

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1664 of 2000

- Sonu @ Ramesh S/o Maniram Chandra, aged about 20 years, R/o Village Aamgaon, P.S. Jaijaipur, Distt. Janjgir-Champa (CG)

---- Appellant

Versus

- The State Of M.P. through Police Station Jaijaipur, Janjgir-Champa (M.P.) (Now C.G.)

---- Respondent

For Appellant	:	Shri Shobhit Koshta, Advocate.
For Respondent/State	:	Smt. Smita Ghai, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

17/05/2017:

This appeal arises out of the judgment of conviction and order of sentence dated 30.3.2000 passed by the Additional Sessions Judge, Sakti, Distt. Bilaspur in ST No.341/1999 convicting the appellant under Section 302 & 201 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.5000/- and RI for three years, pay a fine of Rs.1000/- with default stipulations respectively.

02. As per the prosecution case, deceased Sukhichand had an evil eye on the sister of the appellant Sonu @ Ramesh and on 9.6.1999, he called the deceased at his room and after committing his murder by causing injuries on his neck with tangia, wrapped up his body in a gunny bag and threw the same in the nearby thrashing field of PW-1

Dharamlal. On 9.6.1999 when the deceased did not return to his house, he was searched and on 10.6.1999 his dead body was found in the thrashing field of PW-1. FIR (Ex.P/2) was lodged on 10.6.1999 at 8.30 am by PW-1 Dharamlal, father of the deceased, based on which offence under Sections 302 & 201 of IPC was registered against unknown person. Immediately thereafter merger intimation Ex.P/1 was registered on 10.6.1999 at 8.35 am. Inquest over the dead body was conducted on 10.6.1999 vide Ex.P/5 and thereafter the body was sent for postmortem which was conducted on the same day by PW-30 Dr. S. Kachchhap vide Ex.P/27 wherein the doctor noticed as many as six incised wounds on his person and opined the cause of death to be the incised wounds over the neck resulting in injury to air passage, great vein, artery and nerve leading to hemorrhagic shock and that the death was homicidal in nature. During investigation, memorandum of the appellant was recorded on 10.7.1999 vide Ex.P/16, based on which seizure of bloodstained soil and bloodstained piece of floor was made vide Ex.P/17 and that of bloodstained half pant, bloodstained vest and bloodstained tangia was made vide Ex.P/18. As per seizure memo Ex.P/19, bloodstained iron bucket and bloodstained mattress were seized from near the place of incident. As per FSL report (Ex.P/32), blood was found on the soil, gunny bag, shirt of deceased, piece of floor, tangi, bucket and mattress. Blood found on tangi was not sufficient for serological examination. However, there is no serological report in respect of other articles also confirming the origin and group of the blood. No blood was noticed on the clothes of the appellant and the soil seized from his room. After filing of charge sheet, the trial Court framed charges under Sections 302, 201/34 of IPC against the

accused/appellant and under Section 201/34 of IPC against one Lokendra (acquitted accused).

03. So as to hold the accused persons guilty, the prosecution examined 32 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 co-accused Lokendra of the charge under Section 201/34 of IPC, convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be made basis for his conviction.

(ii) that though on the memorandum of the appellant, certain articles have been seized and blood has been found on them as per FSL report, however, there is no serological report showing origin and group of the blood found on the articles which could connect the appellant with the crime in question and as such, the seizure is of no consequence.

(iii) the other piece of evidence against the appellant is the statements of PW-7 Pradeep Kumar and PW-9 Panduram in respect of

last seen. So far as PW-7 is concerned, he has nowhere stated as to on what date and at what time he saw the appellant with the deceased and as regards PW-9, he has not supported the prosecution case and has been declared hostile.

(iv) that in fact, present is a case of no evidence, yet the appellant has been convicted on the basis of some inadmissible evidence.

Reliance has been placed on the decisions of the Supreme Court in the matters of ***Jackaran Singh Vs. State of Punjab, AIR 1995 SC 2345; Munish Mubar Vs. State of Haryana, 2012 AIR SCW 5454; Sujit Biswas Vs. State of Assam, AIR 2013 SC 3817;*** and ***Dharam Deo Yadav Vs. State of UP, 2014 AIR SCW 2253.***

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

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

08. PW-1 Pradeep Kumar, a child witness, aged about 10 years, has been examined by the prosecution to prove the theory of last seen. He has stated that he knew the appellant and the deceased and the deceased died about a month back. While he was sitting at the door of deceased Sukhiram, he was asked by Sukhiram to call the appellant, on which he went to call the appellant. However, the appellant told him that he is all alone and therefore, asked him to send the deceased to

his house and thereafter, the deceased went to the house of the appellant and he (this witness) went to his house. In cross-examination, this witness has stated that he cannot tell the date on which he went to call the appellant at the instance of the deceased. He has also admitted the suggestion that whatever he has stated in the Court is as per the advice of his counsel.

09. PW-9 Panduram, another witness who has been examined by the prosecution to prove the theory of last seen, has been declared hostile. When he was confronted with his two diary statements dated 15.6.1999 (Ex.P/6) and 8.7.1999 (Ex.P/7), he states that both the statements are correct. It would not be out of place to mention here that as per statement Ex.P/6, number of persons including the appellant and the deceased were sitting in the house of Panduram and consumed ganja whereas as per statement Ex.P/7, the deceased had gone to the house of the appellant on being called by the appellant.

10. PW-11 Shankar Lal Chandra has stated that when police came to his village to enquire into the murder case after 1-2 days of the incident, he informed the police that at about 9-9.30 hours he had seen the appellant passing from his front. He has nowhere stated that he saw both the appellant and the deceased together.

11. PW-1 Dharamlal, father of the deceased, who lodged FIR and merged intimation, has stated that on the date of incident when the deceased did not return in the evening, he asked his other two sons to look for him, and thereafter, he along with others also searched him at all possible places and on the next morning, his dead body was found

wrapped up in a gunny bag. He has further stated that during inquest, enquiry was made from him and he was asked by the police as to whether he has suspicion over anyone and then he informed the police that the gunny bag in which the dead body was found, had the stains of turmeric and marriage has recently taken place in the house of the appellant. He has stated that if the said fact has not been recorded in his statement by the police, he cannot tell the reason.

12. PW-2 Indirabai, mother of the deceased, has not stated anything specific against the appellant. PW-3 Motikumari, sister of the deceased, first saw the dead body of the deceased in a gunny bag and identified the same from lungi of the deceased and then informed about it to her parents. She has also not stated anything specific against the appellant. PW-4 Lendas and PW-5 Hemlal are formal witnesses. PW-6 Paltan, PW-8 Golan Singh, PW-10 Ramlal, PW-12 Lachhiram and PW-13 Kunjram have given the details of co-accused Lokendra and not stated anything specific against the appellant. PW-14 Babulal has turned hostile. PW-15 Subhkaran Singh, Patwari, prepared the spot map. PW-20 Bajrang is a witness of spot map. PW-21 Kumar Goswami and PW-22 Dindayal are witness of inquest. PW-23 Jhaduram and PW-24 Premsai are witness of memorandum and seizure. They have supported the prosecution case. PW-25 Komal Singh, PW-26 Santosh Tiwari, PW-26A Preetam Yadav, PW-28 T. Kujur, PW-29 Parasram Khunte and PW-31 Swambar Singh, police personnel, helped in the investigation. PW-32 AK Bajpai, investigating officer, has supported the prosecution case.

13. PW-30 Dr. Ku. S. Kachchhap, conducted postmortem on the

body of the deceased and noticed as many as six incised wounds on the shoulder and neck of the deceased which were caused by hard and sharp edged weapon. In the opinion of the autopsy surgeon, the cause of death was incised wounds over the neck resulting in injury to air passage, great vein, artery and nerve leading to hemorrhagic shock and that the death was homicidal in nature.

14. The seized articles were sent for chemical examination to Forensic Science Laboratory and as per FSL report (Ex.P/32), blood was found on the soil, gunny bag, shirt of deceased, piece of floor, tangi, bucket and mattress but the blood found on tangi was not sufficient for serological examination. However, there is no serological report in respect of other articles also confirming the origin and group of the blood. No blood was noticed on the clothes of the appellant and the soil seized from his room.

15. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence, main being the recovery of certain articles at his instance and last seen by PW-7 and PW-9.

16. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the

evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

17. Keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that there is no legally admissible evidence against the appellant pointing towards his guilt. As regards the recovery of certain articles on the memorandum of the appellant, though the witnesses to the memorandum and seizure have supported the prosecution case and blood has also been found on some of the articles as per FSL report, however, there is no serological report to prove the origin of the blood or its group to connect the appellant with the crime in question. This apart, no blood was found either on the clothes of the appellant or the soil seized from his room.

18. So far as the last seen theory is concerned, to prove the same the prosecution has examined two witnesses i.e. PW-1 Pradeep Kumar, a child witness, aged about 10 years and PW-9 Panduram. The 'last seen' theory, as it is called in legal parlance, is more brittle when there is a long time gap. The 'last seen theory' should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen. In the instant case, from perusal of the statement of PW-1, it is evident that he has not stated anywhere specifically as to on

what date and at what time he saw the accused/appellant and the deceased together, rather admitted the suggestion in cross-examination that whatever he has stated in the Court is as per the advice of his counsel. Being so, the evidence of this witness on the point of last seen is of no help to the prosecution and hence, no adverse inference can be drawn against the appellant on the basis of such evidence. As for the other witness PW-9 Panduram, he has not supported the prosecution case and has been declared hostile. In both of his diary statements he has made contradictory statement, at one place he states that number of persons including the appellant and the deceased were sitting in his house and consumed ganja whereas at another place, states that the deceased had gone to the house of the appellant on being called by the appellant.

19. The circumstantial evidence in the case thus falls short of the required standard on all material particulars. In a case resting on circumstantial evidence, the prosecution is required to take extra care while collecting the evidence and proving the same. Such evidence must be proved to the hilt leaving no room for any doubt. However, that has not been done in the present case. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and the appellant is entitled to be acquitted of the charges by giving him benefit of doubt.

20. In the result, the appeal is allowed. The impugned judgment, insofar as it relates to the appellant, is hereby set aside and the appellant is acquitted of charges under Sections 302 & 201/34 of IPC.

In view of acquittal of the appellant, the earlier order passed by this Court cancelling his bail is hereby recalled.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.C.S. Samant)
Judge