

(2011) 03 CHH CK 0063
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 169 of 2004

Ajay Prakash Banjare and Others

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313
Evidence Act, 1872 — Section 145, 157, 21, 25, 26
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 3 CGLJ 390

Hon'ble Judges : T.P. Sharma, J;N.K. Agarwal, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—Challenge in this appeal is to the judgment of conviction and order of sentence dated 4.2.2004 passed by the 5th Additional Sessions Judge, Durg in Sessions Trial No. 252/2002, whereby & whereunder learned 5th Additional Sessions Judge after holding the Appellants guilty for commission of culpable homicide amounting to murder of Mohan Banjare in sharing common intention convicted them u/s 302/34 of the I.P.C. and sentenced to undergo imprisonment for life and to pay fine of Rs. 100/-, in default of payment of fine to further undergo R.I. for two months.

2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted and sentenced the Appellants as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on the fateful day of 10.5.2002 at about 10 p.m. all the Appellants were searching Mohan Banjare (since deceased), they were holding deadly weapons, they were beating Mohan Banjare near Girhola bridge where unfortunate deceased Mohan Banjare came at about 10 p.m., the Appellants were holding sword, dagger, stick and non-chalk, they repeatedly caused injuries to Mohan Banjare by the aforesaid weapons, they dragged and

caused his instantaneously death. Thereafter, they dragged dead body of Mohan Banjare from bridge to field where they concealed dead body. Appellant Ajay Banjare was holding sword, Appellant Omprakash was holding dragger, Appellant Tekram was holding non-chalk and Appellant Dameshwar was holding stick. After committing the offence all the Appellants went to Police Station Nandini four kilometers away from the place of incident at 11.45 p.m., within one hour and forty five minutes. At the instance of Appellant Ajay Banjare, F.I.R. was registered vide Ex.P/3. Appellant Ajay produced sword stained with blood which was seized from him vide Ex.P/4. Appellant Omprakash produced dragger stained with blood which was seized from him vide Ex.P/5. Appellant Dameshwar produced one stick, some scale of stick was missing, same was recovered from Appellant Dameshwar vide Ex.P/6. Appellant Tekram produced broken piece of non-chalk, same was seized vide Ex.P/7. Investigating officer proceeded for scene of occurrence and seized one piece of bamboo stick, broken piece of non-chalk, one piece of bamboo stick, four teethes of deceased stained with blood, hairs of the head of the deceased, bloodstained and plain soil, one piece of bamboo stick and one pair chappal of the deceased stained with blood vide Ex.P/16. After summoning the witnesses vide Ex.P/13, inquest over dead body of deceased Mohan Banjare was prepared vide Ex.P/14. Spot map was prepared by investigating officer vide Ex.P/12. Dead body was sent for autopsy to District Hospital, Durg where Dr. A.P. Samant (PW-9) conducted autopsy vide Ex.P/10 and found following injuries:

- (i) Incised wound of 11 cm. x 4 cm. x bone deep over chin.
- (ii) Incised wound of 10 cm. x 2 cm. x 1/2 cm. between chin and neck.
- (iii) Incised wound of 2 cm. x 1 cm. over middle part of nose,
- (iv) Incised wound of 1 cm. x 1/2 cm. x 1/2 cm. over right cheek.
- (v) Incised wound of 4 cm. x 1 cm. x bone deep over back occipital region of skull.
- (vi) Incised wound of 5 cm, x 2 cm. x bone deep over right parietal region of skull.
- (vii) Incised wound of 10 cm. x 3 cm. x bone deep over left parietal region of skull.
- (viii) Incised wound of 6 cm. x 2 cm. x bone deep over left parietal region of skull.
- (ix) Incised wound of 3 cm. x 2 cm. x bone deep over left occipital region of skull,
- (x) Stab wound of 2 1/2 cm. x 1 cm. over right infra clavicle region.
- (xi) Stab wound of 2 cm. x 1 cm. x chest deep over right infra clavicle region.
- (xii) Stab wound of 2 cm. x 1 cm. x chest deep over right supermemory region.

- (xiii) Stab wound of 2 cm. x 1 cm. x chest deep over right memory region.
- (xiv) Stab wound of 2 cm. x 1 cm. x chest deep upto right inframemory region.
- (xv) Stab wound of 2 1/2 cm. x 1 cm. x chest deep upto right inframemory region.
- (xvi) Stab wound of 2 1/2 cm. x 1 cm. x chest deep upto right inframemory region.
- (xvii) Stab wound of 2 cm. x 1 cm. x chest deep upto right inframemory region.
- (xviii) Stab wound of 2 cm. x 1 cm. x chest deep just below injury No. 17.
- (xix) Stab wound of 3 cm. x 1 cm. x deep upto left side of chest deep infra clavicle region.
- (xx) Stab wound of 3 cm. x 1 cm. x deep to the right infra clavicle region.
- (xxi) Stab wound of 3 cm. x 1 cm. x deep into the chest over left super memory region.
- (xxii) Stab wound of 2 cm. x 1 cm. x deep into the chest over left memory region.
- (xxiii) Stab wound of 2 cm. x 1 cm. x deep into the chest over left memory region.
- (xxiv) Stab wound of 3 cm. x 1 cm. x deep into the left side of chest parasternal region.
- (xxv) Stab wound of 3 cm. x 1 cm. x deep into the chest over left precordial region.
- (xxvi) Stab wound two in number of 3 cm. x 1 cm. x deep into the abdomen over apigestic region. Membrain of intestine was coming out from the injury,
- (xxvii) Stab wound of 3 cm. x 1 cm. up to abdomen deep over right hypocordiam.
- (xxviii) Stab wound of 3 cm. x 1 cm. x abdomen deep over left hypocoidrim.
- (xxix) Stab wound of 2 cm. x 1 cm. x abdomen deep near amphalos.
- (xxx) Incised wound of 6 cm. x 5 cm. x bone deep over right wrist.
- (xxxi) Incised wound of 2 cm. x 1 cm. x bone deep over right forearm.
- (xxxii) Incised wound of 4 cm. x 1 cm. x 1 cm. over right middle finger.
- (xxxiii) Incised wound of 10 cm. x 5 cm. x bone deep over left hand.
- (xxxiv) Incised wound of 4 cm. x 14 cm. x 14 cm. over right hand.
- (xxxv) Incised wound of 10 cm. x 6 cm. x 1 cm. over left forearm.
- (xxxvi) Incised wound of 4 cm. x 14 cm. x 14 cm. over left knee.

- (xxxvii) Stab wound of 2 cm. x 14 cm. x 14 cm. over right scapula region.
- (xxxviii) Stab wound of 2 cm. x 14 cm. x 14 cm. over back.
- (xxxix) Incised wound of 4 cm. x 1 cm. x 14 cm. over right ear.
- (xl) Incised wound of 2 cm. x 14 cm. x 14 cm. over trachea.
- (xli) Incised wound of 1 cm. x 1 cm. over trachea. Fracture of occipital region of 8 cm. x 8 cm. and haematoma on brain.
- (xlii) Five perforating wounds on left lung and six purporting wounds on right lung.
- (xliii) Six perforating wounds and five perforating wounds on right and left plural cavity.
- (xliv) Three perforating wounds on pericardium.
- (xlv) Four perforating wounds on stomach.
- (xlvi) Two perforating wounds on small intestine.
- (xlvii) Two perforating wounds on large intestine.
- (xlviii) Two perforating wounds on liver.
- (xlix) Two perforating wounds on spleen.

Cause of death was shock as a result of excessive haemorrhage one full shirt stained with blood was seized from Pransingh Banjare, father of deceased Mohan Banjare vide Ex.P/1. Patwari also prepared spot map vide Ex.P/9. Sealed clothes of the deceased were seized vide Ex.P/17. Seized articles were sent for chemical examination and presence of blood on dagger seized from Appellant Omprakash and sword seized from Appellant Ajay Banjare was confirmed vide Ex.P/19.

4. Statements of the witnesses were recorded u/s 161 of the Code of Criminal Procedure, 1973 (for short "the Code") and after completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions, Durg, from where learned 5th Additional Sessions Judge, Durg received the case on transfer for trial.

5. In order to prove the guilt of the accused/Appellants, the prosecution has examined as many as thirteen witnesses. Accused/Appellants were examined u/s 313 of the Code, in which they denied the circumstances appearing against them and claimed innocence and false implication in the crime in question.

6. After providing an opportunity of hearing to the parties, learned 5th Additional Sessions Judge, Durg has convicted and sentenced the Appellants as aforementioned.

7. We have heard Mr. Rajkumar Gupta, counsel for Appellant No. 1, Mr. Yogesh Pandey, counsel for Appellant No. 2, Mrs. Hamida Siddique, counsel for Appellant

No. 3, Mr. Prafull Bharat, counsel for Appellant No. 4 and Mrs. Madhunisha Singh, Panel Lawyer for the State/Respondent, perused the judgment impugned and record of the trial Court.

8. Mr. Rajkumar Gupta, learned Counsel for Appellant No. 1, Mr. Yogesh Pandey, learned Counsel for Appellant No. 2, Mrs. Hamida Siddique, learned Counsel for Appellant No. 3 and Mr. Prafull Bharat, learned Counsel for Appellant No. 4 argued that the case is substantially based on circumstantial evidence. In case of conviction based on circumstantial evidence the prosecution is required to prove the circumstantial evidence complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence, but in the present case, prosecution has not produced any evidence to connect the Appellants in crime in question. Conviction is based on conjectures and surmises; conviction of the Appellants is not sustainable under the law. Accused persons have not lodged F.I.R., even it is considered that the Appellants have lodged the F.I.R. Ex.P/3, then same is not admissible in evidence and is hit by Sections 25, 26 and 27 of the Evidence Act. Virtually prosecution has not adduced any evidence for drawing inference that the Appellants have committed the aforesaid offence.

9. On the other hand, learned State counsel supported the judgment impugned and argued that in the present case, Appellants themselves have lodged F.I.R. Ex.P/3, they produced weapons stained with blood and same have been recovered at their instances, dead body was found, homicidal death of deceased Mohan Banjare has been established by the evidence of the doctor and the prosecution has proved complete chain of circumstances.

10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the parties.

11. In the present case, homicidal death as a result of fatal injuries found over body of deceased i.e., about fourteen external and forty five internal injuries, fracture, haemorrhage and perforating wounds, has not been disputed on behalf of the Appellants, on the other hand, also established by the evidence of Dr. A.P. Samant (PW-9) and autopsy report Ex.P/10 and death was homicidal in nature.

12. As regards the complicity of the Appellants in the crime in question, conviction is substantially based on production and seizure of weapons, presence of the Appellants at Police Station just after the incident, presence of blood on sword and dagger recovered from Appellants Ajay Banjare and Omprakash, piece of non-chalk found on the spot and second part was seized from Appellant Tekram. Disclosure of dead body at the instance of Appellant Ajay Banjare.

13. In the present case, virtually independent witnesses have not supported the case of the prosecution. As per evidence of Pransingh Banjare (PW-1), father of the deceased Mohan Banjare, on the date of incident at night he was informed by the police that body of his son Mohan is lying near Nikudiya road, then he went

to Nikudiya road where body of his son was lying near nala on the field of Chhabhi, he was badly injured. After seven days of the incident one jeans paint belonging to Appellant Tekram was found near the place of incident which he produced before the police and same was seized vide Ex.P/1. As per para 7 of his cross-examination, police informed him at about 4 at night relating to incident. Sangeeta (PW-2), sister of deceased Mohan Banjare, has not supported the case of the prosecution. Bhag Bali (PW-3) has also not supported the case of the prosecution. Ghanshyam Mishra (PW-4) and Mohd. Abid (PW-6), witnesses of the F.I.R. Ex.P/3 and seizure Exs.P/4 to P/7 have also not supported the case of the prosecution but they have admitted signatures over Exs.P/3 to P/7. Police has declared them hostile. Chaitu (PW-5) betel shopkeeper has deposed in his evidence that at 7 p.m. Appellant Dameshwar along with Ishwari and deceased Mohan came to his betel shop and after purchasing gutkha they went from his shop and on second day morning he came to know that Mohan has been murdered. Ishwariprasad (PW-7) has also not supported the case of the prosecution. As per para 1 of evidence of Sub Inspector I.P. Kharwade (PW-13) i.e. investigating officer who has investigated the offence, on 10.5.2002 at 11.45 p.m. Appellant Ajay Banjare lodged F.I.R. vide Ex.P/3 which he has registered in the presence of Ghanshyam Mishra (PW-4) and Mohd Abid (PW-6). As per para 4 of his evidence, Appellant Ajay produced sword which was seized vide Ex.P/4, Appellant Omprakash produced dragger which was seized vide Ex.P/5, Appellant Dameshwar produced one stick which was seized vide Ex.P/6 and Appellant Tekram produced non-chalk which was seized vide Ex.P/7. As per Ex.P/3, F.I.R. has been registered at 11.45 p.m. on 10.5.2002, thereafter within twenty minutes of lodging of F.I.R. this witness has seized sword from Appellant Ajay Banjare vide Ex.P/4, after twenty five minutes of lodging of F.I.R. he has seized dragger from Appellant Omprakash vide Ex.P/5, after thirty minutes of lodging of F.I.R. he has seized stick from Appellant Dameshwar Vide Ex.P/6 and after thirty five minutes of lodging of F.I.R. he has seized piece of non-chalk from Appellant Tekram vide Ex.P/7.

14. Virtually prosecution has produced only aforesaid piece of evidence that the present Appellants reached Police Station Nandini at 11.45 p.m. on 10.5.2002, they were holding aforesaid weapons. Appellant Ajay Banjare has lodged F.I.R.. vide Ex.P/3, then other Appellants produced the aforesaid weapons which this witness has seized vide Exs.P/4 to P/7. As per chemical examination report Ex.P/19, dragger seized from Appellant Omprakash, sword seized from Appellant Ajay Banjare and second part of non-chalk found near the place of incident was stained with blood. Ex.P/3 F.I.R. consists confessional and non-confessional information. Witnesses of Exs.P/3 to P/7 Ghanshyam Mishra (PW-4) and Mohd Abid (PW-6) have not supported the aforesaid documents, but they have admitted signatures over the aforesaid documents. They have not deposed anything relating to any pressure, threat or fear made by the police or any other circumstances for signing upon the aforesaid documents. This shows that they are concealing the truth, in these circumstances, only the evidence of

investigating officer I.P. Kharwade (PW-13) is remain for consideration.

15. He is police officer, but his evidence cannot be discarded only on the ground that he is police officer and interested in the outcome of the case. While dealing with the question of evidentiary value and reliability of the statement of police officer, the Supreme Court in the matter of Anil alias Andya Sadashiv Nandoskar Vs. State of Maharashtra, has held that witnesses being police officers does not by itself create a doubt about their creditworthiness if non examination of Panch witnesses is explained satisfactorily. Relevant portion reads as under:

Indeed all the five prosecution witnesses who have been examined in support of search and seizure were members of the raiding party. They are all police officials. There is, however, no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness. We have carefully and critically analysed the evidence of all the 5 police officials. There is nothing on the record to show that any one of them was hostile to the Appellant and despite lengthy cross-examination their evidence has remained unshaken throughout. These witnesses have deposed in clear terms the details of the trap that was laid to apprehend the Appellant and the manner in which he was apprehended. Their evidence regarding search and seizure of the weapons from the Appellant is straightforward, consistent and specific. It inspires confidence and learned Counsel for the Appellant has not been able to point out any serious, let alone fatal, infirmity in their evidence. In our opinion, the factum of search and seizure of the country made revolver from the conscious possession of the Appellant has been established by the prosecution beyond any reasonable doubt. The explanation given by the prosecution, for the non-examination of the two Panch witnesses, which is supported by the report Ex. 24 filed by PW-4 P.I. Gaikwad is satisfactory. The evidence on the record shows that the raiding party made sincere efforts to join with them two independent Panchas at the time of search and seizure and they were so joined. They are also cited as prosecution witnesses and summoned to give evidence. However, despite diligent efforts made by the prosecuting agency to serve them, they could not be located or traced and therefore, they could not be examined at the trial. In the face of the facts stated in report Ex. 24, the correctness of which has remained virtually unchallenged during the cross examination of PW-4, the non examination of the two Panchas cannot be said to be on account of any oblique reason. Their non production at the trial thus has not created any dent in the prosecution case. The prosecution cannot be accused of withholding these witnesses since it made every effort to trace and produce them at the trial but failed on account of the fact that they had left the address furnished by them at the time of search and their whereabouts could not be traced despite diligent effort made in that behalf.

We, therefore, do not find any reason to doubt the correctness of the prosecution version relating to the apprehension of the Appellant, the search and seizure by the raiding party and the recovery from the Appellant of the country made revolver and cartridges for which he could produce no license or authority because of the non examination of the Panch witnesses we find that the evidence of PW 1 to PW-5 is reliable, cogent and trustworthy.

16. In the matter of P.P. Beeran Vs. State of Kerala, it has been held by the Supreme Court that the reliance can be placed on the uncorroborated evidence of the Sub Inspector of Police.

17. In the present case, Ghanshyam Mishra (PW-4) and Mohd Abid (PW-6) have not stated anything that why they have signed over five papers if they were not prepared and police has not seized aforesaid weapons from the Appellants. In absence of aforesaid circumstance, it reveals that they are concealing truth.

18. Defence has not able to elicit anything in their defence to show that Assistant Sub Inspector I.P. Kharwade (PW-13) is interested witness and has not followed the procedure prescribed. He is police officer. It was his duty to investigate the offence and only on the ground of his official duty he cannot be branded as interested witness. His evidence cannot be discarded or rejected on the ground that he is police officer.

19. In the present case, prosecution has substantially examined I.P. Kharwade (PW-13) i.e., investigating officer and medical evidence. As per para 1 of evidence of Sub inspector I.P. Kharwade (PW-13) i.e. investigating officer who has investigated the offence, on 10.5.2002 at 11.45 p.m. Appellant Ajay Banjare lodged F.I..R. vide Ex.P/3 which he has registered in the presence of Ghanshyam Mishra (PW-4) and Mohd Abid (PW-6). As per para 4 of his evidence, Appellant Ajay produced sword which has seized vide Ex.P/4, Appellant Omprakash produced dragger which has seized vide Ex.P/5, Appellant Dameshwar produced one stick which has seized vide Ex.P/6 and Appellant Tekram produced non-chalk which has seized vide Ex.P/7. As per Ex.P/3, F.I.R. has been registered at 11.45 p.m. on 10.5.2002, thereafter within twenty minutes of lodging of F.I.R. this witness has seized sword from Appellant Ajay Banjare vide Ex.P/ 4, after twenty five minutes of lodging of F.I.R. he has seized dragger from Appellant Omprakash vide Ex.P/5, after thirty minutes of lodging of F.I.R. he has seized stick from Appellant Dameshwar vide Ex.P/6 and after thirty five minutes of lodging of F.I.R. he has seized piece of non-chalk from Appellant Tekram vide Ex.P/7. As per para 5 of evidence of I.P. Kharwade (PW-13), he has seized one piece of bamboo stick, piece of non-chalk, piece of bamboo stick, teethes of the deceased, hairs of head of the deceased, bloodstained and plain soil and chappals of the deceased vide Ex.P/16. As per para 7 of his evidence he has sent seized articles to Forensic Science Laboratory, Raipur for chemical examination vide Ex.P/18 and report is Ex.P/19 which confirmed presence of blood on dragger seized from Appellant Omprakash and sword seized from Appellant Ajay, piece of non-chalk lying in the place of incident, teethes, hairs and bloodstained soil seized from the spot.

Sword and dagger seized from Appellants Ajay and Omprakash. Rest articles have been seized near Girhola bridge. Defence has cross-examined this witness at length but has not been able to elicit anything in his cross-examination that he has not seized the aforesaid articles from the Appellants and near Girhola bridge. Dead body was found near nala in the field. As per spot map Ex.P/12 articles seized vide Ex.P/16 were found near Girhola bridge and dead body of the deceased has been recovered from the field at the distance of one furlong from aforesaid bridge.

20. Investigating officer I.P. Kharwade (PW-13) has proved F.I.R. Ex.P/ 3 lodged by one of the present Appellants i.e., Ajay Banjare. Ex.P/3 F.I.R. contents,

(a) Confessional statement of Appellant Ajay Banjare.

(b) Non-confessional statement of Appellant Ajay Banjare.

(c) Statement of disclosure of fact.

As per Ex.P/3 F.I.R. all the Appellants have encircled deceased Mohan Banjare and caused his homicidal death. Aforesaid part of confessional statement is hit by Section 25 of the Evidence Act and same is not admissible in evidence. F.I.R. Ex.P/3 contents following non-confessional part/conduct of the Appellants and admission,

(a) All the Appellants were present near Girhola bridge on 10.5.2002 at 10 p.m.

(b) Appellant Ajay Banjare was holding sword, Appellant Omprakash was holding dagger, Appellant Dameshwar was holding stick and Appellant Tekram was holding non-chalk.

(c) Mohan Banjare succumbed to the injuries at about 10 p.m. near Girhola bridge.

(d) All the Appellants reached to Police Station Nandini, four kilometers away from the aforesaid bridge, within one hour and forty five minutes.

(e) The Appellants were holding the aforesaid weapons (disclosure statement of fact)

(f) Ex.P/3 F.I.R. reveals that injured dead body of Mohan Banjare was lying in the field below precinct.

(g) As per evidence of I.P. Kharwade (PW-13) he has seized bloodstained sword from Appellant Ajay, bloodstained dagger from Appellant Omprakash, broken piece of non-chalk from Appellant Tekram and stick from Appellant Dameshwar vide Exs.P/4 to P/7.

21. As regards disclosure statement of dead body of Mohan Banjare and its recovery, although this witness has not supported the fact that he or any police officer has informed about dead body of Mohan Banjare to Pransingh Banjare (PW-1), father of the deceased, but Pransingh Banjare has specifically deposed in

para 6 of his evidence that on the date of incident at night police came to his house and informed that body of his son Mohan Banjare is lying in Nikudiya road near nala, then he went to the aforesaid place along with police officer and two another persons where he found dead body of his son Mohan was lying near nala in the field of Chhabi stained with blood, he was also noticed injuries over the body of Mohan Banjare. Ex.D/1 his statement recorded u/s 161 of the Code of Criminal Procedure also reveals the same fact. This part of evidence of Pransingh Banjare (PW-1) is un-rebutted and is sufficient for drawing inference that on the basis of fact of Appellant Ajay Banjare relating to dead body of Mohan Banjare, dead body of Mohan Banjare has been discovered and dead body was found in the field beside Nikudiya road. No any specific form, specific document or specific mode to prove disclosure of fact is required. Appellant Ajay Banjare has disclosed the fact to the police officer vide Ex.P/3 and aforesaid fact i.e., dead body of Mohan Banjare was discovered at the instance of Appellant Ajay Banjare. As per para 2 of evidence of Pransingh Banjare (PW-1), on the date of incident at about 7 p.m. Mohan Banjare was alive, he left his house at about 7 p.m., thereafter his dead body was discovered. Definitely dead body was not hidden but it was discovered at late night from the field, although it was open place but at late night it was not possible for common man to go to that place or knowledge of dead body lying in the field was not normal and natural for common man at night.

22. In case F.I.R. is lodged by accused, confessional part of F.I.R. is not admissible in evidence and is hit by Section 25 of the Evidence Act. Disclosure of part of F.I.R. is admissible in evidence to the extent of disclosure of fact at the instance of accused u/s 27 of the Evidence Act. Non-confessional part of F.I.R. is admissible in evidence in terms of Sections 8 and 21 of the Evidence Act as conduct of the Appellant and as admission.

23. While dealing with the question of use of F.I.R. lodged by the accused and its evidentiary value against accused, the Supreme Court in the matter of Bheru Singh Vs. State of Rajasthan, has held that F.I.R. lodged by accused can be used against the accused as evidence of conduct u/s 8 of the Evidence Act and relating to disclosure of facts admissible u/s 27 of the Evidence Act. Para-17 and 19 of the said judgment reads as under:

17. Where the first information report is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. No part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by Section 27 of the Evidence Act. The first information report recorded u/s 154 Code of Criminal Procedure is not a substantive piece of evidence. It may be used to corroborate the informant u/s 157 of the Evidence Act or to contradict him u/s 145 of the Evidence Act in case the informant appears as a witness at the trial. Where the accused himself lodges the first information report, the fact of his giving the information to the police is admissible against him as evidence of his conduct u/s 8 of the Evidence Act and

to the extent it is non-confessional in nature, it would also be relevant u/s 21 or the Evidence Act but the confessional part of the first information report by the accused to the police officer cannot be used at all against him in view of the ban of Section 25 of the Evidence Act.

19. From a careful perusal of this first information report we find that it discloses the motive for the murder and the manner in which the Appellant committed the six murders. The Appellant produced the bloodstained sword with which according to him he committed the murders. In our opinion the first information report Ex. P-42, however it not a wholly confessional statement, but only that part of it is admissible in evidence which does not amount to a confession and is not hit by the provisions of Section 25 of the Evidence Act. The relationship of the Appellant with the deceased; the motive for commission of the crime and the presence of his sister-in-law PW 11 do not amount to the confession of committing any crime. Those statements are non-confessional and can be used against the Appellant as evidence u/s 8 of the Evidence Act. The production and seizure of the sword by the Appellant at the police station which was bloodstained, is also saved by the provisions of the Evidence Act. However, the statement that the sword had been used to commit the murders as well as the manner of committing the crime is clearly inadmissible in evidence. Thus, to the limited extent as we have noticed above and save to that extent only the other portion of the first information report Ex. P-42 must be excluded from evidence as the rest of the statement amounts to confession of committing the crime and is not admissible in evidence.

24. As regards the question of motive, in the present case, as per initial case of the prosecution, Appellant Ajay is in habit of using criminal force and outraging the modesty of Sangeeta (PW-2), cousin sister of deceased Mohan Banjare, but Sangeeta (PW-2) has not admitted the aforesaid fact and prosecution has declared her hostile, but Smt. Saroj (PW-12), cousin sister of Sangeeta, has admitted the aforesaid fact in his evidence and has also deposed that the deceased has compelled Appellant Ajay to pray for pardon from Sangeeta and this was the cause/motive for commission of offence.

25. By examining Pransingh Banjare (PW-1), investigating officer I.P. Kharwade (PW-13) and Dr. A.P. Sawant (PW-9), prosecution has proved following circumstances.

(i) On 10.5.2002 before 10 p.m. deceased Mohan Banjare Was alive.

(ii) Previously on account of use of criminal force for outraging the modesty of Sangeeta, cousin sister of deceased-Mohan Banjare, Appellant Ajay was condemned by deceased Mohan Banjare and has compelled for praying pardon from Sangeeta which was the motive for commission of offence.

(iii) On 10.5.2002 at 10 p.m. all the Appellants were present at Girhola bridge, Appellant Ajay was holding sword, Appellant Omprakash was holding dragger, Appellant Dameshwar was holding stick and Appellant Tekram was holding non-

chalk.

(iv) Mohan Banjare succumbed to the injuries near aforesaid bridge. Four teethes, chappal, hairs of head of deceased Mohan Banjare and soil containing blood was found near the aforesaid bridge.

(v) Appellant Ajay Banjare along with Appellants Omprakash, Tekram and Dameshwar went to Police Station Nandini, four kilometers away from such bridge, within one hour and forty five minutes after death of Mohan Banjare.

(vi) Appellant Ajay Banjare lodged F.I.R. vide Ex.P/3.

(vii) Bloodstained sword was seized from Appellant Ajay Banjare, bloodstained dragger was seized from Appellant Omprakash, stick was seized from Appellant Dameshwar and piece of non-chalk was seized from Appellant Tekram vide Ex.P/4 to P/7, within forty minutes of lodging of F.I.R.

(viii) Piece of non-chalk was recovered from the place of incident i.e. near the aforesaid bridge.

(ix) Appellant Ajay has made the fact of dead body of Mohan Banjare and same has been recovered at the instance of Appellant Ajay Banjare from the field at the distance of one furlong from the place where teethes and other articles were lying.

26. If these circumstances are considered together in absence of aforesaid circumstances, then only inference would be possible that the aforesaid Appellants have caused homicidal death of deceased Mohan Banjare and except the aforesaid Appellants no other person has caused homicidal death of deceased Mohan Banjare. These circumstances are also sufficient to exclude the possibility of innocence of the aforesaid Appellants.

27. After appreciating the evidence available on record, learned 5th Additional Sessions Judge has convicted the Appellants u/s 302/34 of the I.P.C. and sentenced them to undergo imprisonment for life and to pay fine of Rs. 100/-, in default of payment of fine to further undergo R.I. for two months.

28. As held by the Supreme Court in the matter of C. Chenga Reddy and Others Vs. State of Andhra Pradesh, , aforesaid chain of circumstances are complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

29. On close scrutiny of the evidence, we do not find any illegality in conviction and sentence imposed upon the Appellants.

30. Consequently, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.