

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 31-8-2017

Judgment delivered on 20-9-2017

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1043 of 2007

1. Jai Singh s/o. Shri Naniram Thakur, aged about 33 years, profession – Farmer, r/o. Village Sirhapara Borpadar, Thana Kotwali Jagdalpur, District Bastar (CG).
2. Mundra @ Sirha S/o Sukalu Muriya aged about 35 years, profession Farmer, R/o Village Bayaguda Para, Kachnar, Thana Kotwali Jagdalpur, Distt.-Bastar,(CG).
3. Dinesh @ Matwar S/o Baisakhu, Caste Rawat, aged about 25 years, profession Driver, R/o Village Bayagudapara, Kachnar, Thana Kotwali Jagdalpur, Distt.-Bastar, CG.

---- Appellants

Versus

- State of Chhattisgarh through Police Station Jagdalpur, District Bastar (CG).

---- Respondent

For Appellant : Mr. Alok Dewangan, Advocate.

For Respondent/State : Mr. Rahul Mishra, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. The appellants have preferred this appeal being aggrieved by the judgment of conviction and order of sentence dated 2/11/2007 passed by the Sessions Judge, Sessions Division Bastar at Jagdalpur (CG), in Sessions Trial No. 128 of 2007 whereby the trial

Court after holding the appellants guilty for commission of murder of Ravindra Thakur and Sampat Kashyap, convicted the accused/appellants under Section 302 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life and fine of Rs.500/- with default stipulations.

2. Names of the deceased in the present case are Ravindra Thakur and Sampat Kashyap. On 9-6-2017 Lokendra Thakur and Sahadev lodged report at Police Station Jagdalpur stating that near village Ghatlohanga, main road at National Highway No.43, the dead bodies of deceased Ravindra Thakur and Sampat Kashyap were lying on the road. On information being received, Police swung into action and recorded Dehati merg intimation after reaching on the spot. Thereafter, inquest report was prepared and bodies of the deceased were subjected to post-mortem. On discovery statement of the appellants, certain articles were seized and the statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure.
3. After completion of investigation charge-sheet was filed before the court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Sessions Court (trial Court). The trial Court framed charges against the appellants for commission of offence under Section 302 read with Section 34 of the IPC, but they did not plead guilty, therefore, trial was conducted and after completion of the evidence of prosecution side, statements of the appellants under Sections 313 of the Code of Criminal Procedure,

1973 were recorded and after completion of trial, appellants were convicted as mentioned above.

4. Learned counsel appearing for the accused/appellants submit as under:

(i)	That there is no eye-witness account to the incident in the case and case of prosecution rests on circumstantial evidence and there is no link to connect the appellants with the crime in question;
(ii)	That the circumstances established are not of such nature which is sufficient to fasten liability on the appellants.
(iii)	That the prosecution tried to establish the last seen theory on the basis of the statement of Gunji (PW/4), who is wife of deceased Ravindra Thakur and her statement is contradicted by the statement of Krishna Kumar @ Munna (PW/12) and the last seen theory is not established.
(iv)	That recovery of certain articles from the appellants are of no consequence as FSL report does not confirm the blood on any article seized from the appellants and the same is not incriminating circumstance against any of the appellants. The Doctor who had conducted autopsy of the deceased does not support the prosecution case, dead bodies were examined by two Doctors and they were unable to give definite opinion regarding homicidal death of the deceased; and
(v)	That the finding arrived at by the trial Court is not in the fitness of factual matrix and legal aspect of the matter, therefore, the same is liable to be quashed.

5. *Per contra*, State counsel supporting the impugned judgment of the trial Court has submitted that the finding arrived at by the trial Court is just and proper and there is no illegality or infirmity in it warranting any interference by this Court.
6. We have heard counsel for the parties and perused the material on record.
7. PW/1 Ban Singh and PW/3 Limsar are the witnesses who saw the dead bodies of the deceased at village Ghatlohanga and turned hostile by the prosecution. PW/2 Lokendra Singh is a person who informed the Police Station Kotwali, Jagdalpur regarding death of Ravindra Thakur as per Exh.P/11. Gunji (PW/4), is the wife of the deceased Ravindra Thakur. As per her version, on the previous day of the incident appellant Jai Singh came to her house and asked about her husband. Her husband and deceased Sampat Kashyap went along with Jai Singh towards shop and thereafter her husband did not return back and on the next day she was heard about two dead bodies lying near village Ghatlohanga and thereafter she reached the spot and saw the dead body of her husband and Sampat Kashyap.
8. PW/12 Krishna Kumar @ Munna deposed on the same point and stated that deceased Sampat Kashap and Ravindra Thakur came to his hotel at about 9.00 pm on the previous day of the incident, but they were not accompanied by any of the appellants. PW/5 Malti is wife of deceased Sampat Kashyap and she deposed that on the previous day of the incident her husband returned at about

5.00 pm after participating in conduction of postmortem of one Patiram and the appellant No.1 Jai Singh came to her house after half an hour and thereafter her husband went along with appellant Jai Singh and did not return at night on the same and on the next day her husband's dead body was found near village Ghatlohanga.

9. PW/6 Vivek Anand is an Assistant Sub-Inspector of Police who assisted in investigation. Dr. Virendra Kumar Jha (PW/7) is the doctor who conducted autopsy of the deceased with a team of Dr. Sanjay Prasad. After conduction of post-mortem of Ravindra Thakur, they noticed (i) two lacerated wounds over left half face within region of Ramus (body) of the left mandible bone stitched 1/2" apart in the size of 1"x1/2"x1/2" clotted blood + on dissection - fracture of left mandible (body), (ii) lacerated wound over left half face just above the left region of left temporal and left parietal region of the skull in the size of 4"x 2 1/2" x 1" clotted blood was present, depressed, fracture of left temporal and parietal bone present in the size of 4"x2 1/2" and pieces of this fracture bones are missing. Brain substance has come outside the wound and (iii) lacerated wound in the size of 2"x2"x1" over the right parietal-occipital region of the skull was present, fracture of right parietal occipital bone was present. As per opinion of the Doctor, all the injuries were ante-mortem in nature and cause of death was coma due to massive intra-cerebral and managerial haemorrhage of the brain. Duration of death of the deceased was 12 - 24 hours of the post-mortem. He also along with team

conducted autopsy of deceased Sampat Kashyap and noticed (i) lacerated wound over just in front of face, right ear, on the right side of face in the size of 2"x2"x1/2" and clotted blood was present; (ii) lacerated wound was found over injury No.1 in the size of 1"x1"x1/2" and clotted blood was present and (iii) lacerated wound was present on the right side of half of the skull, beginning in the middle and extending towards the temporal region and on dissection, fracture of right parietal, frontal, temporal, and right half of occipital bone of the skull present. Some piece of bones are missing, brain substance has protruded outside the wound in the size of 5"x4"x1". He opined that the deceased died due to coma intra-cerebral and managerial haemorrhage of the brain. Duration of death of the deceased was 12 - 24 hours of the post-mortem. It is opined by the Doctor that death is either homicidal or accidental.

10. PW/8 Pitambar Pandey is a Kotwar who prepared the spot map. PW/9 Munna is a witness of inquest. PW/10 Chandrabhan is a person to whom the appellant Jaysingh told to send the deceased Ravindra Thakur but when he enquired from the house of the deceased, he was not in the house. PW/11 Hiralal Kashyap is a person who heard the conversation of appellant No.1 Jai Singh and one tractor owner Lokeshwar regarding releasing the tractor from Police Station. PW/13 Lokeshwar is owner of the tractor bearing registration No. CG-17-B-1518 whose tractor was used for transporting the dead body of Patiram. PW/14 M.B. Patel is Sub Inspector who conducted the investigation and on 12-6-2007 on

discovery statement of appellant No.1 Jai Singh, one jean pant and shirt were seized by him, one lungi was seized on discovery statement of appellant No.2 Mundra @ Sirha on the same day and one tractor bearing registration number as mentioned above is seized from the appellant No.3 Dinesh @ Matwar on the same day. All the seized articles were sent to FSL for chemical examination but no report thereof was submitted before the trial Court.

11. The case of the prosecution is based on the theory of last seen together. As per version of Gunji (PW/4) and Malti (PW/5), deceased Ravindra Thakur and Sampat Kashyap left their house at about 9.00 am with appellant No.1 Jaisingh, but as per version of Krishna Kumar @ Munna (PW/12), when both the deceased Ravindra Thakur and Sampat Kashyap came to his hotel at about 9.30 pm, on the previous day of the incident they were not accompanied by any of the appellant. Though this witness is declared hostile by the prosecution, but even if the statement of this witness is taken out of consideration, the only fact established by the witnesses Gunji (PW/4) and Malti (PW/5) is that at about 9.00, pm both deceased left their house with appellant No.1 Jaisingh, but they did not state anything against rest of the appellants i.e., Mundra @ Sirha and Dinesh @ Matwar. Even if the evidence of these two witnesses is accepted as it is, then it cannot be inferred that appellant No.1 Jaisingh alone was able to commit murder of two persons. It is not established by the prosecution as to what happened after 9.00 pm and no one is there to say that he has seen the appellant Jaisingh with two deceased persons on any

place close to the place of the incident and there is nothing on record to take us anywhere near the place of crime and the same is committed by all three appellants. The case of the prosecution is based on circumstantial evidence of last seen together and certain seizure of articles.

12. Admittedly, there is no eyewitness to the incident. The case of the prosecution is based on circumstantial evidence. In the matter of **Jaharlal Das Vs. State of Orissa**¹, it is held by Hon'ble the Apex Court as under:

“The circumstantial evidence in order to sustain the conviction must satisfy three conditions;

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused

(iii) 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 it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

In cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. When the main link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable

¹(1991) 3 SCC 27

doubts. It is at this juncture the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be short step between moral certainty and the legal proof. At times, it can be a case of "may be true. But there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions."

13. Seizure of pant and shirt from the appellant No.1 Jaisingh and seizure of lungi from appellant No.2 Mundra @ Sirha and seizure of tractor from appellant No.3 Dinesh @ Matwar is not incriminating circumstance against any of the appellants as there is no FSL report regarding the said articles and the same is worthless for the prosecution.
14. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen 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.
15. As the dead body of the deceased is found on the next day and only one appellant was seen with two deceased in the previous night at about 9.00 pm, it cannot be said that time gap is so small that possibility of any person other than the appellant No.1 Jai Singh being the author becomes impossible.
16. Having regard to the peculiar facts and circumstances of the case, it is unsafe to hold all the three appellants or the appellant Jai Singh guilty and we are inclined to extend the benefit of doubt to the appellants.

17. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charges under Section 302/34 of the IPC framed against them. The appellants are reported to be on bail and their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju