

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 920 of 2011

1. Ramayan Sahu @ Ramayan Prasad Sahu, S/o Dulari Sahu, aged about 40 years,

2. Neera Bai W/o Ramayan Sahu, aged about 39 years,

Both above R/o Village Amne, P.S. Kota, Distt.-Bilaspur, C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through Police Station – Kota, District Bilaspur (CG)

---- Respondent

For Appellants	:	Shri Vaibhav Goverdhan, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

19/06/2017

This appeal arises out of the judgment of conviction and order of sentence dated 11.10.2011 passed by the Sessions Judge, Bilaspur in Special Case No.39/2010 convicting the appellants under Sections 302/34 of IPC on two counts and sentencing each of them to undergo imprisonment for life and pay a fine of Rs.1000/- with default stipulation on each count.

02. As per the prosecution case, agricultural land of the

accused/appellant and that of the deceased namely Lakhanlal and his wife Safurabai were adjacent. On 3.8.2010 there was some dispute between the appellants, who are also husband and wife, and the deceased couple over dumping of soil. The said dispute was resolved by the villagers and both the parties agreed not to quarrel further. It is further case of the prosecution that when the villagers left the spot, immediately thereafter the appellants committed murder of both the deceased persons by causing them injuries with pickaxe. Dehati Nalishi (Ex.P/1) was lodged on 3.8.2010 by PW-1 Lankesh Kumar Banjare, son of the deceased persons. Dehati Merg Intimation was recorded vide Ex.P/2 and P/3 on 3.8.2010 at 11.25 am and 11.30 am respectively at the instance of PW-1. On the same date, FIR (Ex.P/25) was registered at 1.45 pm against the accused persons based on Dehati Nalishi under Section 302/34 of IPC. Inquests on the dead bodies of Lakhanlal and Safurabai were conducted on 3.8.2010 vide Ex.P/7 & P/8 respectively and thereafter the bodies were sent for postmortem which was conducted on the same day vide Ex.P/17 & P/18 by PW-8 Dr. Sandeep Dwivedi. As regards deceased Lakhanlal, the autopsy surgeon found fracture of temporal bone, membrane of brain were swollen and contracted, there was sub-dural and sub-arachnoid hemorrhage in brain, and his cause of death was shock due to injury to the vital organ of brain tissue (subdural sub-arachnoid hemorrhage) and the death was homicidal in nature. Likewise, on examination of deceased Safurabai, the doctor found that the brain material had come out, membrane of brain were swollen and contracted, there was sub-dural and sub-arachnoid hemorrhage in brain, and her cause of death was also shock due to injury to the vital

organ of brain tissue (subdural sub-arachnoid hemorrhage) and the death was homicidal in nature. On 3.8.2010 itself memorandum of appellant No.1 Ramayan Prasad Sahu was recorded vide Ex.P/14 and pursuant thereto, vide seizure memo Ex.P/15 one pickaxe stained with blood and vide Ex.P/22 his bloodstained clothes were seized. However, there is FSL report on record. After filing of charge sheet, the trial Court framed charge against the accused persons under Sections 302/34 of IPC read with Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act on two counts.

03. So as to hold the accused/appellants guilty, the prosecution examined 13 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellants of the charge under Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, convicted and sentenced them as mentioned above. Hence this appeal.

05. Counsel for the appellants submits as under:

(i) that the appellant has been convicted solely on the basis of evidence of last seen by PW-2 Ramjhool, PW-3 Ganesh Ram, PW-6 Rajkumar and PW-7 Shyamadheen but even if the statements of these witnesses are taken as it is, merely on the basis of their statements the

appellants cannot be convicted for any offence.

(ii) that but for the evidence of last seen, there is no other connecting evidence against the appellants showing their involvement in commission of the crime.

(iii) though on the memorandum of appellant No.1, seizure of pickaxe and his bloodstained clothes has been made but in absence of FSL report, the said seizure is of no consequence.

(iv) even as per the statements of witnesses of last seen, the dispute between the parties was resolved at the spot itself and the deceased party had removed the soil from their field and the said soil was put by the appellants in their field. Once the dispute itself was resolved with the intervention of the villagers, the question of commission of the offence, that too such a heinous offence of murder, does not arise.

(v) that in absence of any positive and conclusive evidence it cannot be held as to which of the accused committed murder of both the deceased and therefore, the appellants are entitled for benefit of doubt.

He placed reliance on the decision of the Supreme Court in the matters of ***Rambraksh alias Jalim Vs. State of CG*** reported in ***AIR 2016 SC 2381*** and ***Kanhaiya Lal Vs. State of Rajasthan***, reported in ***2014 AIR SCW 1828***.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the evidence of last seen is conclusive against the appellants and they have not offered any explanation in their statements under Section 313 of Cr.P.C. as to how the deceased died. He submits that though FSL report is not on record, but considering the nature of evidence of last seen, seizure of pickaxe and

bloodstained clothes of appellant No.1 and his failure to explain the incriminating circumstances, the said recovery becomes an additional link in the chain of circumstances.

07. Heard counsel for the respective parties and perused the material on record.

08. Admittedly, in the present case there is no eyewitness to the incident. As per case diary statement of PW-2 Ramjhool, he was an eyewitness to the incident but in the Court he has not supported the prosecution case and has not stated that he saw the appellants committing murder of the deceased persons. He has stated that on the date of incident at about 9.30 am he was called by the deceased Lakhan for panchayat meeting and thereafter he along with Ramadheen (Village Kotwar) PW-7, Munna @ Rajkumar Jaiswal PW-6 and Baisakhu (not examined) had gone to the field. The field of the appellants and that of the deceased were adjacent and there was some dispute between the parties over throwing of soil in the field. Both the parties were made to understand by the villagers and thereafter, both the parties followed the advice of the Panchas and then he along with other villagers left the fields of the appellants and the deceased. He has stated that he and other two villagers had gone to different directions from the fields and after about one hour when he returned to the place of occurrence, he came to know about the incident.

09. PW-3 Ganeshram is also a witness of last seen. He has stated that he noticed the dispute between the parties, appellant No.1 Ramnarayan was asking deceased Lakhan not to throw soil in his field

and then appellant No.1 also threatened Lakhan. He has stated that when he was returning to his house, he noticed some noise but he has not clarified as to what was the nature of the said noise. He has further admitted the fact that when he was working in his field, at that time other persons were also working in their fields and in fact, in all the fields 2-3 persons were working as it was the season of sowing crop.

10. PW-6 Rajkumar another witness examined by the prosecution to prove the theory of last seen has stated that upon hearing the dispute between the appellants and the deceased, they were made to understand by the villagers and both of them had followed their advice. According to this witness, the deceased persons were lifting soil from their field and were giving the same to the accused persons, who in turn were putting it in their field. He has stated that after about one hour of the incident he came to know that Lakhan and Safura have been killed. PW-7 Shyamadheen, Village Kotwar, has made almost similar statement as has been made by PW-2, PW-3 and PW-6.

11. PW-8 Dr. Sandeep Dwivedi conducted postmortem on the body of the deceased on 3.8.2010. As regards deceased Lakhanlal, he found fracture of temporal bone, membrane of brain were swollen and contracted, there was sub-dural and sub-arachnoid hemorrhage in brain, and in his opinion, cause of death of Lakhanlal was shock due to injury to the vital organ of brain tissue (subdural sub-arachnoid hemorrhage) and the death was homicidal in nature. Likewise, on examination of deceased Safurabai, he found that the brain material had come out, membrane of brain were swollen and contracted, there was sub-dural and sub-arachnoid hemorrhage in brain, and her cause

of death was also shock due to injury to the vital organ of brain tissue (subdural sub-arachnoid hemorrhage) and the death was homicidal in nature.

12. PW-1 Lankesh Kumar Banjare, son of the deceased, lodged Dehati Nalishi and merg intimation. He has not made any allegation against the appellants. PW-13 N.R. Arya, investigating officer, has supported the prosecution case.

13. Indisputably, there is no eyewitness account of the incident in the present case and the entire case of the prosecution hinges upon the evidence of last seen by PW-2 Ramjhool, PW-3 Ganesh Ram, PW-6 Rajkumar and PW-7 Shyamadheen. The so-called eyewitness to the incident PW-2 has not supported the prosecution case on the point of witnessing the commission of the crime by the appellants and has been declared hostile and his evidence has been considered by the Court only in respect of last seen. All the witnesses of last seen (Pws 2, 3, 6 & 7) have stated that there was some dispute between the parties over throwing of soil in the fields, however, the said dispute was pacified and resolved at their advice on the spot itself and both the parties had corrected themselves. There is absolutely no evidence that the dispute had again cropped up between the parties and during that process, the appellants committed murder of the deceased.

14. In the matter of ***Rambraksh alias Jalim (supra)*** it has been held as under:

10. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused

was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

11. In a similar fact situation this Court in the case of *Krishnan v. State of Tamil Nadu* [(2014) 12 SCC 279, held as follows:

“21. The conviction cannot be based only on circumstance of last seen together with the deceased. In *Arjun Marik v. State of Bihar* (1994) Supp (2) SCC 372)

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding

that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

22. This Court in *Bodhraj v. State of J&K* (2002) 8 SCC 45) held that:

“31. 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 will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In *Jaswant Gir v. State of Punjab* (2005) 12 SCC 438), this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of “last seen together” even if version of the prosecution witness in this regard is believed.

12. In the present case as noticed above the Sessions Court as well as the High Court convicted the appellant/accused No.2 on the basis of last seen evidence, the correctness of which is also doubtful. The High Court had failed to appreciate the aforesaid fact and erred in affirming the judgment of conviction passed by the Sessions Court. We are satisfied that the conviction of the appellant cannot be sustained in law and liable to be set aside.

15. Likewise, in the case of ***Kanhaiya Lal (supra)*** it has been held as under:

“12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

14. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against

him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh vs. State of Rajasthan* (2010) 15 SCC 588.”

16. The other piece of evidence against the appellant is seizure of pickaxe and his bloodstained clothes on his memorandum, but there is no FSL report to prove that blood was found on these articles. As such, this circumstance has also not been proved to the hilt by the prosecution.

17. Thus having examined the facts and circumstances of the case in the light of above legal position, it will not be safe for us to hold the appellants guilty of the offence under Section 302 of IPC merely on the basis of evidence of last seen. Even otherwise, in absence of any positive evidence it cannot be held as to which of the two accused committed murder and the law does not permit us to assume many things which is not part of the evidence. Though the circumstances raise suspicion against the appellants but mere suspicion can not be the basis of conviction, howsoever strong it may be. Considering the over all nature and quality of evidence, we are of the opinion that the prosecution has not been able to prove its case beyond the shadow of reasonable doubt and as such, the trial Court has committed an illegality in convicting the appellants under Section 302/34 of IPC on

the basis of such evidence. The appellants deserve to be acquitted of the said charge by giving them benefit of doubt.

18. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellants are acquitted of charge under Section 302/34 of IPC by extending them benefit of doubt. Appellant No.1 Ramayan Sahu is reported to be in jail, therefore, he be set free forthwith if not required in any other case. Appellant No.2 Neera Bai is already on bail, therefore, her bail bonds stand discharged and she need not surrender.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.C.S. Samant)
Judge