

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1083 of 2004

(Arising out of judgment/order dated in Case No. of the
learned.....)

- Suresh Agrawal, aged about 28(21) years, Son of Sukhdayal Agrawal,
Ex-student, resident of LIG-687, P.s. Amanaka, Raipur Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant	: Shri P.K.C.Tiwari, Sr. counsel assisted by Shri Shashi Bhushan, Advocate
For Respondent/State	: Shri Adil Minhaj, P.L.

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

Judgement on Board

Per Pritinker Diwaker, J.

11/08/2017

This appeal has been preferred against the judgment and order dated 04.12.04 passed by the Additional Sessions Judge, (FTC), Raipur in Sessions Trial No. 246/1997 convicting the accused/appellant for the offence punishable under Section 302/34 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 200/- with default stipulation.

2. As per prosecution case, on 27.02.97, at 12.30 p.m. *dehati nalishi* Ex.P-5 was lodged by PW-3 Pawan Kumar Thakur Sarpanch of village Jarvai mentioning therein that when he was sitting in the panchayat Bhavan along with other villagers one Shivanand Yadav

came there and informed that near Poultry farm, Atari Road, two boys are assaulting one another boy. It has been further mentioned that when he had gone to the place of occurrence he saw the dead body of a young boy drenched in blood. He has further stated that near the dead body one pair of leather footwear and a velvet scabbard was also lying. He telephonically informed the police about the incident, the police reached there and dehati merg Ex.P-17 was recorded. FIR Ex.P-16 was lodged by Pawan Kumar Thakur (PW-3) against two unknown persons under Section 302 IPC. Inquest on the body of deceased was prepared vide Ex.P-2 and body was sent for postmortem examination which was conducted by Dr. Ulhas Gonnade (PW-16) vide Ex.P-20 on 28.02.1997 who opined that the cause of death was shock and hemorrhage due to multiple stab injury present over body and death was homicidal in nature. During investigation, memorandum of the accused/appellant Ex.P-9 was recorded on 5.03.1997 based on which recovery Ex.P-10 of dagger (*katar*) was made from the bushes. On the basis of memorandum of accused/appellant Ex.P-11, seizure of Luna vide Ex.P-12, shirt and pant of the appellant vide Ex.P-13 was made whereas vide Ex.P-14 some love letters are said to have been seized. From the spot vide Ex.P-3, one pair of leather footwear whereas vide Ex.P-6 love letter and vide Ex.P-7 shirt of the deceased was recovered. As per FSL report (un-exhibited) in the article c and c-1 i.e. shirt and pant, blood has been found and likewise in the dagger (article e) blood has been found. From the co-accused Pranjal Tiwari, shirt and pant was seized and blood was found on those articles as per the FSL report (un-exhibited). As per query report Ex.P-21 blood was also noticed on the shirt worn by the deceased. While framing the charge trial judge has framed charge against the appellant and co-accused Pranjal under

Section 302 in alternate under Section 302/34 IPC. Since co-accused Pranjali was juvenile at the time of commission of the offence, the trial judge has referred his case to the Juvenile Justice Board.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 17 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant whereas the co-accused as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) there is no eyewitness count to the incident and the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence collected by the prosecution is very weak and the chain of circumstantial evidence is not complete.

ii) the main piece of evidence which has been relied upon by the trial court is the recovery of dagger and clothes and the blood found on them however in absence of any serological report, the said seizure loses its significance.

iii) the other piece of evidence led by the prosecution against the appellant is the so called witness of last seen Moolchand PW-10 however this witness is not reliable.

iv) it has been argued that Rana Pratap Singh (PW-14) has not stated anything against the appellant and has merely stated that he saw the deceased along with two persons.

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

7. Heard counsel for the parties and perused the material on record.

8. Ram Kumar Sahu (PW-1) and Ram Kumar Sonkar (PW-2) are the witnesses to inquest (Ex.P-2) and seizure (Ex.P-3). Pawan Singh Thakur (PW-3) is the lodger of dehati nalishi, dehati merg and FIR. Arjun Nishad (PW-4) is a witness to seizure Ex.P-6, P-7 and P-8 by which shirt, pant and blood stained soil and plain soil were seized. Laalta Prasad Yadav (PW-6) is a witness to memorandum Ex.P-9, P-10, P-11 and seizure P-12, P-13 and P-14. It is relevant to note that examination-in-chief of this witness has not been concluded by the prosecution nor there is cross-examination of this witness. Thus this witness is of no help to the prosecution. Mohan Singh Thakur (PW-7) is a hearsay witness and has been declared hostile. Mannu (PW-8) is a witness to seizure Ex.P-6, P-7 and P-8 i.e. seizure made from the spot. Moolchand (PW-10) is a star witness of the prosecution who allegedly saw the appellant along with the deceased. He has stated that the appellant and co-accused had taken the deceased along with them. In para 6 of his cross-examination he has stated that his brother (deceased) was studying in the adjoining house and at that time, co-accused Pranjal came there, enquired about him and thereafter he (this witness) had left the place and when he returned neither the deceased

nor the co-accused were present. He has stated that on the basis of photograph of the appellant and the co-accused shown by the police, he identified the same to be that of the appellant and the co-accused. Sher Bahadur Yadav (PW-13) is a witness to memorandum of Ex.P-9, P-10 and P-11, seizure Ex.P-10 and P-12 to P-14. From seizure Ex.P-10, it is apparent that the dagger was seized from the bushes accessible to anyone. Rana Pratap Singh (PW-14) is alleged witness of last seen. He has stated that when he was returning from village Atari he saw three persons were riding in a luna but he identified only one of them. Satish Chandra Bajpai (PW-15) is the Investigating Officer who has done part of the investigation. Dr. Ulhas Gonnade (PW-16) is the doctor who conducted postmortem examination on the body of deceased vide Ex.P-20 and according to him cause of death was shock and hemorrhage due to multiple stab injury present over body and death was homicidal in nature. As per un-exhibited FSL report, blood was found on C, C-1 i.e. shirt and pant of the appellant and dagger article -e however there is no serological report.

9. Close scrutiny of the evidence makes it clear that there is no reliable and clinching evidence against the appellant showing his involvement in the commission of the murder of the deceased. Though Mool Chand (PW-10) and Rana Pratap Singh (PW-14) have been examined as witnesses of last seen but the statement of Mool Chand (PW-10) does not appear to be reliable as it is full of contradictions. Likewise in the statement of Rana Pratap Singh (PW-14) also, he does not mention the name of accused/appellant. Even otherwise it is settled proposition of law that merely on the basis of statement of witnesses to last seen the appellant cannot be convicted unless there is some other

corroborative piece of evidence. [Please see the referred cases/ judgments : in the matter of ***Nizam and Anr. Vs. State of Rajasthan (AIR 2015 SC 3430)***; ***Smt. Jiteshwari Bai Vs. State of Chhattisgarh (Cr.A. No.587/2004 dated 25.10.2016)***; ***State of Goa Vs. Sanjay Thakran and Anr. (2007(3) SCC 755)***; ***S.K.Yusuf Vs. State of West Bengal (AIR 2011 SC 2283)*** and ***Anjan Kumar Sarma Vs. State of Assam (2017 SCC 622)***]. On the memorandum of the accused/appellant Ex.P-9 and P-11, certain seizures have been made vide Ex.P-10,12,13 and 14 though in the FSL report blood has been found on shirt, pant and dagger but in absence of serological report merely on the basis of FSL report the appellant cannot be convicted. Seizure of three love letters vide Ex.P-14 and P-6 A have absolutely no relevance as these letters have not been connected with the commission of the crime. Thus, in absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction.

10. Taking the cumulative effect of the evidence we are of the considered view that the evidence led by the prosecution is a weak type of evidence and it will not be safe for us to convict the appellant on the basis of evidence collected by the prosecution. In the present case, we find that the prosecution has blatantly failed to prove the offence against the accused beyond reasonable doubt. Only on the basis of last seen evidence the accused cannot be convicted for the offence of murder. Thus, after taking all the facts and circumstances in consideration we do not find ourselves in conformity with the findings arrived at by the Learned trial court. Accordingly, the appeal filed by the appellant is allowed and the judgment impugned convicting and

sentencing the appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. The appellant is on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge