

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Cr. Appeal No.361/2010**

Ravindra Singh, S/o Shri Gulab Singh, aged  
about 33 years, R/o Barbaspur, P.S. **APPELLANT**  
Manendragarh, Distt. Korea, Chhattisgarh. (In Jail)  
Vs  
State of Chhattisgarh, through P.S.  
Manendragarh, Distt. Korea, Chhattisgarh. **RESPONDENT**

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For the appellant: Shri Gautam Khetrapal, Advocate.

For the respondent: Shri Arun Sao, Dy. Advocate General.  
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DB: Hon'ble Shri Justice Pritinker Diwaker  
Hon'ble Shri Justice I.S. Uboweja

**Judgment on Board by P. Diwaker, J**

**10.07.2015**

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.4.2010 passed by the Additional Sessions Judge, Manendragarh, District Korea (CG) in S.T. No.112/09 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for Life & fine of Rs.5,000/-, in default to undergo additional RI for 06 months.
2. As per prosecution case, the accused/appellant, Sarpanch of Village Barbaspur, was having illicit relation with Dhaneshwari (since deceased) and it is alleged that quite often the accused/appellant used to spend night in the house of Dhaneshwari (since deceased). On 4.6.2009 the accused/appellant had also gone to the house of the deceased in the night and on 5.6.2009 at about 11.00-12.00 in the morning some quarrel took place between the accused/appellant & the deceased and it is stated that the accused/appellant set the deceased on fire after pouring kerosene on her. Further case of the prosecution is that after hearing cries of the deceased, Munna (PW-12), neighbour of the deceased,

reached to the place of occurrence along with his wife and saw the deceased in burning condition and thereafter with the help of villagers and accused/appellant, the deceased was taken to the Community Health Centre, Manendragarh where she died at about 10.15 p.m. Memo (Ex.P-1) was sent by Dr. P.S. Kurre (PW-10) based on which Merg Intimation (Ex.P-2) was recorded. After merg enquiry, FIR (Ex.P-19) was registered against the accused/appellant on 8.6.2009 under Section 302 of the IPC. Post-mortem on the body of deceased was performed on 06.06.2009 by Dr. S.S. Singh (PW-3) who noticed 70% burn injuries on the body of deceased and as per his opinion, cause of death was hypogolimic neurogenic shock due to 70% ante mortem burn and nature of death can be opined after seeing the circumstantial evidence report. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed against him.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 16 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted & sentenced him as mentioned in para-1 of this judgment.
5. Learned counsel for the accused/appellant submits as under:
  - (i) that, the accused/appellant is convicted solely on the basis of circumstantial evidence but the circumstantial evidence is not such which can be made basis of conviction of the accused/appellant.

- (ii) that, all the important prosecution witnesses have turned hostile and they have not supported the prosecution case.
- (iii) that, the Court below after relying upon the statement of Smt. Jaimatiya (PW-9) has reached to the conclusion that it is the accused/appellant who was last seen in the company of the deceased, but only on the basis of this circumstance, the accused/appellant cannot be convicted.
- (iv) that, even assuming that in the night prior to the date of incident i.e. 04.06.2009, the accused/appellant had gone to the house of the deceased but there is no evidence that at the time of occurrence the deceased was present in the house of the deceased.
- (v) that, some of the witnesses have stated that the accused/appellant used to spend night with the deceased and in the morning he used to leave her house, whereas in the present case the incident had taken place in between 11.00 to 12.00 in the morning of 5.6.2009 and thus the possibility that some third person may have committed the crime cannot be ruled out.
- (vi) that, in the cases of circumstantial evidence the prosecution is required to prove that the entire chain of evidence is complete but in the present case the quality of evidence is not as such on which basis it can be said that the chain of circumstances is complete.
- (vii) that, yet another basis for conviction of the appellant is that he had not offered any explanation in his statement recorded under Section 313 of Cr.P.C., but the same cannot be used against him because house where the deceased caught fire does not belong to him.
- (viii) that, the trial Court has not recorded any finding as to whether death

was homicidal or suicidal in nature and once the witnesses have been turned hostile, heavy burden lies upon the prosecution to prove the death of the deceased as homicidal.

(ix) Lastly it has been argued that the appellant is in jail since 25.09.2009 and has suffered enough.

Learned counsel for the appellant has placed reliance in the matters of **Padala Veera Reddy vs. State of Andhra Pradesh & others** reported in **AIR 1990 SC 79**; **State of U.P. vs. Satish** reported in **(2005) 3 SCC 114**; **Ramareddy Rajesh Khanna Reddy & another vs. State of A.P.** reported in **(2006) 10 SCC 172**; **Gamparai Hrudayaraju vs. State of Andhra Pradesh** reported in **(2009) 13 SCC 740**; **Sohel Mehboob Shaikh vs. State of Maharashtra** reported in **(2009) 12 SCC 588** & **Sahadevan & another vs. State of Tamil Nadu** reported in **(2012) 6 SCC 403**. Reliance is also placed in the recent judgment of the Hon'ble Supreme Court dated 01.07.2015 passed in Cr. Appeal Nos.623/2008 & 624/2008, parties being State of UP vs. Satveer & ors.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that Smt. Jaimatiya (PW-9) has although been declared hostile but has categorically stated that it is the accused/appellant who had spent the entire night with the deceased and therefore it is only the accused/appellant who can be held liable for committed murder of the deceased. He further submits that it is the accused/appellant who immediately after the incident took the deceased on his vehicle to the hospital and thus his presence cannot be doubted in or around the

house of deceased. Though some of the witnesses have turned hostile but the chain is complete in view of the statement of Smt. Jaimaniya (PW-9). The accused/appellant has not offered any explanation in his statement recorded under Section 313 of Cr.P.C. as to where he was at the time of incident.

7. We have heard learned counsel for the parties and perused the material available on record.
8. Jaikumar (PW-1) is Peon of the Community Health Centre, Manendragarh who took memo (Ex.P-1) of the doctor to the police on which basis Merg Intimation (Ex.P-2) was recorded. Ghasiram (PW-2) is the witness of seizure (Ex.P-3) by which burnt clothing of the deceased, matchbox & some other articles were seized from the house of the deceased.
9. Dr. S.S. Singh (PW-3) conducted post mortem on the body of the deceased, noticed 70% burn injuries and opined that cause of death is hypogolimic neurogenic shock due to 70% ante mortem burn. He further opined that nature of death can be given only after seeing the circumstantial evidence report. He has further stated that at the time of performing post-mortem, he had not noticed any kerosene smell from the clothes & body of the deceased.
10. Ramnayan Gupta (PW-4) is the Head Constable who recorded merg intimation (Ex.P-2).
11. Mannu Singh (PW-6) is the father of deceased. He has stated that accused/appellant used to call him uncle and their relationship were of maternal uncle & nephew. He has stated that on the date of incident he was not in the village and after receiving information on telephone, he rushed to the hospital, however, the deceased was unconscious and he

never had talk with her. He has further stated that his wife might have asked the deceased as to how she caught fire and it is his wife who told him that the deceased had informed her that it is the accused/appellant who set her on fire. However, in the cross-examination he has stated that when reached to the hospital the deceased was unconscious and till her death she remained unconscious. He has further stated that in his presence his wife had never asked anything to the deceased and that the deceased had never informed his wife that as to how she got burnt. He has further stated that his wife had never informed him anything about the incident. He has further stated that when he reached to the hospital at that time her mother Jaimaniya (PW-9) was not in the hospital and this witness has admitted that her mother had not informed him anything about the incident.

12. Shibbu (PW-7) is the witness of inquest (Ex.P-8). Smt. Rukman (PW-8), aunt of the deceased, has been declared hostile and not stated anything against the accused/appellant.
13. Smt. Jaimaniya (PW-9) is the star witness of the prosecution and the accused/appellant appears to have been convicted mainly on the basis of evidence of this witness. She has stated that she is grandmother of the deceased and was living with the deceased under the same roof though in a separate room. She has further stated that the accused/appellant is from her village and used to address her as maternal grandmother. She has further stated that on the preceding night of the incident, the accused/appellant had come to her house and stayed with the deceased. She has stated that in the morning after preparing meals she had left for her work place and there she was informed by her neighbourer Munna (PW-12) that the deceased has

suffered burn injuries. She has stated that when she reached to her house, she saw the accused/appellant taking the deceased to the hospital. In the cross-examination she has stated that accused/appellant used to visit her house in the night and he used to leave the house in the morning. She has stated that it is true that when Munna (PW-12) came to inform her about the incident, he had informed that it is the accused/appellant who burnt the deceased but then she has stated that it is incorrect to say that it is the accused/appellant who set the deceased on fire after pouring kerosene on her. When she was confronted with her case diary statement wherein she has stated that it is the accused/appellant who burnt the deceased, she has categorically stated that she never made any such statement. She has further stated that as the accused/appellant is in her relation i.e. grandson, therefore, she wants that he should be acquitted. This witness has further stated that Munna (PW-12) never informed her that it is the accused/appellant who had burnt the deceased. This witness has been declared hostile.

14. Dr. P.S. Kurre (PW-10) first treated the deceased and after her death, wrote memo of Ex.P-1 to the police on which basis merg was recorded. Shyambai (PW-11) has been declared hostile.

15. Munna (PW-12) is the witness who first attended the deceased after hearing her cries. He has stated that after hearing cries "save-save", he and his wife reached to the house of deceased where the deceased told him that she would not survive. This witness was also declared hostile.

16. Smt. Jaimati (PW-12) appears to be neighbourer of the deceased & Munna (PW-12) has also not supported the prosecution case. Kavilal Kujur (PW-14) has prepared the spot map (Ex.P-14). Mahendra Kumar Singh (PW-15), Police Constable, took certain seized articles to the

Forensic Science Laboratory for chemical examination. Lalaram (PW-16) is the Investigating Officer and has duly proved the prosecution case.

17. On close scrutiny of the evidence makes it clear that on 5.6.2009 at about 11.00-12.00 in the morning the deceased suffered 70% burn injuries. She was taken to the hospital by villagers with the help of accused/appellant where the deceased succumbed to burn injuries at about 10.15 p.m. All the important witnesses of the prosecution have turned hostile and not supported the prosecution case. Only piece of evidence against the accused/appellant on which basis he has been convicted is the statement of Smt. Jaimaniya (PW-9). According to this witness, the accused/appellant used to come to the house of deceased in the night and stay with her till morning and on the preceding night of the incident also he had come to the house of the deceased and stayed with her whole night.
18. Undoubtedly, the last seen is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty, but this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and following the point of being so last seen. In the matter of Satish (supra) the Hon'ble Supreme Court has held thus:-

“22. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons

coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs3 and 5, in addition to the evidence of PW-2.”

Similarly, in the matter of Sahadevan (*supra*) the Hon'ble Supreme Court has held as under:-

“28. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and the deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt.”

19. In the present case, Smt. Jaimaniya (PW-9), who had seen the accused/appellant in the company of deceased in the preceding night of the incident, has not stated that in the morning after cooking food when she left the house for her work place, at that time the accused/appellant was present in the house of the deceased. Moreover, the time-gap between the point of time when the accused & the deceased were seen together by this witness and the deceased received burn injuries is so long that possibility of other persons coming in between cannot be ruled out. Thus, evidence of Smt. Jaimaniya (PW-9) alone cannot constitute sufficient evidence against the accused to fasten the alleged offence.

20. Further, this Court does not find any substance in the argument of the learned State Counsel that the appellant had failed to offer any explanation in respect of burns sustained by the deceased because the deceased was found in burning condition in her own house and not in

the house of the accused/appellant. Furthermore, mere non-explanation on the part of accused/appellant in his statement under Section 313 of Cr.P.C. itself is not sufficient to uphold his conviction for the commission of murder of the deceased. Even presuming that the accused had taken the deceased to the hospital in his vehicle, this itself is not sufficient to prove that it is the accused/appellant who set the deceased on fire after pouring kerosene because there were other persons also who have shifted the deceased to the hospital along with the accused/appellant.

21. As there is no evidence to show circumstantially that accused/appellant was present in the room of the deceased at the time of occurrence, we have no other option but to hold that the accused/appellant is entitled to the benefit of doubt.

22. In the result, the appeal succeeds. Conviction & sentence of the appellant under Section 302 of the IPC are hereby set aside and he is acquitted of that charge by extending benefit of doubt. He be set at liberty forthwith unless required to be in custody in connection with any other case.

Sd  
(Pritinker Diwaker)  
Judge

Sd/-  
(I.S. Uboweja)  
Judge

roshan/-