

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 774 of 2011

- Bharat Das, S/o Anjorva Satnami, aged about 41 years, resident of village Bahunvagaon, PS Bemetara, District Durg (CG)

---- Appellant (In jail)

Versus

- State Of Chhattisgarh, through the Police Station Dadhi, District Durg (CG)

---- Respondent

For Appellant	:	Shri U.K.S. Chandel, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker, J

06/07/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 7.9.2011 passed by the Additional Sessions Judge, Bemetara in S.T. No.16/10 convicting the accused/appellant under Sections 302, 120B & 404 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life & fine of Rs.500/-; RI for life and fine of Rs.500/- and RI for 3 years & fine of Rs.200/-, plus default stipulations, respectively.
2. In the present case, name of deceased is Bihari Das, father-in-law of accused/appellant herein.

3. Vide impugned judgment two accused have been convicted and sentenced by the trial Court, however, present accused/appellant has only challenged his conviction and till date no appeal has been filed on behalf of co-accused Pitambar, who is in custody.
4. The prosecution story, in brief, is that about a week prior to the date of incident i.e. 8.9.2009, Bihari Das (since deceased) had gone to village Hirapur to get his pension amount and after getting pension, he went to the house of his son Mohan (Ex.P-10) where he stayed for about 3-4 days and thereafter gone to the house of his daughter Champabai (PW-8) situated at village Bahunawagaon. When Bihari Das was staying in the house of Champabai, Jagmohan (PW-2), son of deceased, made a telephone call and talked to Bihari Das who informed him that he would come back after 1 or 2 days. However, when Bihari Das did not return for about 3 days then said Jagmohan again talked to his sister and brother-in-law on telephone and they informed him that said Bihari Das had already left for his house. Thereafter the deceased was searched but his whereabouts could not be traced and therefore a missing report was lodged by Jagmohan (PW-2) on 22.9.2009.

In the meanwhile, on 9.9.2009 one unknown body of a male was recovered from near the dam at Bandhakhaar and accordingly a merger intimation (Ex.P-22) was recorded at the instance of one Hiralal, son of village Kotwar. Inquest on the body was conducted vide Ex.P-19 on 10.9.2009. Photograph of dead body was taken vide Ex.P-4. Body was sent for post-mortem examination vide Ex.P-21 which was conducted by Dr. A.M. Shrivastava (PW-11) vide Ex.P-8. In the post-mortem examination cause of death could not be ascertained, hence viscera was preserved for chemical examination. Viscera was chemically examined

and the Forensic Science Laboratory, Raipur in its report (Ex.P-27) reported that aluminium phosphide poison (sulphas) was found in the contents sent for examination.

In the course of investigation of missing report of the deceased lodged by Jagmohan (PW-2), the accused/appellant was interrogated on the basis of suspicion. The disclosure statement of accused/appellant was recorded on 23.9.2009 vide Ex.P-2 wherein he disclosed that on 8.9.2009 while he along with co-accused Pitambar was going to drop the deceased at village Badhuli, on the way they purchased sulphas from the medical shop situated near Ballar Hotel, Bemetara and after that they purchased country-made liquor, disposable glasses and snacks at village Birsinghi. They sat near Birsinghi Khaar Dabri to drink liquor where he mixed the pesticide (sulphas) in the liquor of deceased and the deceased died after drinking poison laced liquor. Thereafter, he got removed the golden ornaments of deceased and buried the same in a corner of his house after keeping it in the cash-box. On the same day at 2.00 p.m. memorandum (Ex.P-14) of co-accused Pitambar was also recorded based on which gold ornaments, packet containing sulphas and cash of Rs.2,500/- were seized vide seizure memo of Ex.P-15. The police had shown Jagmohan (PW-2) photograph of the dead body recovered on 9.9.2009 from Birsinghi Khaar forest and he identified the photograph as of his father Bihari Das. Unnumbered FIR (Ex.P-13) was registered on the basis of missing report against both the accused persons under Sections 302, 328, 397 IPC. On 27.10..2009 identification of recovered articles was done by the Tahsildar (PW-15) vide Ex.P-5 and the ornaments have been identified to be that of deceased by PW-8, PW-10 & PW-13.

5. On completion of investigation, charge sheet was filed against the

accused persons and the trial Judge has framed the charges under Sections 120B, 302 & 404 IPC against them. The prosecution in order to bring home the charges levelled against the accused/appellant examined 23 witnesses in all. Statement of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

6. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused persons in the manner as described above.

7. Counsel for accused/appellant submits that;-

- the appellant has been convicted solely on the basis of circumstantial evidence but the circumstances relied upon by the prosecution, being not of conclusive nature, are not sufficient to convict the appellant for the offence like murder.
- identification of articles allegedly recovered at the instance of accused/appellant has not been done as per procedure prescribed under the law because the police was present at the time of identification. Even, for the sake of argument, if the recovery of ornaments is admitted, then also the appellant could not be convicted under Section 302 IPC and at best he could be convicted for stealing the articles belonging to the deceased.
- prosecution has failed to establish beyond reasonable doubt that the deceased was last seen in the company of appellant as the statements of witnesses of last seen i.e. PW-7 & PW-8 have been recorded after much delay and the prosecution failed to explain the delay in recording the statements of these witnesses.
- there is absolutely no motive proved by the prosecution as against

the appellant and therefore the entire case of prosecution falls to the ground.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that;

- conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
- packet containing sulphas was seized from the possession of accused/appellant and as per report of the chemical analyst (Ex.P-27), poisonous substance i.e. aluminium phosphide insecticide (sulphas), was found in the viscera of the deceased which was sent for chemical analysis.
- articles belonging to the deceased were seized at the instance of accused/appellant and these articles were duly identified by the witnesses to be that of the deceased. No explanation was given by the accused in his statement under Section 313 Cr.P.C. as to how he came into possession of the articles belonging to the deceased.
- “last seen evidence” give by wife and son of accused/appellant is perfectly reliable and there are no contradictions in their statements. Their statements are quite natural and trustworthy.
- delay in recording the statements of some witnesses is required to be ignored in the light of fact that FIR itself was registered on 23.9.2009 after conducting due enquiry.

9. We have heard counsel for the parties and perused the evidence available on record.

10. Ramdhan Satnami (PW-1) is the witness of seizure memo (Ex.P-1) & memorandum of accused/appellant (Ex.P-2). Though this witness was

declared hostile to prosecution but in the cross-examination by the Public Prosecutor he has duly supported the prosecution.

11. Jagmohan Satnami (PW-2), son of deceased, is the person who lodged missing report of deceased on 22.9.2.009. He is also witness of identification memo of photograph (Ex.P-3). According to this witness, his deceased father left the house saying that he is going to village Hirapur to collect his pension and after that he would go to village Bahunawagaon where his sister (daughter of deceased) is residing along with her family. He has further stated that after about eight days, he made a telephone call at the house of his sister which was attended by his sister and thereafter he had talked to his father also who told him that he will come after one or two days. He has further stated that two days thereafter the accused/appellant herein informed him on telephone that he made his father board the bus. However, when he did not find his father at home, he again enquired from accused/appellant who again told him that he made his father board the bus. Thereafter, he started searching his father and when his whereabouts could not be traced, he lodged a missing report in the police station.
12. Saroj Bai Barle (PW-3), wife of Jagmohan (PW-2), has supported the version of her husband that the deceased had gone to the house of accused/appellant and thereafter he went missing.
13. Chitadas (PW-4) is the witness of identification memo of articles (Ex.P-5). He has stated that at the time of identification, the police was also present but he clarifies that the entire proceeding was being carried out by the Tahsildar. In the cross-examination, he has not stated that there was no interference by the police officer in the identification proceedings.

14. Kamlesh (PW-5) is also a witness of identification memo of ornaments (Ex.P-5). He has also made almost similar statement as has been made by PW-4. According to this witness also, at the time of identification of ornaments, though the SHO was also present but he has not taken part in the proceedings.
15. Amir Chand Satnami (PW-7) is the minor son of accused/appellant. He has been examined by the prosecution as witness of last seen. This witness has stated that last year at the time of emergence of Lord Ganesha idol, his maternal grandfather (deceased) had come to his house and stayed with them for four days. His grandfather was wearing three lockets of gold and a golden earring. He has further stated that his father (accused/appellant) along with Pitambar (co-accused) had gone to drop his grandfather, however, his father did not return on that day and came on the next day and informed him that he had dropped his grandfather. He has further stated that thereafter behaviour of his father got changed and he used to be remain quite. Nothing incriminating could be elicited in the cross-examination of this witness which makes the testimony of this witness unreliable or untrustworthy.
16. Champa Bai (PW-8), wife of accused/appellant, is a witness to identification of articles Ex.P-5. She has stated that when her father came to her house, he was wearing gold ornaments. She has stated that her husband had gone to drop her father at the bus stand, but he did not return home on that day. He returned on the next day and being asked, he told that he had dropped her father at Ghotiya. After one or two days thereafter her brother Jagmohan made a telephone call and enquired about her father and then she informed him that her husband had gone to drop the deceased. In answer to the question put by the Court to this

witness regarding behaviour of accused/appellant after his return, this witness has replied that he used to be remain silent. She has further stated that she along with his brother Jagmohan (PW-2) had gone to the police station and lodged missing report showing her suspicion on the accused/appellant & co-accused Pitambar. In the cross-examination of this witness, the defence has not been able to elicit anything incriminating which makes her testimony unreliable or untrustworthy.

17. Sanat Kumar Satnami (PW-9) is the witness of memorandum (Ex.P-2) & seizure memo (Ex.P-1). Though this witness has not supported the prosecution and declared hostile, but he has admitted his signature over the aforesaid documents.

18. Mohan Satnami (PW-10), son of deceased, has identified the body as his father Bihari Das vide Ex.P-3. He is also witness of identification memo of ornaments (Ex.P-5). His statement is also similar to that of Jagmohan (PW-2).

19. Dr. A.M. Shrivastava (PW-11) is the person who conducted post-mortem examination over the body of deceased.

20. Vijay Verma (PW-12) is a shopkeeper from whose shop the poisonous substance Sulphas was purchased by the accused/appellant. He has stated that the said chemical was purchased by the accused persons by saying that the same will be used by them for preserving gram (चना). Sukhdev (PW-13) is another son of deceased. His statement is almost identical to Jagmohan (PW-2). Deepak Kumar Soni (PW-14) is the jeweller who was called by the police for weighment of seized articles and for its valuation. Ashok Kumar Tiwari (PW-15) is the Tahsildar who conducted identification proceedings of seized articles vide Ex.P-5. He

has stated that gold ornaments were duly identified by PW-8, PW-10 & PW-13. Ram Charan Verma (PW-16) is the Patwari who prepared the spot map vide Ex.P-12. Chandrapal Verma (PW-17), Krishna Kumar Dwivedi (PW-18) & Mohammed Jalaluddin Khan (PW-20) are the police persons who either helped in the investigation or done initial investigation in the matter. Baran Singh (PW-21) & Inderbhan Singh (PW-22) are the witnesses of memorandum (Ex.P-14) of co-accused Pitambar and seizure memo (Ex.P-15) by which earring, and 25 currency notes of 100 denomination were seized at the instance of co-accused Pitambar. J.D. Singh (PW-23) is the investigating officer who has duly supported the prosecution case.

21. Of course, there is no direct eye-witness to speak about the occurrence proving the crime in question committed by the accused/appellant. The prosecution case therefore wholly rests on the evidence on the circumstances i.e. last seen and recovery of golden ornaments belonging to the deceased.
22. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) 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. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial

evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

23. Keeping the above in view, now let us consider the evidence. Amir Chand Satnami (PW-7), a minor son of accused/appellant whose evidence was recorded by the Court after satisfying itself of the fact that he understands the duty to speak truth and is able to rationally answer the questions put to him. He has stated that on 8.9.2009 the accused/appellant along with co-accused had gone to drop the deceased, but he did not return on that day and returned on the next day and informed him about the dropping of his grandfather (deceased). Champa Bai (PW-8), wife of accused/appellant, has also made almost similar statement. According to this witness, her husband (accused/appellant) told her that he would go to drop her father. She has further stated that after returning from the field, when she asked from her son regarding whereabouts of her husband, she was informed by her son that they have not returned yet. According to this witness, her son informed her that accused/appellant and co-accused Pitambar both have gone to drop the deceased. She has further stated that the accused/appellant returned on the next day and he informed her that he had dropped her father at Ghothiya. It is deducible from the evidence of these two witnesses that the accused/appellant along with co-accused took the deceased along with him from his house to make him board the bus and thereafter the deceased was not seen alive by anyone till recovery of his body on 9.9.2009 from near the dam situated at Birsindhikhaar. These witnesses are family members of accused/appellant and before the incident in question, the relation between these witnesses and the accused/appellant was cordial and therefore there does not appear any reason to disbelieve their evidence. Their evidence remain unshattered even in the cross-examination by the defence. Thus, from the

evidence of aforesaid witnesses, it is established that the accused/appellant herein took the deceased along with him from his house to drop him and thereafter the deceased was never found alive. Even on a specific question as to what the accused/appellant had to say in this regard, except saying that it was incorrect, the accused/appellant gave no further explanation in his statement recorded under Section 313 Cr.P.C., whereas, once the last seen theory comes into play, the onus was on the accused to explain as to what happened to the deceased after they were together seen alive.

True it is that the diary statement of Champa Bai (PW-8) was recorded after about one month from the date of death of the deceased. However, during trial neither an explanation was sought from this witnesses as to why her diary statement was recorded with such delay nor the investigating officer was questioned about the delay in recording statement of the aforesaid witness and therefore, the delay in recording the statement of PW-8 cannot be held to be fatal to the prosecution. The law is settled in this regard that unless the Investigating Officer is asked questions about delay in recording statements and explanation is sought from the witnesses as to why their statements were recorded late, the statements by themselves did not become suspicious or concocted. For this view we are fortified from the decisions of the Hon'ble Supreme Court in the matters of **State of UP v. Satish** reported in **(2005) 3 SCC 114** and **Vijay Kumar Arora v. State Govt. of NCT of Delhi** reported in **(2010) 2 SCC 353**.

24. That apart, the accused/appellant herein led the police party to his house and gave recovery of gold ornaments worn by the deceased and the same were duly identified by the wife, son & daughter of the deceased as belonging to the deceased. We have carefully examined the manner in

which the proceeding of identification of ornaments was conducted by Ashok Kumar Tiwari (PW-15) and we have no reason to doubt the identification of ornaments by the prosecution witness as belonging to the deceased.

Admittedly, at the time of identification proceedings of articles the police was present, but mere presence of the police in the courtyard/ premises where the identification proceedings of articles was being conducted by the Tahsildar (PW-15) is not enough to discard the entire identification proceedings as of no value. The principle underlying the exclusion of the police from the identification parade is twofold : first, to remove any undue influence of the prosecuting or investigating agency on the identifying witnesses; and, secondly, to comply with the provisions of Section 162 of the Code of Criminal Procedure which prohibits the conduct of identification parades by police officers. In the present case also, there is no whisper in the testimonies any of the witnesses to the effect that police officer had exerted any undue influence on anybody or taken effective part in the parade. According to the Tahsildar (PW-15), who conducted the identification proceedings of articles, the police was not present in the Court and the entire proceeding was conducted by him only.

25. Now the next question arises for consideration of this Court is whether it is the accused/appellant who mixed the poison with alcohol and made the deceased drink the same as a result of which he died and thus the accused/appellant committed murder of the deceased?
26. The Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **(1984) 4 SCC 116**, in the case of death by poisoning held that the Court must carefully scan the evidence and determine the following four important circumstances which can justify a

conviction:

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

27. In the present case, to prove the above circumstances the prosecution has relied upon the evidence of PW-7, PW-8 & PW-12 as well as medical evidence, besides seizure memos of Ex.P-1 & Ex.P-15. According to Vijay Verma (PW-12), who was running a medical shop, the accused/appellant & co-accused Pitambar sought for pesticides by saying that the same will be used by him for preservation of gram (chana) and accordingly he gave him packet of sulfas worth Rs.10/-. This witness is an independent witness and had no reason to give false evidence against the accused/appellant herein. Nothing incriminating could be elicited by the defence in the cross-examination of the aforesaid witnesses so as to make his testimony unreliable or untrustworthy. The accused/appellant in his statement recorded under Section 313 CrPC did not offer any explanation with regard to recovery of sulfas at his instance, except making a bald denial. Thus, the fact that the accused persons had purchased sulfas stands proved by the examination of PW-12.

28. According to doctor (PW-11), who conducted autopsy, there was no external or internal injury found on the body of the deceased. Since the cause of death of the deceased could not be ascertained, as is evident from post-mortem report Ex.P-8, viscera was preserved and sent for chemical analysis. Report of FSL (Ex.P-27) makes it clear that aluminium

phosphide (sulphas) in the viscera of deceased was found. It is, therefore, clear that the deceased died due to poisoning. The proved circumstance that the deceased was last seen alive in the company of accused/appellant is sufficient to hold that the accused/appellant had all the opportunities to administer poison to the deceased by mixing it in alcohol.

As regards the motive, normally, there is a motive behind every criminal act. However, this does not mean that where prosecution has failed to prove motive, the offender cannot be convicted. It is well known that motive is always hidden in the heart of the culprit and the prosecution is not always obliged to prove motive. However, in the present case, the gold ornaments and cash of deceased were found missing and the same were got recovered from the specified place by the accused/appellant on the basis of his disclosure statement. Thus, it is clear that the appellant had motive to commit the crime. The motive was to steal the gold ornaments and cash of the deceased.

29. From the above, we are of the opinion that all the above four circumstances have been established by the prosecution by leading proper evidence and the trial Court has not committed any illegality in placing reliance on the prosecution evidence while convicting the accused/appellant for the murder of Bihari Das.
30. The cumulative effect of the above is that the circumstances from which the conclusion about the guilt of the accused/appellant is to be drawn are fully proved. The circumstances proved are conclusive in nature and are consistent with the hypotheses of guilt of the accused/appellant and inconsistent with his innocence. Therefore, we do not find any reason to interfere with the findings recorded by the trial Court.

31. In the result, the appeal has no substance, the same is liable to be dismissed and is hereby dismissed. Accused/appellant is already in jail, therefore, no separate direction regarding his surrender etc. is needed.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan