

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 358 of 2010**

1. Punit Ram S/o Jati Ram, aged about 40 years.
2. Dani Ram S/o Mulchand Mandavi, aged about 21 years.
3. Parveen Begum W/o Late Mod. Hussain, aged about 30 years.

All are resident of village - Sakri, Police Station - Pallari, District - Raipur (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station - Pallari, District Raipur (C.G.)

---- Respondent

For Appellants	:	Shri Hemant Gupta, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Arvind Singh Chandel**

Judgment On Board**By Pritinker Diwaker, J****14/12/2017**

01. This appeal arises out of the judgment of conviction and order of sentence dated 22.02.2010 passed by 2nd Additional Sessions Judge, Baloda Bazar, District Raipur, in Sessions Trial No.03/2009 convicting the accused/appellants under Sections 302/120-B and accused/appellants Punit Ram and Dani under Section 201 of IPC & sentencing each of them to undergo imprisonment for life with fine of Rs.500/-, R.I. for seven years with fine of Rs.100/-, plus default stipulations respectively.

02. In the present case, name of the deceased is Mohd. Hussain, husband of appellant No.3-Parveen Begum.

03. As per the prosecution case, accused/appellant No.1-Punit Ram was having illicit relation with accused/appellant No.3-Parveen Begum for the last about 10 years. On 09.10.2008 accused/appellants eliminated the deceased by causing several injuries on his face and head and thereafter burnt his body. Half burnt body of the deceased was thrown in an abandoned house of one Kartik Ram. Body was noticed by Madho Das (PW/1), Kotwar of the village, and accordingly a complaint was lodged on 13.10.2008 at his instance vide Ex.P/1. On 14.10.2008, inquest on the body of deceased was conducted, however, the body could not be identified by any of the villagers. Thereafter, the body of deceased was sent for postmortem examination which was conducted on the same day by Dr. B.S. Dhruv (PW/10) who gave his report Ex.P/10 noticing following injuries:-

- (i) Rigor mortis passed out. Muscles of both hands, skull, face and leg were not present.
- (ii) Bones of hand were intact. Hair on back side of head present. Front portion of face was burnt. Left leg thumb was absent.
- (iii) Ribs Nos.1, 2, 3 and 4 were broken due to burn.
- (iv) Upper region of chest, both hands, neck and skull were burnt.
- (v) Peeling off of skin started on body. Maggots were present all over body and some teeth were missing.

Autopsy Surgeon opined the cause of death of deceased to be complication of injuries. It was further opined by the Autopsy Surgeon that the burn injuries sustained by the deceased were postmortem in nature. Mode of death was unknown.

04. After receiving postmortem report, FIR (Ex.P/13) was registered

against unknown person under 302 of IPC. On 10.11.2008, memorandum of accused/appellant No.1-Punit Ram was recorded vide Ex.P/5 wherein he has admitted the fact of having illicit relation with accused/appellant No.3-Parveen Begum. He has also admitted that all the accused persons have killed the deceased, burnt his face and thereafter threw his body in an abandoned house. Based on this memorandum, seizure (Ex.P/6) was affected by which one stone having weight of about one kilogram was seized near the brook. On 09.11.2008, diary statement of Raees Khan (PW/7) was recorded and it is said that it is PW/7 who identified the body on the basis of photographs and small pieces of clothes of the deceased. On 27.11.2008, diary statement of Najmin Begum (PW/6) was recorded wherein she has alleged that she saw the deceased and his father going with accused/appellant No.2-Dani Ram. After filing of charge sheet, the trial Court framed charge under Sections 302/120-B alternatively Sections 302/34 and 201 of IPC against the accused/appellants.

05. So as to hold the accused/appellants guilty, the prosecution examined as many as 10 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.

06. 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.

07. Learned counsel for the appellants submit :-

- That there is no eye-witness to the occurrence and the conviction of the accused/appellants is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellants can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellants who committed the murder.
- That so called evidence of last seen by Najmin Begum (PW/6) is not reliable and it appears that she has falsely implicated the accused/appellants in the crime in question because she wanted to grab the property of the deceased.
- That on the memorandum of accused/appellant No.1-Punit Ram, one stone is alleged to have been seized but there is no FSL report on record to connect the said seizure with the commission of offence.
- That identification of the dead body by Rais Khan (PW/7) on the basis of photographs and small pieces of clothes of deceased is doubtful. It has been argued that the body was highly decomposed and after crushing the face of body, the same was burnt and that is why at the time of inquest, it could not be identified.
- That once in the inquest itself body could not be identified, question of identification of the same by PW/7 does not arise.

08. 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.

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

10. Mado Das (PW/1) - village Kotwar is lodger of merg intimation (Ex.P/1). He is also a witness to inquest (Ex.P/3). He has stated that the body of deceased was unidentifiable.

11. Tukaram Verma (PW/2) is a photographer, who took the photographs of the dead body.

12. Mohan Lal Tandon (PW/3) is a witness to memorandum (Ex.P/5) of accused/appellant No.1-Punit Ram, seizure thereof made under Ex.P/6 and identification panchanama of dead body on the basis of photographs.

13. Sitara Begum (PW/5) is sister of the deceased. She has stated that accused/appellant No.1-Punit Ram was having illicit relation with accused/appellant No.3-Parveen Begum and when she inquired about her brother, incorrect information was given by appellant No.3. She has further stated that illicit relation between the appellant No.1 and 3 was known to the villagers. This witness was cross-examined at length by the defence to establish the fact that she is making false allegation against the accused persons as she wanted to grab the property of the deceased. This witness has admitted that merely on the basis of suspicion, a report was lodged. This apart, there are material contradictions and omissions in the Court statement of this witness from that of her diary statement.

14. Najmin Begum (PW/6), aged about 13 years, is daughter of the deceased and appellant No.3. She has stated that her mother was having illicit relation with accused/appellant No.1-Punit Ram since last

about six years. She has further stated that even accused/appellant No.2-Dani Ram used to live with one lady Sama Kumari @ Aarti and in the night intervening 9th and 10th of October, 2008 when she was in her (this witness) house, she heard telephonic conversation of the accused persons as to the manner in which the deceased was required to be eliminated. However, no such call details have been filed by the prosecution. This witness has further stated that her father went missing and when she inquired from her mother, it was told that the deceased had gone to Jagdalpur. She has also stated that earlier also an attempt was made by her mother (A-3) to eliminate her father. This witness admits that on the date of incident itself, she could come to know about the death of her father but she did not disclose this fact to anyone and ultimately she disclosed this fact to PW/5. She has also stated that during this period she was attending her school but did not disclose this fact to anyone including PW/7 (cousin brother). She has further stated that at the relevant time, her mother had gone to attend some marriage in other village for about 7 days and after her return when she inquired from her, it was told by her mother (A-3) that deceased had gone to Jagdalpur.

15. Raees Khan (PW/7), son of Sitara Begum (PW/5), had allegedly identified the body of deceased vide Ex.P/7 on the basis of photographs and small pieces of clothes of the deceased. He has stated that conduct of appellant No.3-Parveen Begum was suspicious as it was disclosed by her that deceased had gone to Bihar. He has also stated that earlier an attempt was made by appellant No.3 to kill the deceased, however, no report thereof was lodged by him.

16. Sayed Ahmed (PW/8) has been examined to establish the motive.

17. M.S. Kanwar (PW/9) - Investigating Officer, has duly supported the prosecution case.

18. Dr. B.S. Dhruv (PW/10) conducted postmortem examination on the body of deceased and gave his report (Ex.P/15) opining the cause of death of deceased due to complication of injuries. It was further opined that the mode of death was unknown.

19. Close scrutiny of the evidence makes it clear that the accused/appellants have been convicted solely on the basis of circumstantial evidence main being the statement of last seen by Najmin Begum (PW/6) and identification of dead body by Rais Khan (PW/7) vide Ex.P/7. It is well settled position of law that the conviction cannot be recorded against an accused merely on the ground that he was last seen with the deceased. In other words, conviction cannot be based only on the 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**

1 2007 (3) SCC 755

2 AIR 2011 SC 2283

3 2017 SCC 622

4 AIR 2015 SC 3430

5 2014 (4) SCC 715

of CG⁶ 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.

20. In the present case, according to evidence of PW/6, she lodged report against accused/appellants merely on the basis of suspicion. She had suspicion in her mind that her father had been killed by the accused persons as her mother (A-3) wanted to eliminate him (deceased) and earlier also an attempt was made by A-3 to kill the deceased. Diary statement of this witness has been recorded on 27.11.2008 i.e. after about one and half month of the incident, and improbable explanation has been offered by this witness stating therein that she was threatened by the accused persons. She admits that during this period she also used to go to school but surprisingly she did not disclose the incident to anyone. The most important aspect of the case is that the body has been identified by PW/7 on the basis of photographs and small pieces of clothes (pant) of the deceased. This fact has also been admitted by the Investigating Officer (PW/9) that the body has been identified only on the basis of photographs and small pieces of clothes (pant) of the deceased. It would not be out of place to mention here that at the time of inquest the witnesses could not identify the body of deceased as the face and head of the body were burnt after crushing it. Thus, the identification of the dead body itself becomes doubtful. That apart, PW/7, in para 11, has admitted the fact that on the basis of photographs body was not identifiable and he identified the same on the basis of certain pieces of cloths of the deceased but he further states that no other clothes were

6 2015 (S) SCC 393

mixed at the time of identification.

21. It is further relevant to note here that the diary statement of PW/7 was also recorded after about one month i.e. on 09.11.2008 of the incident. Furthermore, at the instance of accused/appellant No.1-Punit Ram, one stone is said to have been seized vide Ex.P/6, however, there is no FSL and Serological report on record to confirm presence of blood and origin of it connecting the said stone with the commission of murder of the deceased. Thus, in absence of FSL and Serological report, the seizure of stone made under Ex.P/6 loses its significance.

22. The evidence of PW/6 makes it crystal clear that she has not seen the accused persons and the deceased together last time and thus she cannot be treated as witness to last seen. Furthermore, there is material contradiction in the statement of PW/7 with respect to identification of dead body and merely on the basis of small pieces of clothes the body has been identified to be that of the deceased. The evidence of PW/6 and identification of dead body by PW/7 vide Ex.P/7 is not very conclusive in nature and on the basis of aforesaid evidence it cannot be said with certainty that it is the accused/appellants who have committed murder of the deceased. Further, there is no evidence on record to suggest that the accused persons after hatching criminal conspiracy has committed murder of the deceased. Therefore, the finding of the trial Court accepting testimony of PW/6 for the purpose of last seen is not justified.

23. Furthermore, though the facts involved in the case and the evidence on record give rise to the suspicion about the involvement of the accused/appellants in the crime in question, but in a series of cases

it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of the evidence. One such judgment of the Apex Court dealing with this fact is **Commissioner of Police, Delhi & Others V. Jai Bhagwan** reported in **2011 (6) SCC 376**.

21. The Supreme Court 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.

24. Thus, considering the quality of evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Sections 302/120-B and 201 IPC is not based on proper 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 302/120-B and 201 IPC is set aside and they are hereby acquitted of the

charges levelled against them. Appellants are reported to be on bail, their bail bonds stand discharged.

25. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Arvind Singh Chandel)
JUDGE