

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.320 of 2003**

1. Abdul Mahmood S/o Abdul Aziz, aged 73 years, resident of Bachhod outpost Baloda, PS Akaltara, District Janjgir Champa (CG).
2. Abdul Sharif, S/o Abdul Mahmood, aged 39 years, R/o Khamaria, PS Seepat, District Bilaspur (CG).
3. Panchram S/o Jagannath, aged 32 years, R/o Vidyanagar, PS Bilaspur, District Bilaspur (CG).
4. Jahida Begam, W/o Late Antony, aged 34 years, R/o Chantidih, PS Bilaspur, District Bilaspur (CG).
5. Shamsunnisha W/o Abdul Mahmood, aged 50 years, R/o Bachhod outpost Baloda, PS Akaltara, District Janjgir-Champa (CG).

---- Appellants**Versus**

State of Chhattisgarh Through OP Baloda, PS Akaltara, District Janjgir-Champa (CG)

---- Respondent

For Appellants	:	Shri HS Ahluwalia, Advocate for the appellants.
For Respondent	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****C A V JUDGMENT****Per P. Sam Koshy, J.****Delivered on 05/08/2015**

1. The appellants in the instant appeal have been convicted for the offence punishable under Section 302 IPC and have been sentenced to undergo RI for life with fine of Rs.100/- and in default further RI for one month. The appellants have also been convicted for offence under Section 201

IPC and sentenced RI for three years with fine of Rs.100/- and in default, further RI for one month vide judgment dated 21.01.2003 passed by the Fourth Additional Sessions Judge (FTC), Janjgir, in Sessions Trial No.172/2001.

2. The brief facts necessary for disposal of this appeal are that, missing report was lodged by the PW-2, Abdul Sazzad on 14.03.2001 stating that deceased Anthony was missing since 20.12.2000 and thereafter his whereabouts were not known. On the missing report, entry was made in the Station diary and the matter was investigated. During the course of investigation, dead body of deceased was found in the hut situated in the field of appellant No.1-Abdul Mahmood near Lilagar river bank (Lilagar Nadi). Accordingly inquest report Ex. P/3 was prepared and FIR was lodged on 21.03.2001 Ex. P/24. Based on the informations collected during the course of investigation and on the basis of memorandum statement of appellant No.1-Abdul Mahmood, charge-sheet was filed in the court of Fourth Additional Sessions Judge (FTC), Janjgir and the matter was put to trial. 25 prosecution witnesses were examined, whereas, on behalf of defence, two witnesses were examined and after conclusion of trial, the Session Court vide impugned judgment dated 21.01.2003 held the appellants guilty of offence on the basis of circumstantial evidence and sentenced them as afore-mentioned in para-1 of this judgment leading to filing of this appeal.
3. Learned counsel appearing for the appellants submitted that judgment of trial court is ignoring the basic principles of criminal jurisprudence. It has acted in a mechanical manner against the accused persons in convicting them for the offence charged against them irrespective of fact that

prosecution has failed to prove its case beyond reasonable doubt on all points. According to Counsel for the Appellants, when it is a charge under Section 302 IPC, the first and foremost thing which the prosecution ought to have proved by leading cogent and clinching evidence was that death of deceased was homicidal in nature, which in the instant case has not been established by direct or indirect evidence. Thus, the findings of trial court on this count deserves to be interfered with and the order of conviction is liable to be set aside.

4. He would further submit that once when it is established that death of deceased was homicidal, then the second thing which the prosecution has to establish is that the homicidal death of deceased was on account of the assault or offence made by the accused persons alone, which again in the instant case has not been established.
5. It is further submitted that the conclusion of trial court on the last seen theory is also contrary to the evidence and law and that the last seen theory has also not been properly established. Chain of events linking the role of accused persons in the offence of murder of deceased also has to be completed and that the chain of events should be interlinked without any interruption so as to lead us to arrive at the conclusion that it is the appellants alone who have murdered the deceased, which is again missing in the instant case and for all these reasons, the findings of trial court is bad in law and deserves to be set aside.
6. Counsel for the Appellants further referring to the witnesses examined on behalf of the prosecution particularly the witnesses on the basis of which the trial court had drawn the interference against the appellants of having committed the offence, are not trustworthy or reliable evidence for the

reasons that there were ample evidence on the record to show that the witnesses particularly PW-2,3,4,11,15 and 16 were the witnesses who were in inimical terms with the accused appellants, and therefore, statements of only these witnesses alone should not be taken into consideration for holding the appellants guilty of the offence for which they were charged.

7. Likewise, Counsel for the Appellants further referring to the evidence of witnesses examined on behalf of the prosecution stated that there are large number of contradictions and omissions in the evidence led by the prosecution and further the evidence of witnesses are self contradictory which itself shows that there is no element of proof to establish that the appellants alone are the persons responsible for the death of deceased. According to counsel for the Appellants, last seen theory accepted by the trial court to be one of the circumstances for conviction is again a weak piece of evidence inasmuch as, the witnesses particularly PW-3 and PW-15 namely Abdul Gulzar and Jashir Mohammad both have stated that they had last seen the accused appellants with the deceased on 20.12.2000 and the dead body of deceased in the instant case was recovered on 20.03.2001 i.e. after a gap of more than three months and that these prosecution witnesses did not for all this period say anything about the deceased or he being assaulted, and as such the gap between the date when the Appellants were last seen with the deceased and the date of recovery of dead body being two wide, such last seen theory does not have any sufficient force to reckon with the factors relevant for bringing in the circumstantial evidence.
8. Another missing link as per counsel for the Appellants in the prosecution's

case is that the hut from where the dead body of deceased was recovered is stated to have been locked with two locks which were opened at the time of recovery of dead body, but the said locks not having been seized by the prosecution and the failure of seizure of said locks on the hut itself creates doubt as to whether hut at all was locked or not and it also leads to doubtful situation on the fact that if it was locked, whether it was opened by the appellant No.1-Abdul Mahmood as there is no prosecution witness except for a bald statement made by PW-7, Bedu Ram about the fact that the lock on the hut was opened by the appellant No.1-Abdul Mahmood. At the same time, PW-24, D.R. Yadav, the Investigating Officer, in his evidence has said that lock infact was opened by one Bharat. Investigating Officer also accepted the fact that the lock was not seized. According to counsel for the Appellants, the prosecution has also not been able to establish the fact that it was the appellants alone who had put the lock on the hut as the possibility of others also being in a capacity to have put lock cannot be ruled out particularly the persons who were in inimical terms with the family of the accused appellants.

9. Counsel for the Appellants further referring to the evidence of PW-7, Bedu Ram submitted that he made contradictory statement so far as opening of the lock of the hut is concerned inasmuch as, in para-5 he says that it was the Patwari who got the lock opened at the time of recovery of dead body whereas, in para-12 he says that it was the appellant No.1-Abdul Mahmood who had opened the lock while preparation of the Panchnama. Pertaining to recovery of dead body, counsel for the Appellants also submitted that it is a doubtful case in believing the fact

that dead body of deceased was recovered at the instance of accused appellant No.1, as from the evidence, it establishes the fact that appellant No.1 alone was not the person who had the exclusive knowledge about the dead body being in the hut belonging to the appellant No.1. Similarly, para-6 of deposition of PW-7, Bedu Ram states the fact that the memorandum statement of appellant No.1 and recovery was made in presence of the Police personnels also gives impression that the memorandum statement and the alleged subsequent recovery was not voluntary so as to take it to be a strong piece of evidence.

10. Counsel for the Appellants further submitted that the suspicion of PW-6, Rajkumar also could have committed the offence cannot be ruled out for the reason that PW-6 was a lock maker and as he was a lock maker and he was also found near the hut where the dead body of deceased was found and as such he could also have committed the offence and have hidden the dead body inside the hut of the Appellant No.1 and might have also put his lock. Likewise, counsel for the Appellants also referring to the provisions of Evidence Act, 1872 (for short, the Act, 1872) submitted that Section 106 of the Act, 1872 would come into play only after the prosecution discharges its burden of proof as to how the dead body of deceased was brought to the hut of Appellant No.1. In support of above contention, he relied upon the judgment of Supreme Court in case of *Vikramjit Singh @ Vicky Vs. State of Punjab*, reported in Cr.LJ 2007 SC-1000.
11. As regards the last seen theory is concerned, counsel for the Appellants submitted that there are many contradictions and omissions in the statements made before the court by prosecution witnesses particularly

PW-3, Abdul Guleshar and PW-16, Ashiya Begum. PW-17 and PW-18 have not supported the case of prosecution and have been declared as hostile. Thus, the prosecution case gets substantially weakened on this ground alone.

12. Counsel for the Appellants further referring to the conduct of PW-10, Sheikh Mohammad and PW-15, submitted that their evidences are not trustworthy for the reasons that in their statement they said that they had last seen the deceased on the eve of Milad, but they did not disclose this fact for about three months time either to the mother of deceased or to any of the members of the society about what they had witnessed.
13. Counsel for the Appellants further referring to the medical evidence submitted that ocular evidence does not match the medical evidence, and therefore, the benefit of doubt should also be given to the Appellants. According to him, there were no injury marks visible on the dead body of deceased and the dead body was in a adipocere stage wherein the entire body was intact in-spite of it being more than three months old and during the course of Postmortem no external injuries whatsoever were visible on the body of deceased.
14. Lastly, the counsel for the Appellants stressed upon the fact that there was no motive for the Appellants to commit the said offence for the reason that PW-12, Husaina Bee, PW-13, Niyajuddin and PW-23, Josphin Meiry in their deposition before the court have admitted the fact that Appellants were having good relation with the deceased and as such, there could not have been any reason for the Appellants to be suspected for committing the offence. Thus, on all the above-referred grounds, counsel for the Appellants prays for setting aside the judgment of

conviction against the Appellants.

- 15.** Per contra, learned State counsel opposing the appeal submitted that the prosecution has proved its case beyond all reasonable doubts and though the conviction is based on circumstantial evidence, but all the circumstances which the court below has taken into consideration completes the chain of events. On perusal of the complete chain of events it lead us to the conclusion that it was only the Appellants alone who have committed the offence, and there was no doubt in reaching to the conclusion that the offence could have been done by no one else, except the Appellants. State counsel further submitted that as far as the lock put on the hut of the Appellants where dead body is said to have been recovered, not having been seized may be inconsequential in the light of the evidences of PW-4, Amir Miyan as well as PW-6, Rajkumar whereby both of them have admitted the fact that hut was locked and it was opened before the dead body of deceased was removed. Similarly, the State Counsel referred to the evidence of PW-7, Bedu Ram, who, in his deposition has also said that the hut was locked which was opened by the Appellant No.1-Abdul Mahmood.
- 16.** Learned State counsel further argued that the strongest suspicion against the Appellants are that deceased died an unnatural death and secondly, the dead body of deceased was found inside the hut belonging to Appellant No.1 and further the Appellants were misleading the mother of deceased in respect of whereabouts of the deceased. So far as the motive for committing the offence is concerned, again the State counsel referring to statement of PW-13, Niyajuddin submitted that deceased was eliminated on account of the fact that Appellant No.4-Zahida Begum i.e.

wife of deceased was having illicit relationship with Appellant No.3- Panchram, and therefore, they decided to eliminate the deceased. According to State Counsel, the Appellants have not been able to give any plausible or justifiable explanation in respect of dead body being found in the hut of Appellant No.1 and that too which was buried almost two feet under the earth coupled with the fact that hut was locked from outside. There being sufficient evidence that the lock was put by the Appellant No.1 leads to the conclusion that it is only the Appellants who could have assaulted the deceased. The State counsel relied upon the evidences of PW-2, Abdul Sazzad, PW-3, Abdul Gulsher and PW-4, Amir Miyan having last seen the deceased in the house of Appellant No.1 and since thereafter the deceased being missing, with which the only inference that can be drawn is that the Appellants had assaulted the deceased and subsequently his dead body was buried in the hut of the Appellant No.1. This is again a strong link in the chain of events. Thus, taking into consideration all these facts and circumstances, the State counsel prays for rejection of Appeal.

17. We have heard counsel for the parties and perused the records with utmost circumspection.
18. Some of the undisputed facts which stand revealed from perusal of record and evidences are that:
 - the deceased was missing since 20.12.2000 and the first missing report was lodged by PW-2, Abdul Sazzad after about three months of time i.e. on 14.03.2001. Interestingly, PW-2, Abdul Sazzad is also not directly or indirectly related to deceased Anthony.

- Since 20.12.2000 i.e. the date on which the deceased went missing, the wife of deceased, Appellant No.4-Zahida Begum did not lodge any missing report.
- The body of deceased was found on 20.03.2001 i.e. exactly after three months from the date he had gone missing and the body was recovered from inside the hut situated in the field of Appellant No.1 and further the hut was locked from the outside.
- Postmortem on the body of deceased was conducted on 21.03.2001 and in the course of conducting postmortem, the Doctor has opined that no definite opinion can be found showing cause of death. Subsequently, the body was also sent to the Medical College, Raipur, wherein the Department of Forensic Medicine further examined the dead body and in the course of such examination no injuries were found over the body. Skull was also found to be intact and the duration of death was opined to be around four months back i.e. from 22.03.2001. It was also opined that the body was in the advance stage of decomposition and was in adipocere form. The Department of Forensic Medicine also said that since no injuries were found over the body of deceased, hence cause of death was uncertain.
- Further admitted position in the instant case is that there is no eye witness in respect of the incident of the deceased being attacked or getting murdered. The entire conviction of the

Appellants was based on the circumstantial evidence and the main circumstances which has been taken note of by the trial court while convicting the Appellants was based on the last seen theory. More particularly, PW-3, Abdul Gulzar, PW-4, Amir Miyan and PW-16, Ashiya Begum are the witnesses supporting the last seen theory.

- From the perusal of records another very important fact which is not disputed is that postmortem report or the Department of Forensic Medicine of Medical College, Raipur have not been able to give any definite opinion regarding of death of deceased to be homicidal in nature.

19. Based upon the above-referred admitted position, if we look into some of the decisions of Supreme Court in case of *The State of Punjab v. Bhajan Singh and Others*, reported in 1975 (4)-SCC-472, wherein, after considering the medical evidence finding that there were no marks of ligature on the dead body, it was found not possible to hold that the death of deceased was homicidal. It was further held in the later part of the said judgment that the accused person cannot be made to suffer on the basis of insufficient evidence holding that death of deceased was homicidal.
20. Further, in case of *Madho Singh Vs. State of Rajasthan*, reported in 2003(1)Supreme-473, the Supreme Court has held that in absence of proof of homicidal death, the accused cannot be convicted merely on the theory of last seen. It was further held that Appellant's conviction cannot be maintained merely on suspicion howsoever strong it may be. It further held that these facts assume further importance on account of absence of proof of motive particularly when it is proved that Appellants/accused

were having good relations.

21. Perusal of deposition in para-2 of PW-12 & PW-13 and deposition in para-7 of PW-23 reveal that Appellants/accused were having good relations with the deceased-Anthony. Once when it is established that they were having good relations, the motive of committing the crime has also to be established by the prosecution, which, in the instant case has not been sufficiently established.
22. Another aspect which cannot be ignored is the fact that many of the prosecution witnesses particularly PW-4 Amir Miyan, PW-6 Rajkumar, PW-7 Bedu Ram and other witnesses have stated that the hut from where the dead body of deceased was found was locked and was subsequently opened while exhuming the dead body, but there is no evidence whatsoever to show that the lock/locks put on the hut was seized. In the absence of seizure of lock/locks which is said to have been put on the hut gives rise to a great element of doubt as to whether the hut was at all locked and at the same time giving rise to the possibility of the said hut being open without any lock and was having access to other persons also and the benefit of which would also go in favour of the accused/Appellants. Another piece of evidence which further gives rise to a doubt is that there is contradiction among the prosecution witnesses themselves as to who had opened the lock at the time of exhumation of the dead body.
23. Likewise, the Doctor of department of Forensic Medicine examining the dead body has opined that the body had reached to adipocere stage which means that the natural body fats are converted to waxy substances by hydrolysis and may resist decomposition and retain the shape and

appearance for a substantial long period.

24. As per the medical jurisprudence, a body when it is in adipocere stage, it can easily reveal any sort of external injuries on the body. In the instant case, the report of Doctor conducting the postmortem as well as the Doctor of Forensic Medicine examining the dead body of deceased have stated that they could not find any external injuries on the dead body of deceased. The Skull was healthy and also intact. The Viscera preserved also did not lead to anything incriminating.
25. Thus, from the overall consideration of the evidences which have come on record, it would reveal that there are a lot of broken links in the prosecution's case which does not complete the chain of circumstances for conclusively reaching to the conclusion that it was the Appellants alone to have assaulted the deceased-Anthony.
26. Similarly, the conduct of PW-3 Abdul Gulsher and PW-16 Ashiya Begum in not disclosing the fact for about three months to any of the neighbours or the persons in the surrounding vicinity about the incident gives a great element of doubt on their versions and their depositions make it less trustworthy and these witnesses have also not explained as to why they did not inform anybody about the incident.
27. Further, a bare perusal of statement of PW-16 Ashiya Begum also shows that she was not an eyewitness to what transpired on 20.12.2000 and whatever information she had received was told to her by PW-3.
28. Likewise, the statement of PW-4 Amir Miyan would also reveal that he was informed by PW-16 Ashiya Begum. Further, it is a case where PW-2 Abdul Sazzad has made his statement on the basis of the information which he received from PW-17 Nishi Begum and further PW-17 had

received the information from PW-18 Abdul Hamid. Both PW-17 & PW-18 have not supported the case of prosecution and further they have been declared hostile. The prosecution witnesses who have deposed before the court on the basis of the information received from PW-17 and PW-18 loses all its credibility making the prosecution's story still weaker and the benefit of which further goes in favour of the Appellants/accused.

- 29.** In the light to all the afore-mentioned infirmities in the prosecution case and in absence of complete chain of events, it would be difficult for upholding the conviction of the Appellants only on the basis of circumstantial evidence of strong suspicion which have come on record.
- 30.** Thus, giving the benefit of doubt to the Appellants, the Appeal is allowed. The conviction of Appellants for offence under Sections 302 and 201 IPC is set aside. The Appellants are acquitted of the charges. The bail bond of the Appellants shall remain in operation for a period of six months from today in view of provision contained in Section 437-A Cr.P.C.
- 31.** The Appeal accordingly stands allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE