

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 594 of 2002**

- Bhupendra Kumar Verma S/o Bundram Verma, aged 22 years, R/o village Tundri, P.S. - Bilaigarh, District Raipur (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through : Station-In-Charge, P.S. Bilaigarh, District Raipur (C.G.)

---- Respondent**CRA No. 614 of 2002**

- Ramavatar Verma S/o Rujhram, aged 32 year, R/o village Tundri, P.S. Bilaigarh, District Raipur (C.G.)

---- Appellant**Vs**

- State Of Chhattisgarh

---- Respondent**And****CRA No.601 of 2005**

- Milu Ram Verma S/o Mahajan, aged 56 years, Occupation - Agriculture, R/o Village - Tundri, P.S. Bilaigarh, District Raipur.

---- Appellant**Vs**

- State of Chhattisgarh

---- Respondent

For Appellant in CRA No.594/2002	:	Shri Pankaj Agrawal, Advocate.
For Appellant in CRA No.614/2002	:	Shri Aman Kesharwani, Advocate.
For Appellant in CRA No.601/2005	:	None.
For Respondent/State	:	Smt. Smita Ghai, P.L.

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

Judgment On Board

By Pritinker Diwaker, J

08/08/2017

As these three appeals arise out of the common judgment dated 10.05.2002 passed by the 2nd Additional Sessions Judge, Baloda Bazar, in S.T. No.19/2001 convicting the accused/appellants under Sections 364(A)/34, 302/34 and 201/34 of IPC and sentencing them to under go imprisonment for life with fine of Rs. 1000/-, imprisonment for life with fine of Rs.1000/- and R.I. for three years with fine of Rs.500/- each plus default stipulations, respectively, they are being disposed of by this common judgment.

02. In the present case, name of the deceased is Beeru @ Yogendra, a young boy aged about 8 year. It is said that on 12.04.2000 at about 2.00 pm, the deceased was kidnapped and ransom of Rs.2 Lakh was demanded. Upon this, on 13.04.2000, FIR Ex.P/1 was lodged by Hari Shankar (PW/1)-uncle of deceased under Sections 363(A) and 364 IPC against an unknown person. On 16.04.2000 at about 12.00 noon, body of deceased was found near Laami brook. Unnumbered merg Ex.P/20 and numbered merg Ex.P/19 were recorded on 16.04.2000 and 17.04.2000 respectively. On the same day, inquest on the body of deceased was prepared vide Ex.P/3 and body was sent for postmortem examination to Primary Health Center, Bilaigarh vide Ex.P/21 where Dr. M.M. Devdhar (PW/9) conducted postmortem and gave his report Ex.P/18, however, no definite opinion was given regarding the cause of death. During investigation, memorandum of accused/appellant Milu Ram in Cr.A.No.601/2005 was recorded vide Ex.P/4, based on which one

Baba Suit Shirt, one red colour half pant and one nylon string were seized vide Ex.P/6. Memorandum of accused/appellant Ramavatar Verma in Cr.A.No.614/2002 was recorded vide Ex.P/5, based on which one used razor (super max) was seized vide Ex.P/7, however, as per FSL report Ex.P/28, no blood has been found on razor. After investigation, charge sheet was filed against the accused/appellants under Sections 363, 364, 302 and 201/34, however, while framing the charge, the trial Court framed the charge under Sections 364(A), 302 and 201 read with section 34 IPC against accused/appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 22 witnesses. Statements of the accused/appellants 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. This apart, Dhaleshwar Sahu (DW/1) and Rajeshwar Pandey (DW/2) have also been examined by the defence in support of its case.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence, this appeal.

05. During pendency of these appeals, accused/appellant Milu Ram Verma in Cr.A.No.601/2005 has expired and, therefore, the appeal in respect of accused/appellant Milu Ram stands abated.

06. Learned counsel for the appellants in Cr.A.No.594/2002 and 614/2002 submit as under:-

- That the appellants have been convicted solely on the basis of

circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for their conviction.

- That the main piece of evidence against the accused/appellants are the statements of Uma Bai (PW/5) and Lakhanlal Verma (PW/8), however, even if their entire statements are taken as it is, it cannot be said that they saw the deceased last time in the company of accused persons.
- That other piece of evidence against the appellants is the statement of Hari Shankar (PW/1) who has stated that accused Bhupendra in Cr.A.No.594/2002 gave one inland letter to family members of the deceased and through that letter ransom was demanded. It has been argued that this document is nothing but a created document by the prosecution and no hand writing expert has been examined to establish the fact that the said letter was written by deceased accused Milu Ram.
- That even if the contents of said letter is taken as it is, merely on the basis of the same it cannot be said that it is the accused persons in particular accused Bhupendra and Ramavatar, who have committed any offence.
- That there is nothing on record showing commission of offence under Section 364(A) IPC or 302/34 IPC.
- That the seizure of article cannot be connected with the commission of crime showing the involvement of the accused/appellants because in the FSL report (Ex.P/28) no blood has been found on the seized article (razor).
- That even if the entire prosecution case is taken as it is, it

indicates the involvement of only deceased appellant Milu Ram and there is absolutely no evidence against the surviving accused/appellant Bhupendra Kumar and Ramavatar Verma.

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

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

09. Hari Shankar (PW/1), who is uncle of the deceased and lodger of FIR, has stated that the deceased went missing on 12.04.2000 and in the said night at about 11.00 pm, accused/appellant Bhupendra Kumar gave inland letter wherein ransom of Rs.2 Lakh was made. He has not made any allegation against the accused/appellants showing their involvement in commission of crime. He has also stated that he lodged the FIR Ex.P/1. He is also a witness to inquest Ex.P/3. Shankar Prasad (PW/2) is the witness who first saw the body of deceased in the bushes near brook. He is also a witness to inquest Ex.P/3. Narottam Das (PW/3) - village Kotwar is witness to memorandum Ex.P/4, P/5 and seizure Ex.P/6 and P/7. However, he did not support the prosecution case and turned hostile. Lakhan Lal (PW/4) is the Patwari who prepared spot map vide Ex.P/16. Smt. Uma Bai (PW/5) is the mother of deceased and alleged witness of last seen. She has stated that on the date of incident, deceased was going to school but on the way his teacher told him that the school is closed and, therefore, he returned to house. While deceased was playing in his house, at about 11.00 am he was called by son of deceased accused Milu Ram to go to village river and after taking

bath deceased returned to the house. She has further stated that thereafter deceased was again called by son of deceased accused Milu Ram and, thereafter, his son did not return. The deceased was extensively searched and in the night Budhram informed her that accused/appellant Bhupendra gave him inland letter in which demand of Rs.2 Lakh was made against her son. Lambodar (PW/6) is the father of deceased who at the relevant time was working in the collary at Baikunthpur far away from his village. This witness has not stated anything specific against the accused/appellants. Ram Kumar (PW/7) is the photographer, who at the instance of police, took photographs of the deceased. Lakhan Ram Verma (PW/9) has also been examined by the prosecution as witness to last seen. He has stated that he had seen the deceased and accused/appellant Milu Ram near the brook. Apart from this, he has not stated anything specific against accused/appellant Bhupendra and Ramavatar. Dr. M.M. Devdhar (PW/9) conducted the postmortem on the body of deceased vide Ex.P/18 and found following injuries/symptoms:-

- (i) Postmortem heredity seen on ventral surface of the body.
- (ii) Scalp, eyeballs and lips were eaten by maggot or destroyed by water born insect.
- (iii) Abdomen distended. Body was decomposed and putrefying fowl coming from body.
- (iv) Scrotum and penis were distended and swollen.
- (v) Maggot crawling inside the chest wall and abdominal cavity.

The autopsy surgeon has not given any definite opinion regarding the cause of death.

S.L. Chouhan (PW/11) is the Investigating Officer who has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that there is no eye-witness account to the incident and the main piece of evidence which has been relied upon by the prosecution are the statements of PW5 and PW/8, witnesses to last seen. 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. The Supreme Court in the matters of **State of Goa V. Sanjay Thakran**¹, **Yusuf V. State of West Bengal**², **Anjan Kumar Sharma V. State of Assam**³, **Nijam V. State of Rajasthan**⁴, **Kanhaiyalal V. State of Rajasthan**⁵ and this Court in the matter of **Smt. Jiteshwari Bai V. State of CG**⁶ has held that while basing the conviction on the last seen theory, it is safer to look for corroboration from other circumstance and evidence adduced by the prosecution.

11. In the present case, according to evidence of PW/5, deceased was taken by the son of accused Milu Ram and as per the evidence of

1 2007 (3) SCC 755

2 AIR 2011 SC 2283

3 2017 SCC 622

4 AIR 2015 SC 3430

5 2014 (4) SCC 715

6 2015 (S) SCC 393

PW/8, he had seen the deceased along with accused Milu Ram near the brook. Both the witnesses have not made any specific allegation against accused/appellant Bhupendra in Cr.A.No.594/2002 and Ramavatar in Cr.A.No.614/2002. Though, on the memorandum (Ex.P/4) of accused/appellant Milu Ram, red colour baba shirt, half pant and string were seized vide Ex.P/6 and likewise on the memorandum (Ex.P/5) of accused/appellant Ramavatar, one used razer was seized vide Ex.P/7 but in the chemical analysis no human blood has been noticed, which is evident from FSL report Ex.P/28. So far as recovery of clothes on the memorandum of accused/appellant Milu Ram is concerned, there is no FSL report in that regard showing the presence of blood on it. In the facts and circumstances of the case, we find it difficult to support the impugned judgment recording conviction of the accused/appellants.

12. Yet another important aspect of the case is the alleged unexhibited ransom inland letter. The prosecution, in order to convict the accused/appellants, was required to prove that the said letter was written by any of the accused by examining handwriting expert, but the prosecution has failed to do so and the Court below of its own has assessed that the said letter was written by the deceased accused Milu Ram.

13. In the matters of **Sattatiya @ Satish Rajanna Kartalla V. State of Maharashtra, (2008) 3SCC 210** and **Sharad Birdhichand Sarda V. State of Maharashtra [(1984) 4 SCC 116]** has held 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.

14. Thus, considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Sections 364(A)/34, 201/34 and 302/34 IPC is not based on due appreciation of the evidence available on record and that being so they are entitled for benefit of doubt. Consequently, the judgment impugned convicting the accused/appellants under Sections 364(A)/34, 201/34 and 302/34 IPC is set aside and they are hereby acquitted of the charge levelled against them. As the appellants are reported to be on bail, their bail bonds stand discharged.

15. Appeals are thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE