

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
ACQA No. 68 of 2009

State of Chhattisgarh Through Station House Officer, Police Station
 Lormi, District Bilaspur (C.G.)

---- Appellant

Versus

1. Sanjay Pandey, Aged about 35 years, S/o. Munnalal Pandey,
2. Krishna Kumar, Aged about 52 years, S/o. Shobharam Kashyap,

Both are residents of village Saraipatera, Police Station Lormi,
 District Bilaspur (C.G.)

---- Respondents

For Appellant/State :- Mr. Rajendra Tripathi, Panel Lawyer
 For respondent :- Smt. Indira Tripathi, Advocate.

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Judgment

Per Ram Prasanna Sharma, J

05-02-2018

1. This acquittal appeal is directed against the judgment dated 26.06.2007 passed by the Additional Sessions judge, Mungeli, Sessions Division, Bilaspur, in Session Trial No. 390 of 2006, wherein the trial Court has acquitted the respondents for commission of offence punishable under Sections 302/34 read with Section 201 of the IPC, for committing murder of one Ramji Kashyap and for causing disappearance of evidence of the offence.

2. In the present case, name of deceased is Ramji Kashyap, who was representative of Gram Panchayat- Saraipatera. Gram Panchayat constructed a tank in the village near residential plot to which respondent Krishna Kumar objected that is why relations between the deceased and respondent Krishna Kumar was strained. The deceased left for village Lormi on 11.07.2006 at about 18.45 pm but did not return. His son Rohit Kumar Kashyap (PW-10) made search on the next day, and he was informed by one Subhash Thakur that a dead body is lying near Ghorbandha canal. He reached the spot and found the dead body of his father Ramji Kashyap. Upon his report, at Police Station Lormi, merg No. 25/06 was registered and body of the deceased was sent for postmortem. After autopsy, it is found that cause of death is excessive bleeding leading to hypovolemic shock due to head injury. The authorities registered a case under Sections 302/34 read with Section 201 of the IPC and investigated the matter. After completion of investigation, charge sheet was filed against the respondents. Respondents pleaded innocence and therefore, the trial was conducted. After examination of the all the witnesses, statements of the respondents were recorded under Section 313 of the Code. After hearing the parties, the trial Court acquitted the respondents as aforementioned.

3. Learned counsel for the State submits as under;-

(I) That the trial Court has failed to marshal the evidence regarding enmity between the deceased and the respondents.

(ii) That the weapon of offence was seized and last seen theory was also established but the trial Court disbelieved the same contrary to law.

(iii) That the trial Court committed error in rejecting the application filed under Section 311 of the Cr.P.C. made for recording the evidence of Girvar Guruji, Subhash Singh and Prem Kashyap.

(iv) That the circumstances established by the prosecution was sufficient to bring home guilt but trial Court delivered the judgment of acquittal despite availability of ample evidence against the respondents.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed while invoking jurisdiction of the appeal.

5. To substantiate the charge prosecution has examined as many as 17 witnesses in their support.

6. We have heard learned counsel for both parties and perused the record of the trial Court.

7. Barandas (PW-1), Suresh Kashyap (PW-4), Ashok Kumar Rajput (PW-5), Phoolsingh Dindore (PW-8), Virendra Gupta (PW-9), Rohit Kumar Kashyap (PW-10), Constable Rakesh Singh Thakur (PW-12), Inspector S.K. Rastogi (PW-15) and Head constable Harish Chandrasingh (PW-16) are the persons who assisted the investigation during preparation of map, merg inquiry and inquest.

8. 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 (1991) 3 SCC 27**, 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 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."

9. As per Narendra Kumar Kashyap (PW-3) he was the Secretary of Gram Panchayat Saraipatera and the deceased was the Sarpanch of the same Gram Panchayat. They constructed a tank in the village near residential plot to which respondent Krishna Kumar objected and he threatened to kill them. The incident was informed to Tahsildar and Chief Executive Officer of Janpad Panchayat Lormi. By adducing this witness the prosecution proposed to establish that there was enmity between the deceased and respondent Krishna Kumar that is why the respondents committed the crime. In our view, the enmity is double edged weapon which can be used by either side and enmity itself is not sufficient to connect the respondents with the crime.
10. Khadawan (PW-11) is a person to whom one driver informed on 12.07.2006 that someone has thrown some articles in a jute bag on the road, thereafter, Police Inspector, Police Station Lormi came there with 4-5 police personnels and they found a dead body in the jute bag and he identified the dead body of Ramji Kashyap. He further deposed that Ramkumar Gupta informed the police that he

met with deceased on the previous evening in a hotel and in that hotel respondent Krishna Kumar was also sitting. From the statement of Khadawan (PW-11) the prosecution tried to establish last seen theory. But from the statement of Khadawan (PW-11), it is not clear as to when the deceased left the hotel and when respondent Krishna Kumar left the same place. A hotel is a public place in which anyone can enter at any time because hotel management invites the public as per Rules of hotel. Sitting of a person in a hotel is not a evidence of last seen. It is also not clear from the statement of Khadawan (PW-11) as to what happened in the hotel and how they came out from the hotel. Theory of last seen is available only when time gap is very narrow between last seen and death of anyone to rule out the possibility of meeting with any other person and is not the case here. As per version of Rohit Kumar Kashyap (PW-10) his father left for village Lormi and there is no connecting evidence as to what happened with the deceased after leaving the house. Link of leaving the house and meeting with any respondents is missing, therefore, it is not a case of last seen theory.

11. Khadawan (PW-11) deposed that one Girvar Singh informed him that one marshal vehicle was standing near medical store in which one jute bag was kept by respondent. But version of this witness is hearsay because Girvar Singh is not examined before the Court. Hearsay evidence is not received as relevant evidence. In **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under;-

“(a) the person giving such evidence does not feel any

responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me".

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.

12. As hearsay evidence of this witness is inadmissible the same is not to be used against the respondents. Bhupendra Kashyap (PW-17) has deposed on the same line. As per statement of this witness Girvar Singh informed him regarding keeping of one jute bag in a marshal vehicle. Statements of this witness is also hearsay and it is not to be acted upon.

13. Police Inspector S.K. Rastogi (PW-15) is the investigating officer, as per the version of this witness he seized one iron rod from respondent Sanjay Pandey and one marshal jeep bearing registration No. CG 09 ZD/5013. But as per report of Forensic Science Laboratory origin of blood was not determined in the said weapon, therefore, it is not an incriminating circumstance against respondent Sanjay Pandey. Soil, Jute bag, Panchha and Polythene were seized from the spot on which blood was found but origin of blood was not determined. Though, blood group was found in the

panchha but the same is not incriminating circumstances against the respondent because the said panchha was seized from the spot and not from any of the respondents.

14. In the case of **Kansa Behera Vs. State of Orissa (AIR 1987 SC 1507)**, Hon'ble the Apex Court observed "that in the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood- stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood-stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn."

16. Looking to the evidence, the prosecution has not proved any cogent and firm link and nothing is pointing towards guilt of the respondents. It is settled law that suspicion, however, strong cannot be allowed to take the place of proof. We are of the view, that the findings arrived at by the trial Court is not liable to be rejected or modified. Accordingly, the appeal fails and is hereby dismissed.

Sd/-
Judge

(Prashant Kumar Mishra)

Sd/-
Judge

(Ram Prasanna Sharma)