appears to be a little doubtful. It is the consistent case of all the witnesses including Budhiyarin Bai (PW-5) that the appellant had left in the

morning at about 7:00 am for his native place and that as told by Budhiyarin Bai (PW-5) he returned around 9:00 am as his cycle's tyre got punctured. The fact that he actually returned as alleged does not stand established by any independent evidence except for the statement of Budhiyarin Bai (PW-5). However, her statement could not be corroborated by any piece of evidence. It is hardly believable that a person whose relationship with the deceased was not cordial and has left for his native place in disgust would return soon thereafter. The cycle of the appellant was recovered by the police but no effort was made to find out if either of the tyres was actually punctured, which could have proved that the appellant may have returned as the cycle's tyre got punctured.

- 13.** The weapon of crime i.e., *farsi* (Ex P/6) was set to have been recovered after 20-25 days of the incident on the pointing out of the appellant. It has come in evidence that it had some blood stains. However, no forensic report was brought on record to prove that the blood stains on it matched with that of the blood of the deceased. Merely for the reason that the

doctor opined that the injuries on the deceased may have been caused by a similar weapon would not conclude that the recovered *farsi* was the weapon of crime. Similar and identical instruments like *farsi* are found in almost every home in the village as it is one of the most used farming equipment. That apart, Jogi Ram, who lodged the complaint, in his cross examination stated that the *farsi* was lying in an open place, referring to the place of the commission of the crime. The said statement completely belies the fact that the *farsi* was recovered subsequently from the field of one Chamaru Ram. The recovery of the weapon of crime or the *farsi*, which was recovered, is doubtful and it is also not certain that it was actually the weapon of crime.

- 14.** One important circumstance pointing to the involvement of the appellant is that he was seen running from the village both by Budhiyarin Bai (PW-5) and Jogi Ram (PW-1). Budhiyarin Bai in her statement in unequivocal terms stated that when she returned home after selling the paddy, the appellant had fled. It means that she had not found and seen the appellant at the place of the crime after her return as he

had already fled. However, in her cross examination she took a summersault and stated that when she came back, she saw the appellant Hans Raj running from the house with the *farsi*. Jogi Ram (PW-1) who at the time of occurrence of the incident was working in his field, stated that he had seen the appellant running before he came to know about the incident through Jogeshwar (PW-3), whereupon he went to the house of the deceased. In his cross examination, he further stated that the wife of the deceased, Budhiyarin Bai, told him that when she came back after selling paddy, her husband was lying on the spot and the appellant had disappeared. PW-1 nowhere stated that Budhiyarin Bai saw the appellant fleeing from the spot rather, she only informed that the appellant had already disappeared when she returned from the market. Later, in the cross-examination, Jogi Ram stated that while working in the field collecting *mahuva* he only saw a man running from a distance of more than a furlong. But he never named the person who was running. Therefore, the evidence of none of the two witnesses could conclusively establish that they saw the appellant running or fleeing from the place of

crime or from the village. The identity of the person running away had not been established by any evidence.

- 15.** In addition to this, according to the prosecution, the clothes of the appellant which he was wearing at the time of the incident were produced by one Pritam Singh (PW-9) who was declared to be hostile. The said clothes again had the blood stains but no forensic report was produced to prove that the blood of those stains matched with the blood of the deceased.
- 16.** In the aforesaid facts, the circumstances raising finger upon the appellant, are not of a conclusive nature to prove beyond the shadow of doubt that the appellant was the person responsible for the commission of the crime. The possibility of innocence of the appellant does not stand excluded as per the chain of events.
- 17.** Thus, in the facts and circumstances of the case, the appellant cannot be held guilty of the commission of the offence beyond reasonable doubt and therefore, in such circumstances the benefit of doubt goes in his favour. Accordingly, we are of the opinion that the Courts below have manifestly erred in convicting him for the aforesaid offence.

18. The impugned judgment and orders dated 19.12.2002 and 30.07.2012 are hereby set aside and the appellant is acquitted from the offence charged with. He has already suffered incarceration for over 10 years. He is already on bail. His sureties and bail bonds are discharged.

19. The appeal is allowed accordingly.

..... **J.**
(PANKAJ MITHAL)

..... **J.**
(AHSANUDDIN AMANULLAH)

NEW DELHI;
FEBRUARY 10, 2025.