

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 5-9-2017

Judgment delivered on 22-9-2017

CRA No. 31 of 2009

1. Parvez Ahmad s/o. Aajimul Haq Khan, aged about 26 years, r/o. Himmat Colony, Kumhari, Thana Kumhari, District Durg (CG)
2. Rajesh Pathak S/o Kishan Ram Pathak R/o Himmat Colony, Kumhari, Thana-Kumhari, Distt.-Durg (CG)

---- Appellants

Versus

- State of Chhattisgarh Through The District Magistrate, Dhamtari, Tahsil & Distt.-Dhamtari (CG)

---- Respondent

For Appellants : Mrs. Indira Tripathi, Advocate.

For Respondent/State : Mr. Madhunisha Singh, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 6-1-2009 passed by the Additional Sessions Judge, Dhamtari (for short, "the trial Court") in Sessions Trial No. 23 of 2006, whereby the trial Court after holding the appellants guilty for commission of murder and causing disappearance of evidence of the offence, convicted the accused/appellants under Sections 302 read with Section 34 and 201 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life and

to pay fine of Rs. 5000/- and RI for three years and to pay fine of Rs.500/- respectively, with default stipulations.

2. As per the prosecution case, the appellant Pervez Ahmad was driving one Mahendra pick-up vehicle bearing registration number CG-04 CD 6786 rashly and negligently on 21-5-2005 at about 9.00 a.m., near village Kodebod, dashed Bharat Sahu (deceased) and thereafter both the appellants took him to their vehicle for treatment and dead body of Bharat Sahu was found near Marhimatanagar of Raipur at night of 22-5-2005. His dead body was brought to Dr. Ambedkar Hospital, Raipur, for post-mortem and after post-mortem it is found that the deceased died due to poison. Viscera of the body was sent for chemical examination to FSL, Raipur and as per report thereof, poison Carbosulfan was found in his body. Thereafter, the matter was investigated for commission of murder of said Bharat Sahu. Certain seizures were made and after completion of investigation charge-sheet was filed against the appellants for commission of offence under Sections 302 read with Section 34 and 201 read with Section 34 of the IPC before the Court of Judicial Magistrate First Class, Kurud, who in turn committed the case to the Court of Sessions. The Court of Sessions charged the appellants for the offence mentioned above and in alternative charge under Sections 279 and 304-A of IPC was also framed against the appellants, to which they did not plead guilty, and therefore, trial was conducted.

3. In order to prove the complicity of the accused/appellants in commission of crime in question, the prosecution has examined 22 witnesses in support of its case. Statements of the accused/appellants have also been recorded under Section 313 of the Code of Criminal Procedure.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.
5. Learned counsel appearing for the accused/appellants submits as under:
 - (I) That the case of the prosecution is based on circumstance of last seen theory, but the evidence is not as such to form basis of conviction;
 - (ii) That taking the deceased to the hospital was natural and humanly conduct of the appellants and the same is not any incriminating circumstance against them;
 - (iii) That to justify of conviction in case of death by poisoning it has to be proved by the prosecution that the appellants had poison in their possession but evidence on this count is lacking;
 - (iv) That there is no connecting piece of evidence against the appellants in this regard and no link in chain of evidence led by the prosecution has been proved and the finding arrived at by the trial Court is perverse.
6. Per contra, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
7. We have heard counsel for the parties and perused the material on record.

8. PW/1 Sudama Ram Sahu is a person who reported about the accident by pick up vehicle to Police Station as per Ex.P/1 and signed the map Ex.P/2. PW/2 Ramlal Sahu deposed that Bharat Sahu was going to village Kodebada on his bicycle and one Mahendra Pick-up vehicle dashed his vehicle and both the appellant after alighting from vehicle took the injured Bharat Sahu in their vehicle. PW/3 Guha Ram Satnami, PW/4, Chetan Ram, PW/5, Milu Ram Sahu, PW/6, Bhawani Sahu, PW/7, Bhagwat Ram Sonwani, PW/8 Mehattar Dheemer deposed the similar facts. PW/9 Vishnu Ram Sahu and PW/10 Budhram Sahu are the witnesses who have seen dead body of the deceased at Mekahara hospital, Raipur. PW/21 Doctor Shiv Narayan Manjhi conducted autopsy of deceased Bharat Sahu on 23-5-2005 at 2.30 pm and after autopsy he opined that characteristic of some poison substance was found in the body of the deceased that is why he advised for chemical examination. Viscera of the deceased was sent for chemical examination to FSL, Raipur and as per report thereof (Ex.P/19), poison Carbosulfan was found in it. As per inquest report (Ex.P/6) which is prepared on 23-5-2005 time of death of deceased is 19.05 pm on 22-5-2005 and the report of accident from pick-up vehicle was reported as per Ex.P/1 to be of 9.00 a.m. On 21-5-2005. Now the point is whether the last seen theory has an application in the facts and circumstances of the case.
9. 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. As the dead body of the deceased is found on 23-5-2005 i.e., after two days and time of death is 19.05 p.m. On 23-5-2005, it cannot be said that time gap is so small that possibility of any person other than the appellants being the author becomes impossible.

10. From the autopsy report and laboratory report, this is a case of death by poisoning. In **Sharad Birdhi Chand Sarda vs. State of Maharashtra, reported in 1984 (4) SCC 116**, it has been held by Hon'ble the Apex Court that in cases of death by poisoning the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction;

- (i) There is a clear motive for the accused to administer poison to the deceased;
- (ii) That the deceased died of poison said to have been administered;
- (iii) That the accused had the poison in his possession;
- (iv) That he had an opportunity to administer the poison to the deceased.

11. There is no iota of evidence that any of the appellants was in possession of poison as mentioned in laboratory report. Prosecution in the present case has miserably failed to prove one of the essential ingredients of a case i.e., possession of the poison with appellants and there is no direct or circumstantial evidence on the point and on this ground alone prosecution must fail.

12. Admittedly, there is no eyewitness to the incident. The case of the prosecution is based on circumstantial evidence. In the matter of

Jaharlal Das Vs. State of Orissa¹, it is held by Hon'ble the Apex

Court as under:

“The circumstantial evidence in order to sustain the conviction must satisfy three conditions;

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

In cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. When the main link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable doubts. It is at this juncture the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be short step between moral certainty and the legal proof. At times, it can be a case of “may be true. But there is a long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions.”

¹(1991) 3 SCC 27

13. True it is that the appellants have taken the deceased in their vehicle on 21-5-2005 and they are under a cloud of suspicion, but it is settled law that suspicion however, strong cannot take place of proof. When last seen theory and circumstance regarding poisoning failed, possibilities are open in favour of the appellants. They are undoubtedly entitled to benefit of doubt. In our view, there is no legally admissible and clinching evidence to prove their complicity in crime in question and thus considering the evidence adduced by the prosecution, we are of the view that the trial Court was not justified in convicting and sentencing the appellants for offences under Sections 302 read with Section 34 & 201 read with Section 34 of the IPC.
14. Again from the evidence adduced by the prosecution, it is not clear as to who was driving the pick-up vehicle at the time of accident. Witnesses have seen alighting both the appellants from the vehicle, but they are not firm as to who among the appellants was driving the vehicle at the time of accident. Therefore, it cannot be concluded that it is the appellant Pervez Ahmad who was driving the vehicle rashly and negligently to endanger human life. His conviction and sentence under Section 279 of IPC is also not sustainable.
15. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charges under Section 302/34 and 201 read with Section 34 of the IPC framed against them. Appellant No.1 Pervez Ahmad is also acquitted of the charge under Section 279 of the IPC.

The appellants are reported to be on bail and their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju