

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 81 of 2004**

(Arising out of judgment/order dated 17.11.2003 in S.T. No. 523/2002 of the learned 1st Additional Sessions Judge, Bastar at Jagdalpur)

- Somnath Singh S/o Ful Singh, aged about 20 years, Occupation Farmer, R/o village Sonabal, P.S. Kondagaon, District Bastar (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through The District Magistrate, Bastar (C.G.)

---- Respondent

For Appellant	:	Shri Shailendra Dubey, Advocate
For Respondent/State	:	Shri Adil Minhaj, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****25/08/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 17.11.2003 passed by the 1st Additional Sessions Judge, Bastar at Jagdalpur, in S.T. No.523/2002 convicting the appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.2000/-. On appellant's depositing fine amount, the same be paid to the wife and daughter of the deceased as compensation, in default the same be recovered from his immovable property.

02. As per the prosecution case, on 05.10.2002 deceased Laxminath Kumhar left his house at about 8.00 pm and on the next day at about 10.00 am his body was found near the village pond. FIR Ex.P/7 was lodged on 06.10.2002 by the villager Ram Singh (PW/2) under Section 302 IPC against an unknown person mentioning therein that deceased was having some dispute with one Jagdish Kumhar for which the matter was pending in the Court. Based on this FIR, offence under Section 302 IPC was registered against an unknown person. Immediately, thereafter merg intimation Ex.P/6 was recorded and inquest on the body of deceased was prepared on 06.10.2002 vide Ex.P/9 and body was sent for postmortem examination to Assistant Surgeon, Kondagaon vide Ex.P/12-A where Dr. R.K. Singh (PW/4) conducted postmortem on the body of deceased and gave his report Ex.P/12 opining the cause of death to be shock due to excessive bleeding and death was homicidal in nature. After filing of the charge sheet, the trial Court framed the charges against four accused persons including that of appellant under Sections 120-B and 302 IPC.

03. So as to hold the accused persons guilty, the prosecution examined as many as 10 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 Samnath Singh, Chouhan Singh and Mangal Ram, 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 the appellant has 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 his conviction.
- That the main piece of evidence against the appellant is his memorandum Ex.P/18 and seizure of T-shirt and lungi vide Ex.P/20, however, in absence of FSL report, the same is not of any consequence.
- That other piece of evidence against the appellant is so called query report Ex.P/13 of axe and Ex.P/16 of T-shirt and lungi which contain stains like blood. It has been argued that in absence serological report confirming the origin of blood group, the seizure of these articles loses its significance.
- That, another piece of evidence which has been relied upon by the trial Court against the appellant is the evidence of last seen by Ramula Bai (PW/1) and Ku. Hemlata (PW/9), wife and daughter of the deceased respectively, however, they do not appear to be reliable

being interested witnesses.

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. Ramula Bai (PW/1) is the wife of deceased. She has stated that on the previous night of incident when her husband deceased was having meal in house, the appellant came and took her husband along with him to the house of one Mangal and thereafter he did not return. When appellant Samnath came to her house, she inquired about her husband on which appellant told her that he would come after some time. She has further stated that in the night when her husband did not return, she searched him and early in the morning when she again searched him, she was informed by the villagers that her husband has been murdered and his body is lying in the field. This witness has admitted the fact that she does not have any dispute with the appellant and earlier also he used to come to her house.

09. Ku. Hemlata (PW/9)- child witness aged about 9 years is daughter of the deceased. The trial Court after satisfying itself that the child witness is able to answer the question rationally, has examined her. She has stated that on the previous night of incident the appellant along with one Chouhan came to her

house and took her father along with them. This witness admits the fact that earlier also the appellant used to come to her house and there was no dispute between her father and the appellant.

10. Smt. Pratibha Markam (PW/8) is the Investigating Officer who has duly supported the prosecution case.

11. Ram Singh (PW/2) is the lodger of merg Ex.P/6 and FIR Ex.P/7. He is also a witness to inquest Ex.P/9. Gyansingh Thakur (PW/3), Jamghar (PW/5), Sajan (PW/6) and Nohar Singh (Pw/10) have turned hostile.

12. Dr. R.K. Singh (PW/4) conducted the postmortem on the body of deceased vide Ex.P/12 and noticed that neck and head cut, esophagus trachea, thoracic vertebra and jugular vein were cut, mouth was opened, eye semi closed, margin of injuries were sharp, injury was seen below and above right hand, chest and excessive blood on spot. The autopsy surgeon opined the cause of death to be shock due to excessive bleeding.

13. Ramesh Kumar (PW/7) is witness to seizure of T-shirt and lungi made under Ex.P/20 and has admitted his signature thereon.

14. Based on the memorandum of the appellant vide Ex.P/18, T-shirt, Lungi and axe were seized vide Ex.P/20 and P/21 and according to query report of doctor (Ex.P/13), axe, T-shirt and Lungi were found to be stained with blood, however, there is no FSL and serological report confirming the stains of blood on the seized articles and origin of blood group.

15. Close scrutiny of the evidence makes it clear that the appellant has been convicted mainly on the basis of last seen evidence and recovery affected vide Ex.P/20, P/21 on the basis of memorandum Ex.P/18.

16. It is well settled position of law that the conviction cannot be recorded against an 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. In the matter of **State of Goa V. Sanjay Thakran**¹, Supreme Court has held as under:-

“In the light of the factors that evidence regarding the recovery of the incriminating materials from the accused persons has been discarded; that there has been sufficient time gap between the instances when the accused persons were last seen together with the deceased persons; and in the absence of any other corroborative piece of evidence to complete the chain of circumstances to fasten the guilt on the accused couple, we are of the opinion that the accused have been rightly given the benefit of doubt by the courts below. We have found that the finding of the High

1 2007 (3) SCC 755

Court that the chain of circumstances is not complete to conclusively establish that either A-1 or A-2 alone or with the common intention of each other have committed the dreadful crime of murder of newly married couple, is correct and merely suspicion, however grave, cannot replace the weight attached to the evidence”.

17. In the present case, according to evidence of PW/1 and PW/9, on the previous night of incident they saw the deceased last time in the company of appellant Samnath and on the next day i.e. on 06.10.2002, the dead body of deceased found near the village pond. But it has also come in the evidence of these two witnesses that the appellant used to often visit their house and that there was no dispute between the deceased and the accused/appellant and, therefore, mere fact that deceased was last seen in the company of accused by itself is not sufficient to establish the guilt of the accused unless there is evidence to the effect that the accused and the deceased were last seen together near or at the place from where the body was recovered. The 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 author of the crime becomes impossible. Furthermore, the time gap between the last seen and recovery of body of deceased is so long (one day) that the possibility of

third person other than the appellant killing the deceased cannot be ruled out.

18. The other piece of evidence brought forth by the prosecution against the appellant is the seizure of T-shirt, lungi of the appellant and weapon of offence axe on the memorandum Ex.P/18 of appellant and query report Ex.P/13 of axe and Ex.P/16 of clothes of appellant on which stains like blood has been found but there is no FSL and 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 clothes and axe loses its efficacy. Even otherwise, in our view, mere recovery does not establish the guilt of the accused when there is no other clinching evidence particularly about the presence of accused/appellant on the spot or nearby area when the incident took place.

19. 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.

20. Thus, considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the appellant under Section 302 IPC is not based on due appreciation of the evidence available on record and that being so he is entitled for benefit of doubt. Consequently, the judgment impugned convicting the appellant under Section 302 IPC is set aside and he is hereby acquitted of the charge levelled against him. As the appellant is reported to be on bail, his bail bonds stand discharged.

21. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE