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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 499 of 2001

Samarau @ Prem Chand S/o Sadhu Ram

VERSUS

State of Chhatisgarh Through : Police Station – Baloda Bazar C.G.)

C A V JUDGMENT

Sd/-

JUDGE

4/07/2016

For consideration

Hon'ble Shri Deepak Gupta

I agree

Sd/-

Chief Justice

Post for pronouncement of judgment on 04/07/2016.

Sd/-

P. Sam Koshy
Judge



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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 499 of 2001

Samarau @ Prem Chand S/o Sadhu Ram R/o Sonloharshi, P.S. Masturi,
District- Bilaspur.

---- Appellant

Versus

State of Chattisgarh Through : Police Station – Baloda Bazar (C.G.)

---- Respondent

For Appellant	:	Ms. Usha Chandrakar, Advocate
For State/Respondent	:	Ms. Madhunisha Singh, Panel Lawyer

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C.A.V. Judgment

Per P. Sam Koshy, Judge

07.10.2016

1. The present Appeal has been preferred challenging the judgment of conviction dated 25.04.2001 passed by the Second Additional Sessions Judge, Baloda Bazar, District Raipur in Sessions Trial No. 157/97 convicting the Appellant for the offence under Sections 302, 201/34 of the Indian Penal Code (in short 'the I.P.C.') and to undergo R.I. for life for the offence under Section 302 of the I.P.C. with fine of Rs. 1000/- and R.I. for 7 years for the offence under Section 201 of the I.P.C. with fine of Rs. 500/- and with default stipulations.
2. The brief facts relevant for deciding the present Criminal Appeal is that on 07.04.1988 at around 9 o'clock PW-11, Kotwar of the village Pajni, Hatoi

Das gave an intimation to the Police Station, Baloda Bazar that Kashi Ram one of the Panchs of the village intimated him that near the fields of Son Charan Kurmi dead body of a man was lying. They went to the spot and found the dead body lying by side of the road near the field of Son Charan Kurmi and according to the said witnesses the body had already started getting decomposed. Based on the said report the Police authorities lodged a merg intimation 12/88 on the same day and also gave an intimation to the Sub Divisional Magistrate and started the investigation. During the course of investigation it was found that the body was that of one Bakhari which was later on identified by his brother and his son from the clothes and shoes which the deceased was wearing. Suspicion fell upon the wife of the deceased Jag Bai and one Samarau who were since missing from the date of incident and based upon the final report a charge-sheet was filed in the Court and finally the matter was put to trial under Sessions Trial No. 157/97. During the course of trial the prosecution examined as many as 11 witnesses and in his defence the accused did not lead any evidence. Finally, the Court below vide the impugned judgment finding the accused persons to be guilty of having committed offence under Section 302 and 201/34 of the I.P.C. and convicting them imposed sentence of life imprisonment as well as R.I. for 7 years for the two offences respectively upon each of the Accused persons i.e. Jag Bai wife of the deceased and Samarau.

3. Pending the Appeal before this Court Jag Bai died her Appeal No. 569/2003 has already abated. The entire conviction of the Appellant was based on the circumstantial evidences, and the circumstances which went against the Appellant and have been taken note for his conviction by

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the Court below are firstly the last seen theory and secondly the extra judicial confession. According to the prosecution the P.W.-1 Kartik Ram is a person from the same village where the deceased and the Appellant stayed and he had last seen the deceased in the company of his wife Jag Bai and also saw Samarau the other accused person in the Appeal near the place where the deceased and his wife were seen. Likewise, according to the prosecution P.W.-2 Kashi Ram also is an important witness as he can be said to be at least a witness to the extra judicial confession by the wife of the deceased and he has also seen the accused Samarau with a knife near the dead body of the deceased Bakhari. It is the evidence of these two witnesses which have been heavily relied upon by the Court below for convicting the accused.

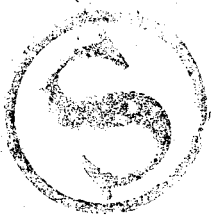
4. Learned Counsel for the Appellant Smt. Chandrakar assailing the judgment submits that a plain reading of the evidence of the P.W.-1 Kartik Ram and P.W.-2 Kashi Ram by itself would clearly establish the fact that their evidence is highly improbable and is full of omissions and contradictions and also highly unreliable for convicting the Appellant. So far as P.W.-2 is concerned to whom according to the prosecution as well as the Court was a prime witnesses of having been at the place of incident immediately after the commission of the offence, learned Counsel for the Appellant firstly questions the prosecution itself for not making P.W.-2 Kashi Ram an accused person particularly when he has deposed before the Police authorities as well as Court of having assisted the accused in dragging the dead body from the place of incident and dumped near the field of Son Charan Kurmi. Secondly according to the Counsel for the Appellant the deposition of the said witness is not reliable



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for the reason that no proper explanation or justification has been given by the said witness for not disclosing this fact to any person in the village or for that matter to the Police authorities in spite of knowing so much of details in respect of the commission of the offence. The fact that he for the first time makes a statement before the Police authorities after 2 months by itself is a highly improbable story that he intends to float and therefore his disposition should not have been taken as a substantive piece of evidence for convicting the Appellant. Likewise, as regards P.W.-1 Kartik Ram the alleged witness to the last seen theory learned Counsel for the Appellant submits that the deposition of this witness it is totally ambiguous without any clarity nor is there any detail in respect of when, at what time, on which date and the exact place where he had seen both the accused persons in the company of the deceased or near the deceased. According to the Counsel for the Appellant in the absence of these details the statement so made by P.W.- 1 Kartik Ram also would be hard to rely upon. The Counsel for the Appellant submits that once when the deposition of these 2 prime witnesses got demolished the question of further entertaining merits of the case does not arise, judgment of conviction needs to be recalled by setting aside and quashing the same.

5. Learned State Counsel however opposes the appeal and submits that there is no reason brought by the Appellant from the cross-examination of the 2 said witnesses the P.W.-1 Kartik Ram and P.W.-2 Kashi Ram for doubting their statement. According to the State Counsel there is also no substantive material on record brought by the defence to disbelieve these 2 independent witnesses and therefore prays for rejection of the Appeal.



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6. Having considered rival contentions put forth on either side and a perusal of record, admittedly the entire conviction of the Appellant is based on the 2 prime witnesses, the P.W.-1 Kartik Ram who has been projected to be the witness to the last seen theory and P.W.-2 Kashi Ram is allegedly as an eye witness and if not then a witness to the extra judicial confession. A plain reading of the deposition of the P.W.-1 Kartik Ram itself shows that the witness having projected last seen theory has not given any specific details so far as the place where he found the accused in the company of the deceased, the date he found them, the time when he saw them etc. In the absence of these details it would be hard to believe upon the said statement of the P.W.-1 Kartik Ram and basing it as a substantive factor for convicting the accused persons.

7. It is settled position of law that in case of circumstantial evidence the circumstances has to be cogent and strong. In the present case the statement of the P.W.-1, Kartik Ram can not said to be cogent evidence or strong clenching evidence which could authoritatively draw an inference against the accused persons. So far as the P.W.-2 Kashi Ram is concerned again there is a great element of doubt created in his deposition, firstly on account of the fact that it is only after 2 months from the date of the incident that he for the first time makes an averment against the accused persons and for 2 months he did not speak about it to anybody either in the village or Police authorities. Another aspect which has to be borne in mind is if P.W.-2 Kashi Ram has also attributed and had played some role in disposing the dead body then he too was supposed to be made an accused person and if this P.W.-2 Kashi Ram as per his evidence itself had communicated to the Police authorities after

about 2 months time from the date of incident in respect of what he had seen and the role that he had played then why the said witness was not made an accused person even subsequently and therefore the statement of P.W.-2 Kashi Ram becomes highly improbable and hard to believe.

8. So far as the circumstantial evidence is concerned it should be conclusive in nature, and it should be such as to exclude every hypothesis but the one proposed to be proved. There is no scope of conjecture or suspicion to dismantle the mind of the Court replacing the legal proof required for establishing an offence. A circumstantial evidence must be conclusive and must also be conclusively established to reach a conclusion that the accused alone could have committed the crime. The Courts can not truncate and brake the chain of circumstances and consider each of the circumstances separately. For establishing the case under circumstantial evidence there has to be incriminating facts and the circumstances and it should be found to be incompatible with the innocence of the accused. The circumstances also have to be proved beyond reasonable doubts. Establishing circumstances to be so closely connected with each other by which the only inference that can be drawn is that of the accused alone could have committed the offence. In the instant case deposition of the witnesses P.W.-1 Kartik Ram and P.W.-2 Kashi Ram does not disclose any such incriminating factor which can be said to be either conclusive, cogent or strong enough to draw an inference of the Appellant alone to have committed the offence. In these circumstances the judgment of conviction passed by the Court below is not sustainable and the same deserves to be set aside and quashed.

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9. Accordingly, the order of conviction passed against the Appellant stands set aside/quashed and he is acquitted from the charges under Sections 302 and 201/34 of the I.P.C.
10. The Appellant is on bail. The bail bond of the Appellant shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A of Cr.P.C.
11. The present Appeal stands allowed.

Sd/-
Chief Justice

Sd/-
P. Sam Koshy
Judge