

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 124 of 2009

- Surendra @ Jagatram, S/o. Rusiram KOlata, Aged about 36 years, R/o.- village Ongana, Thana Dharamjaigarh, Tahsil Dharamjaigarh, District Raigarh (CG)
- Shankar Ram S/o Sudarshan Yadav, Aged about 33 years, R/o Village-Khamhar, Thana & Tah. -Dharamjaigarh, Distt.-Raigarh (C.G.)

---- Appellants

Versus

- State Of Chhattisgarh, through Station House Officer, Thana Dharamjaigarh, Tahsil Dharamjaigarh, District Raigarh

---- Respondent

For appellants	: Shri Rajkumar Pali, Advocate
For Respondent/State	: Shri Vaibhav Govedhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement on Board by Pritinker Diwaker, J.

06/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 16.01.09 passed by the Fourth Additional Sessions Judge (FTC), Raigarh, in Sessions Trial No. 63/2008 convicting the accused/appellants under Section 302/34 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 500/- plus default stipulation.

2. In the present case, name of the deceased is Mehattar Das Mahant. It is alleged that on 07.02.08 deceased Mehattar Das tried to administer poison mixed in liquor to appellant No.2 Shankar with an intention to kill him over some dispute of old copper coin. However Shankar threw the said liquor and on account of which some dispute

arose between them and on 8.02.08, in the morning, accused/appellants committed murder of Mehattar Das after causing him multiple injuries on his body with knife and also causing injury on his face with stone. Dead body of the deceased was found in the next morning near the field of village Khamhar where his motor cycle was also lying. FIR Ex.P-2 was lodged on the same day at 10.00 a.m. by Sukhdas (PW-1) village Kotwar against unknown person under Section 302 IPC and thereafter merged intimation Ex.P-1 was recorded. Inquest on the dead body of the deceased was prepared and body was sent for postmortem examination which was conducted by Dr.B.L.Bhagat (PW-7) vide Ex.P-7 and he opined that cause of death was coma due to head injury and death was homicidal in nature. On 11.03.08 i.e. after more than one month of the incident accused/appellants were arrested. Based on the memorandum of accused/appellant No.1 Ex.P-12, seizure of one Rampuri knife vide Ex.P-13 was given effect to which was kept in a pit secretly covered with stone. On the memorandum of accused/appellant No.2 Ex.P-15, seizure of old copper coin vide Ex.P-16 and vide Ex.P-17 jacket and pant were given effect to and as per FSL report Ex.P-26, blood was found on the knife and jacket seized from appellants 1 and 2. However, there is no serological report. After filing of charge sheet, the trial Court framed charge against the accused/appellants u/s 302/34 IPC.

3. In order to establish the guilt of the accused/appellants in the crime in question, the prosecution has examined 17 witnesses. Statement of the accused under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. This apart one defence witness has also been examined by the appellants in support of their case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellants as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the appellants submits as under:

i) there is no eyewitness account to the incident and the accused/appellants have been convicted solely on the basis of circumstantial evidence but none of the circumstance from which the inference of guilt of the appellants can be drawn has been proved beyond reasonable doubt therefore there it cannot be said that it was the appellants who had committed the murder.

ii) that the so called eyewitnesses of last seen Guruwari (PW-4), Arti Das (PW-12) and Manju Mahant (PW-13) for the first time have disclosed before the court that the deceased was last seen in the company of the appellants but in their diary statement they have not deposed so.

iii) though on the memorandum of the accused/appellants knife and jacket were seized but in absence of FSL and serological report, the said seizure is of no consequence.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellants is in accordance with law and there is no infirmity in the same.

7. Guruwari (PW-4) mother of the deceased, has stated that she knew the accused/appellants who used to visit her house frequently and on the date of incident also accused/appellants came to her house and took the deceased along with them and thereafter her son did not return. In cross-examination she however has admitted the fact that the

deceased had gone along with the appellants and for the first time she is deposing in the court. Almost similar statement has been made by Arti Das (PW-12) and Manju Mahant (PW-13) wife of the deceased. F.J.Tigga (PW-17) is the Investigating Officer who has supported the prosecution case.

8. On the memorandum of accused/appellant No.1 Ex.P-12 seizure of knife vide Ex.P-13 was effected and on the memorandum of accused/appellant No.2 Ex.P-16 seizure of jacket and pant were given effect to vide Ex.P-17. Though FSL report is positive in respect of knife and jacket but there is no serological report.

8. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence regarding the involvement of the appellants in the commission of the offence. As already stated above, the main piece of evidence against them is the statements of last seen made by Guruwari (PW-4), Arti Das (PW-12) and Manju Mahant (PW-13). These witnesses have admitted the fact that for the first time they have deposed in the court that they saw the deceased in the company of the appellants. Thus, merely on the basis of statement of these three witnesses that the deceased was last seen in the company of accused/appellants, they cannot be convicted. As the articles A, B, D, E, F, G and H contained blood however there is no serological report to this effect.

9. Conviction is based on circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused persons. The chain should be such that no other conclusion except the guilt of the accused person, is discernible without any doubt. In the present case, the appellants were last seen

along with the deceased. The prosecution has to prove its case against the appellants beyond reasonable doubt. The chain of circumstances is not complete so as to sustain the conviction of the appellants. The last seen theory relates to evidence, which is not direct evidence i.e. circumstantial evidence. The foundation of last seen theory is based on principles of probability and cause and connection. Where a fact has occurred with a series of acts, preceding or accompanying it, it can safely be presumed that the fact was possible as a direct cause of the preceding or accompanying acts, unless there exists a fact which breaks the chain upon which the inference depends.

10. The evidence of last seen is also not established. If all these facts are seen in its entirety, in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellants only on the basis of the recovery of knife, jacket and pant. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof.

11. Overall scrutiny of the evidence makes it clear that but for the memorandum of the accused/appellants based on which seizure of knife, jacket and pant were made, there is no evidence against them. There is no eyewitness to the incident and the entire case is based upon circumstantial evidence. The trial court based the conviction of the appellants mainly on the last seen theory relying on the evidence of the mother of the deceased. Yet another circumstance relied upon by the prosecution is the seizure of knife, jacket and pant at the instance of accused/appellants. Thus, we are of the opinion that the present is in

fact a case of no evidence. We may also make a reference to the decision in the matter of ***Mustkeem v. State of Rajasthan (4(2011)11 SCC 742:(2011) 3 SCC(Cri) 473***; in the matter of ***Sharad Birdhdichand Sarda v. State of Maharastra (1984) 4 SCC 116 : 1984 SCC(Cri) 487, in para 153***, wherein some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under : (SCC p.185)

- i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely “may be” fully established;
- ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- iii) The circumstances should be of a conclusive nature and tendency;
- iv) they should exclude every possible hypothesis except the one to be proved and
- v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12. In ***State of U.P. v. Ashok Kumar Shrivastava (1992) 2 SCC 86: 1992 SCC (Cri) 241: 1992 Cri LJ 1104***, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. it was also pointed out that the circumstances relied upon must be found to have been fully established

and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

13. A reference may be made to a later decision in ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116: 1984 SCC(Cri) 487***, wherein while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established.

14. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only to one conclusion, that is, the guilt of the accused. In our opinion it is not safe to record a finding of guilt of the appellants as the present case on the basis of circumstantial evidence. The prosecution has failed to establish the charge and therefore we allow the appeal and set aside the conviction and sentence of the appellants. The accused/appellants are acquitted of the charges. Accused/appellants is reported to be on bail. Their bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Arvind Singh Chandel)
Judge