

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 887 of 2004**

(Arising out of judgment/order dated 27.09.2004 in S.T. No. 93/2004
of the learned 1st Additional Sessions Judge, Kanker)

- Jagdev Ram S/o Dharmu Ram, aged about 35 years,
Occupation - Agriculture, R/o Village Tohttar Thana,
Durgukondal, District Kanker (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Durgukondal,
District Kanker

---- Respondent

For Appellant	:	Smt. Renu Kochar, Advocate
For Respondent/State	:	Shri Vivek Sharma, G.A.

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

Judgment On Board**By Pritinker Diwaker, J****17/08/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 27.09.2004 passed by the 1st Additional Sessions Judge, Kanker, District Bastar, in S.T. No.93/2004 convicting the appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine amount to further undergo R.I. for one month.

02. As per the prosecution case, on 01.12.2003 on account of election dispute, the appellant took the deceased

Shatrughan along with him outside the village and there he first gave blow on his face and when the deceased fell down on the ground, the appellant threw a big stone on his head resulting death of the deceased. The body of deceased was found on 04.12.2003 by one Nawaluram in the forest, who gave information to Parsuram (PW/2) - father of the deceased, at whose instance merg intimation Ex.P/1 was recorded on 04.12.2003 at 1.15 pm. On the same day, inquest on the body of deceased was prepared vide Ex.P/11 and body was sent for postmortem examination to P.H.C., Durgukontal vide Ex.P/18 where Dr. Rajesh Tembhurnikar (PW/15) conducted postmortem on the body of deceased and gave his report Ex.P/19, however, no definite opinion was given regarding the cause of death. After merg inquiry, FIR Ex.P/25 was registered against the appellant under Sections 302 and 201 IPC on 12.12.2003. After filing of the charge sheet, the trial framed the charge against the appellant under Section 302 and acquitted accused Heeralal under Section 201 IPC.

03. So as to hold the accused persons guilty, the prosecution examined as many as 17 witnesses. Statements of the accused persons 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 while acquitting accused Heeralal has convicted and sentenced the appellant as mentioned in para 1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submit as under:-

- That there is no eye-witness account to the incident and the appellant has been convicted solely on the basis of circumstantial evidence which is very weak in nature. It has been argued that the circumstance from which the inference of guilt is sought to be drawn, must be cogently and firmly established, however, in the present case, no such evidence is available on record.
- That the trial Court has erred in law in convicting the appellant on the basis of his disclosure statement Ex.P/13 and seizure of stone vide Ex.P/14. It has been argued that the said stone was seized from an open place and though in the FSL report Ex.P/30 blood has been found on the said stone but in absence of serological report the said disclosure and FSL lose its significance.
- That the trial Court has erred in law in convicting the appellant on the basis of statements of Bhagbati Bai (PW/3) and Kunwar Singh (PW/7), so called witnesses to last seen. He submits that these witnesses saw the deceased in the company of the appellant on 01.12.2003 whereas body of deceased has been found on

04.12.2003 and considering long gap between the last seen of the appellant and the deceased and recovery of dead body, the possibility of deceased being killed by some other person cannot be ruled out.

06. On the other hand, supporting the impugned judgment it has been argued that conviction of the appellant is in accordance with law and there is no infirmity in the same.

07. We have heard counsel for the parties and perused the material available on record.

08. Bhagbati Bai (PW/3) is the wife of deceased. She has stated that on the date of incident at about 2.00 in the afternoon her husband deceased returned from the polling booth and thereafter he along with the appellant had gone to grocery shop for selling paddy and thereafter he did not return. She has further stated that her husband was extensively searched and after about 2 days the body of her husband was found outside the village. She has also stated that on being questioned by the villagers, the appellant informed them that he has committed murder of the deceased. Kunwar Singh (PW/7) has also been examined by the prosecution as witness to last seen. He has stated that he was informed by one Lakhan that the deceased had gone along with the appellant. Janaki (PW/4), Sukhwati (PW/5) and Salik Ram (PW/6) are the witnesses before whom the appellant is alleged to have made extra-judicial confession, however, PW/4 and PW/5 turned

hostile, whereas PW/6 has stated that he was informed by Sukhpati (PW/3) that the deceased has been killed by the appellant. Laluram (PW/8), Sawant (PW/9), Jairam (PW/10) and Faganu Ram (PW/11) turned hostile. Dukhu Ram (PW/12) is a witness to inquest Ex.P/11, spot map Ex.P/12, memorandum Ex.P/13 and seizure Ex.P/14 by which stone has been seized. Dr. Rajesh Tembhurnikar (PW/15) conducted the postmortem on the body of deceased vide Ex.P/19 and found lacerated wound in the size of 4cm x 1cm over chin, multiple contusion about 2 x 1 cm over chest and neck. The autopsy surgeon has not given any definite opinion regarding the cause of death. R.P. Tiwari (PW/16) is the Assistant Sub Inspect who helped in the investigation. T.S. Pattawi (PW/17) is the Investigating Officer who has duly supported the prosecution case.

09. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the appellant in commission of murder and the conviction of the appellant rest upon circumstantial evidence.

10. In the matter of **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210**, the Supreme Court while dealing with circumstantial evidence observed in paras 11, 12 & 13 as under:-

“11. In Hanumant Govind Nargundkar V. State of M.P. [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:

“10..... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

12. In *Padala Veera Reddy V. State of A.P.* [(1989) Supp (2) SCC 706], this Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

- (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; and (4) 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 and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. **In Sharad Birdhichand Sarda v. State of Maharashtra** [(1984) 4 SCC 116], it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (2) 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;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis

except the one to be proved; and

(5) 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.

11. The trial Court has convicted the appellant on the basis of evidence of last seen by Bhagbati Bai (PW/3) and Kunwar Singh (PW/7). It is well settled position of law that the conviction cannot be recorded against the accused merely on the ground that accused was last seen with the deceased. In other words, conviction cannot be based on the only circumstance of last seen together and normally the Court is required to look for some other corroborative piece of evidence. Most importantly, the theory of last seen comes into play where the time gap, between the point of time when accused and deceased were seen last alive and when the deceased found dead, is so small that possibility of any person other than accused being the perpetrator of crime, becomes impossible.

12. In the present case, according to evidence of PW/3, on 01.12.2003 she saw the deceased last time in the company of appellant and after about two days i.e. on 04.12.2003 the dead body of deceased found in the forest. According to Kunwar Singh (PW/7), wife of deceased PW/1 came to him and asked that deceased is not in house and requested to search him (deceased). Thereafter, one Lakhan informed him that

deceased had gone with the appellant and on 04.12.2003 dead body of deceased was found in the forest. Both the witnesses have not made any specific allegation against the appellant. The time gap between the last seen and recovery of body of deceased is so long (four days) and the possibility of third person other than the appellant killing the deceased cannot be ruled out.

13. The other piece of evidence adduced by the prosecution against the appellant is the seizure of stone and clothes of appellant. Though, on the memorandum (Ex.P/13 and P/15) of appellant, one stone and clothes were seized vide Ex.P/14 and Ex.P/16 respectively & as per FSL report Ex.P/30 blood has been found on the seized articles but there is no serological report to show that it was human blood and that too of the blood group of the deceased. As such, this circumstance of seizure of stone and clothes also lose its efficacy.

14. In **Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507**, while dealing with recovery of bloodstained articles the Supreme Court held as under:-

“11. As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood

stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.

15. Thus, having examined the evidence in the present case in the light of the aforesaid principles of law, we are unable to hold the appellant guilty of the crime in question. None of the circumstances relied upon by the trial Court has been proved to the hilt by the prosecution so as to exclude the possibility of any person other than the appellant being the perpetrator of the crime beyond the shadow of all reasonable doubt. Being so, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.

16. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 302 IPC by extending him benefit of doubt. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE