

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 451 of 2007

- Paras Ram Satnami S/o Santul, aged 52 years, Labourer and Cultivator, R/o Village- Sorwa, P.S. Kasdol, Distt- Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through the (Police Station Kasdol, District Raipur) Collector, Raipur

---- Respondent

For Appellant	: Shri Janak Ram Verma, Advocate
For Respondent /State	: Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement on Board by P.Diwaker

20/01/2017

This appeal arises out of judgment and order dated 18.05.2007 passed by the First Additional Sessions Judge, Baloda Bazar, District Raipur in S.T. No. 442/2006 convicting the accused/appellant under Section 302 IPC with fine of Rs. 500 plus default stipulation.

2. In the present case name of the deceased is Paras Ram brother of accused/appellant. On 11.10.06, dead body of the deceased was found near a canal (Maharaj waterfall) at village Sarwa, P.S. Kasdol. Son of the deceased gave this information to the appellant who in turn lodged merger intimation Ex.P-17 on 11.10.2006 at 10.55 a.m. Immediately thereafter the appellant also lodged FIR Ex.P-18 based on which offence under Section 302 IPC was registered against unknown

person. Inquest (Ex.P-9) was prepared and body was sent for postmortem examination which was conducted by Dr. R.S. Joshi (PW-12) vide Ex.P-15 and according to him cause of death was due to injuries over head and face, fracture of bone and haemorrhage. On 13.10.2006, memorandum Ex.P-4 of the accused/appellant was recorded where he is alleged to have stated that on 10.10.06 when he went to his field he found that water was not supplied to his field, again at about 8.30 pm. when he went to check the water supply and saw his brother Daras Ram (deceased) sleeping, out of anger, he searched out some boulder/stone to kill him. He has stated that he found a boulder lying near the field of the deceased and hit on the head of deceased and killed him. Based on his memorandum, vide Ex.P-2 one boulder/stone was recovered from near the canal and vide Ex.P-3 one blood stained lungi of the appellant was seized. As per query report Ex.P-16, injuries sustained by the deceased could have been caused by the said boulder/stone. However, there is no FSL report in respect of blood found on the boulder/stone. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 15 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. This apart, one defence witness has also been examined.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in

paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) the accused/appellant has been convicted only on the basis of circumstantial evidence and the nature of circumstantial evidence is not as such where, he can be convicted.

ii) solely on the basis of seizure of boulder/stone from near the canal where number of identical boulders were found, there is no legally admissible evidence against the appellant on which basis he can be convicted.

iii) there is no direct evidence involving the appellant in respect of the commission of the offence punishable under Section 302 IPC.

iv) the appellant has been convicted even when the circumstances have not been proved by the prosecution beyond reasonable doubt.

v) even the theory of last seen has not been proved.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/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. Ashwani Kumar (PW-1) has not stated anything against the accused/appellant and has turned hostile. According to this witness, he saw the dead body of the deceased in the night at 10.00 p.m. Smt. Bimla Bai (PW-2) has not stated anything against the accused/appellant. Shanti Kumar (PW-3) son of the deceased has

stated that there was some dispute between his father and appellant and under suspicion he has stated that it might be the appellant who had killed his father. He has further stated that when he informed the appellant about the incident, he stated that he was aware of the same. Budhara Bai (PW-4) the widow of the deceased has stated that on the date of incident, the appellant had called her husband to the spot and when he did not return in the morning till 7.00 a.m., she sent her son to the field in search and came to know that her husband was lying dead near the waterfall. Nirmala Bai (PW-5) daughter of the deceased has stated that she saw the appellant carrying *lathi* and his hands were stained with blood. However she has admitted that this fact has been disclosed by her for the first time in the court. Jaitram Kashyap (PW-6), Ram Vilas (PW-7) and Kamlesh (PW-8) have not fully supported the prosecution case and have turned hostile. Munnalal (PW-9) village Kotwar, is the witness to inquest Ex.P-8, inquest notice Ex.P-9, seizure Ex.P-10, P-11, P-12 and P-13. Harish Chandra Verma (PW-10) is the witness to inquest EX.P-8. Rajesh (PW-11), has not stated anything against the accused/appellant and has turned hostile. Dr.R.S.Joshi (PW-12) has conducted postmortem examination on the body of the deceased vide Ex.P-15 and according to him, cause of death was coma due to injuries over head and face, fracture of bone and hemorrhage. Santosh Dharmik (PW-13) A.S.I. assisted in the investigation. Subash Das (PW-15) is the investigating officer who has done the investigation.

9. To sum up what is discussed above, it is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The

chain should be such that no other conclusion except the guilt of the accused person, is discernible without any doubt. In the present case, in the first instance the appellant was roped in with suspicion that earlier there was some dispute between the accused/appellant and the deceased, however the motive has not been proved. The evidence of last seen is also not established. If all these facts are seen in its entirety, in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the recovery of stone/boulder and lungi. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof.

10. Overall scrutiny of the evidence makes it clear that but for the memorandum of the accused/appellant based on which seizure of boulder/stone was made, there is no evidence against him. Though as per query report the injuries could have been caused by stone. The prosecution has mainly based its case on the circumstances : motive, last seen theory and memorandum of the accused/appellant by which stone/boulder and lungi were seized. Further, there is no FSL report either in respect of boulder/stone or lungi. There is no eyewitness to the incident and the entire case is based upon circumstantial evidence. The relatives of the deceased have stated that only on the basis of suspicion, the report has been lodged against the appellant. The trial court based the conviction of the appellant mainly on the last seen theory relying on the evidence of the relatives of the deceased i.e. wife, son and daughter of the deceased. Yet another circumstance relied

upon by the prosecution is the seizure of stone/boulder and lungi at the instance of accused/appellant. Thus, we are of the opinion that the present is in fact a case of no evidence. We may also make a reference to the decision in the matter of ***Mustkeem v. State of Rajasthan (4(2011)11 SCC 742:(2011) 3 SCC(Cri) 473***; in the matter of ***Sharad Birdhdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : 1984 SCC(Cri) 487, in para 153***, wherein some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under : (SCC p.185)

- i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely “may be” fully established;
- ii) 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;
- iii) The circumstances should be of a conclusive nature and tendency;
- iv) they should exclude every possible hypothesis except the one to be proved and
- v) 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. In ***State of U.P. v. Ashok Kumar Shrivastava (1992) 2 SCC 86: 1992 SCC (Cri) 241: 1992 Cri LJ 1104***, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in

favour of the accused must be accepted. it was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

12. A reference may be made to a later decision in ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116: 1984 SCC(Cri) 487***, wherein while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established.

13. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only at one conclusion, that is, the guilt of the accused. In our opinion it is not safe to record a finding of guilt of the appellant as the present case on the basis of circumstantial evidence. The prosecution has failed to establish the accusation and therefore we allow the appeal and set aside the conviction and sentence of the appellant. The appellant be set at liberty forthwith unless required to be in custody in connection with any other case.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge

