

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 96 of 2011

- Prem Singh, S/o. Kamal Singh, aged about 28 years, R/o. Village Dhanauli, Police Station Gaurella, District Bilaspur (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Collector, District Bilaspur (CG)

---- Respondent

For Appellant : Shri Suresh Pandey, Advocate
For Respondent/State : Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement On Board By Pritinker Diwaker, J.

22/01/2018

This appeal has been preferred against the judgment and order dated 30.10.2010 passed by the Additional Sessions Judge, (FTC) Pendra Road, District Bilaspur in Sessions Trial No. 04/2010 convicting the accused/appellant under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 100/- and to undergo RI for seven years with fine of Rs. 100/- respectively.

2. As per prosecution case, on 29.09.09 deceased Shiv Das had left his house along with the appellant to purchase hand-cart. It is said that at the time of leaving his house deceased was carrying cash of Rs. 3,000/- along with him. In the intervening night of 27-28.09.09 (PW-8) Lal Ji heard noise of something fallen in the well. Next morning he informed about the said noise to Gorelal (PW-7) village Kotwar and when it was searched by means of hook, dead body was

found in the well. Firstly, based on clothes it was identified to be that of deceased. Merg intimation Ex.P-1 was lodged on 28.09.09 by Shiv Lal (PW-1) brother of the deceased. Soon thereafter FIR (un exhibited) was registered on 28.09.09 by the Station House Officer under Section 302 and 201 IPC against unknown person. Inquest on the body of deceased was prepared and body was sent for postmortem examination which was conducted by Dr. M.S. Marco (PW-9) vide Ex.P-11 and according to him cause of death was coma due to head injury leading to cardio respiratory arrest on account of drowning. On 29.09.09, memorandum of accused/appellant Ex.P-3 was recorded based on which seizure Ex.P-6 was given effect to and one lathi, vest and cash of Rs. 1300/- was seized however there is no FSL or serological report confirming the blood either on the club or vest of the appellant. Further case of the prosecution is that for disappearance of the dead body acquitted co-accused Lal Singh, had helped the appellant. While framing the charge, learned trial judge has framed charge against the accused persons under Sections 302 and 201 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 10 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 acquitted Lal Singh of all the offences whereas the appellant has been 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) there is no eyewitness to the occurrence and the conviction of the appellant is based on circumstantial evidence but none of the circumstance from which the inference of guilt of the appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder.

ii) the so called eyewitness of last seen laxmin bai had in fact not seen the deceased going in the company of the appellant and as per her evidence, it is the appellant who informed her that the deceased had gone along with him and thus her statement is not reliable.

iii) on the memorandum of accused/appellant, Ex. P-3 certain seizures have been effected but they have not been connected with the commission of the murder.

iv) that merely on the basis of suspicion the appellant cannot be convicted.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Laxmin Bai (PW-2) wife of the deceased is a witness of last seen. She has stated that on the date of incident her husband had left the house for purchasing a hand cart and was having Rs. 12,000/-

cash with him. In cross-examination she admits that it is the accused/appellant who informed her that deceased left the house along with him and only upon receiving this information she came to know that her husband had gone to Gaurella. In her court statement she has stated that her husband was carrying cash of Rs. 12,000/- whereas in her diary statement she had deposed that her husband was carrying cash of Rs. 3,000/- with him. Shiv Lal (PW-1) is the brother of the deceased. He has stated that he was informed by Laxmin Bai (PW-2) that deceased had left his house along with the appellant and at that time he was carrying cash of Rs. 3,000/- with him. He admits that he had not seen the deceased going with the appellant. Komal Prasad (PW-4) is a witness to memorandum Ex.P-3 and seizure P-4,5,6 and 7. Naresh Kumar (PW-5) is a witness to inquest Ex.P-2. Gore Lal (PW-7) is a village Kotwar to whom on 28.09.09 it was informed by Lal ji (PW-8) that he had heard noise of someone fallen in the well. Lal ji (PW-8) is a person from whose well dead body of the deceased was found has stated that at night when he heard the noise of someone fallen in the well he narrated the incident to Shankar, Shivilal and Gorelal in the morning. He has stated that at night he narrated about the same to wife of Shivdas, his sister and to his cousin. Dr. M.S. Marco (PW-9) is the autopsy surgeon who conducted postmortem examination on the body of the deceased vide Ex.P-11 and according to him cause of death was coma due to head injury leading to cardio respiratory arrest on account of drowning. M. P.Tandon (PW-10) helped in the initial investigation. Investigating Officer has not been examined by the prosecution. Ful kunwar Gond (DW-1) is the mother of the acquitted accused.

9. Close scrutiny of the evidence makes it clear that the appellant

has been convicted solely on the basis of circumstantial evidence. However from the nature of evidence it reflects that the same is very weak in nature. The main piece of evidence against the appellant is the statement of Laxmin Bai (PW-2) wife of the deceased who is stated to be a witness of last seen. In the examination-in-chief, she has stated that deceased left the house and at that time he was carrying cash of Rs. 12,000/- whereas she also admits that it is the appellant who informed her that the deceased had left along with him. If it is the version of this witness that it is the appellant who informed this witness about the leaving of deceased with him, then this witness cannot be termed as witness of last seen. Furthermore, in the cross-examination according to this witness, deceased had taken cash of Rs. 3,000/- and not Rs. 12,000/- along with him.

10. Considering the evidence of Laxmin Bai (PW-2) we are of the view that it will not be safe for us to uphold the conviction of the appellant solely on the basis of statement of this witness. Moreover as per the statement of PW-2 at about 10.00 a.m. the deceased left in the company of appellant whereas his body was found at night i.e. after about 12 hours. Other evidence against the appellant is the seizure of Ex.P-6, lathi, vest and cash of Rs. 3,000/- that has been given effect to but the same is of no significance in absence of FSL and serological report.

11. It is also a settled legal position that in a case of evidence of last seen time gap between the point of time when the accused and deceased were last seen together which is very important. If the time gap is so small then only suspicion goes against the accused but if time gap is so much where possibility of deceased being killed by

some third person cannot be ruled out thus it will not be safe for the court to convict the accused on the basis of evidence of last seen.

12. The present case is based on circumstantial evidence and as per the settled legal position in a case based on circumstantial evidence, all the incriminating circumstances must be supported by reliable and clinching evidence and the circumstances proved must form a chain of events so complete as would permit no conclusion other than one of guilt of the accused. The tests applicable to cases based on circumstantial evidence are fairly well-known. The decisions of the Apex Court and various other High Courts recognizing and applying those tests to varied fact situation are a legion. In the landmark judgment of **Sharad Birdhichand Sarda v. State of Maharashtra** reported in **1984 (4) SCC 116**, the Apex Court declared that a case based on circumstantial evidence must satisfy, the following tests:

“(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) 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.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) 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.”

13. Taking the cumulative effect of the evidence in particular the evidence of last seen and witnesses to memorandum, seizure and also the fact that there is no FSL or serological report, we are of the

view that the evidence led by the prosecution is a weak type of evidence and the prosecution had failed to establish its case beyond the shadow of reasonable doubt. Only on the basis of last seen the accused cannot be convicted for the offence of murder.

14. Thus, after considering the facts and circumstances of the case, we do not find ourselves in conformity with the findings arrived at by the learned trial court. Accordingly, the appeal filed by the appellant is allowed and the judgment impugned convicting and sentencing the appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. Accused/appellant is reported to be in jail, he be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge