

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 392 of 2012

- Hanuman Singh Bariha S/o Amar Singh Bariha , R/o Village Kaudiaparapilwapali, Pithaura ,p.S. Pithaura, Distt. Mahasamund C.G.

----Appellant

Versus

- State Of Chhattisgarh Through - Sho., P.S. Kotwali, Korba , Tahsil And Distt. Korba C.G.

---- Respondent

For Appellant	: Shri Mirza Kaisar Baeg, Advocate
For Respondent/State	: Shri Rahul Tamaskar, P.L.

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

Judgement on Board by Diwaker J.

28/02/2018

This appeal has been preferred against the judgment and order dated 05.09.2011 passed by the Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 19/2011 convicting the accused/appellant for the offence punishable under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- u/s plus default stipulation.

2. In the present case, name of the deceased is Jeewan Bhinjwar S/o. Chamru Bhinjwar aged 32 years. On 06.08.2010, deceased went missing from his house without informing to anyone. Missing report Ex.P-12 C was lodged on 08.08.2010 by Chamru Bhinjwar (PW-1) father of the deceased. On 13.08.2010, body of the deceased was

found in a highly decomposed condition near Baghnadi. Same was identified by Chamru PW-1 on the basis of clothes worn by the deceased. Merg intimation Ex.P-1 was lodged by Chamru (PW-1). Exhumed body Ex.P-2 was identified by PW-1 and other witnesses to that of the deceased vide Ex.P-3. Inquest on the body of deceased was prepared vide Ex.P-5 and body was sent for post mortem examination which was conducted by Dr. M.S.Kanwar (PW-4) vide Ex.P-5 and according to him, cause of death was hypovolemic and neurogenic shock due to injury caused on transverse section of neck and complication of cranial nerve and brain as a result of cardio respiratory failure and death was homicidal in nature. During merg enquiry it was revealed that deceased was last seen in the company of the accused and the appellant was summoned in the village meeting but instead of attending the meeting he ran away from the village after locking his house. Executive Magistrate broke open the lock however nothing was found inside. Based on merg enquiry FIR Ex. P-16 was registered against the appellant on 15.08.2010 under Section 302 and 201 IPC. On 01.09.2010 diary statement of Firangi (PW-2) was recorded wherein he has stated that he saw the deceased and the appellant together on 06.08.2010. Almost similar statement has been made by Sukal Singh Bariha (PW-7) in his diary statement recorded on 01.09.2010 and diary statement of Kamal Singh Yadav (PW-12) recorded on 16.08.2010. On 06.08.2010 accused/appellant was arrested and his memorandum Ex.P-7 was recorded based on which seizure of axe was effected vide Ex.P-8 however there is no FSL report on record. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 and 201 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 12 witnesses. Statement of the accused/appellant was 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.

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 as under :

i) that there is no eyewitness to the occurrence and conviction of the appellant is based on circumstantial evidence but none of the circumstances 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) that the witnesses of last seen i.e. Firangi (PW-2), Sukal Singh Bariha (PW-7) and Kamal Singh Yadav (PW-12) are not reliable.

iii) that the diary statement of these witnesses were recorded after a lapse of about 24 days of the incident and no explanation has been offered by them as to why they kept quiet for sometime.

iv) that even otherwise the evidence of last seen is being treated as a weak type of evidence and unless the said evidence is corroborated by other evidence accused/appellant could not have been convicted.

v) The conduct of the appellant has been considered adversely by the trial court whereas possibility that the appellant ran away from the

village on account of fear cannot be ruled out.

vi) The identification of the dead body is disputed because the same has been identified on the basis of clothes worn by the deceased however the clothes found on the body were not the same about which reference has been given by PW-1 at the time of lodging the missing report.

vii) that there is no FSL or Serological report on record and thus any seizure made by prosecution loses its significance.

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 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. Chamru Bhinjar (PW-1) is the father of the deceased who lodged the missing report Ex.P-12. He has stated that when he was inquiring about his son he was informed by Firangi PW-2, Sukal Singh Bariha (PW-7) and Kamal Singh Yadav (PW-12) that they saw the deceased roaming along with the appellant and that they were intoxicated. He further stated that in the village meeting the appellant was called however his house was found locked and the meeting was attended by the brother of the appellant. He has further stated that while the deceased was being searched, his body was found near the river bed which was identified by him on the basis of clothes worn by him. He has stated that there was no dispute between the appellant and

the deceased. Firangi (PW-2) the witness to last seen has stated that the date on which deceased went missing, he saw the deceased roaming around the village along with the appellant in his bicycle. He has further stated that the village meeting was not attended by the accused however his brother did attend the same. In cross-examination he admits that there was no dispute between the appellant and the deceased. Sukal Singh Bariha (PW-7) and Kamal Singh Yadav (PW-12) had made almost similar statement as has been made by PW-2. Lekhraj Singh Thakur (PW-3) has stated that the accused/appellant was absconding after the incident and when he was called for the meeting he was not present. Dr. Mohar Singh Kanwar (PW-4) is the autopsy surgeon who conducted postmortem examination vide Ex. P-5 and according to him, Sukal Singh Bariha (PW-7) and Kamal Singh Yadav (PW-12) cause of death was hypovolemic and neurogenic shock due to injury caused on transverse section of neck and complication of cranial nerve and brain as a result of cardio respiratory failure and death was homicidal in nature. Lal Bahadur Singh (PW-5) is the S.I. who registered the murg. Shyam Sundar Chandrakar (PW-6) is the head constable who assisted in the investigation. Vivekanand Yadav (PW-8) has stated that on 06.08.2010 he saw the accused/appellant carrying something on the carrier of his bicycle and that this fact was disclosed by him in the meeting. Avinash Singh (PW-9) is the Investigating Officer who has done the investigation. Meena Bai (PW-10) is the wife of deceased has not stated anything specific against the appellant. S.R.Thakur (PW-11) Executive Magistrate in whose presence the body was exhumed and identification panchnama was also conducted.

9. Close scrutiny of the evidence makes it clear that but for the evidence of last seen by Firangi (PW-2), Sukal Singh Bariha (PW-7) and Kamal Singh Yadav (PW-12) there is no legally admissible evidence against the appellant. These three witnesses allegedly saw the appellant and the deceased together on 06.08.2010 but they kept quiet till 01.09.2010 and had not disclosed the fact to the police. Furthermore dead body of the deceased was found on 13.08.2010 i.e. after about 7 days of the deceased last seen along with the appellant. Law in this respect is well settled in the case of evidence of last seen wherein the time gap is very important and unless the said evidence is conclusive, it is not safe for the Courts to convict the accused/appellant on the basis of such evidence alone. Moreover, the witnesses have stated that they saw the accused/appellant and the deceased seven days prior to the recovery of dead body. Though on the basis of memorandum of appellant Ex. P-7 seizure Ex.P-8 of axe was made however there is no FSL or Serological report that any blood was found on the seized article.

10. The other piece of evidence against the appellant is the statement of Vivekanand Yadav PW-8 who saw the appellant carrying something on the bicycle carrier however in absence of any positive evidence it cannot be presumed that PW-8 saw the accused/appellant carrying dead body of the deceased.

11. True it is that as per the evidence, accused/appellant also went missing from the date of incident or immediately after the incident but merely on that basis it cannot be held that after committing the murder of the deceased appellant fled away from the spot. There is no

eyewitness and the conviction is based on circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. Appellant is a rustic villager and the possibility that he ran away from the village on account of fear, cannot be ruled out. Though on the memorandum of the accused/appellant seizure of axe has been made but in absence of any FSL report the said seizure cannot be connected with the commission of the offence.

12. Overall scrutiny of the evidence thus makes it clear that but for the memorandum of the accused/appellant based on which seizure of axe was made, there is no evidence against him. Thus, there is no direct evidence to connect the accused with the crime in question. The law is well settled that conviction can be based even on circumstantial evidence provided the chain of circumstantial evidence is complete, incapable of being explained by any other hypothesis except the guilt of the accused and is of a conclusive nature unerringly pointing towards the guilt of the accused. In other words, there must be a complete chain of circumstantial evidence leaving no room for any doubt as to the accused/appellant being the only perpetrator of the crime.

13. Keeping in mind the aforesaid principles of law in relation to circumstantial evidence if we examine the facts and evidence of the present case we find that except for the memorandum of the accused/appellant and seizure of axe from him, there is no other circumstance proved by the prosecution against the appellant which could conclusively and unerringly point towards his guilt. In the light of the above discussion, we are of the view that the prosecution has failed

to establish its case beyond reasonable doubt against the appellant and therefore he is entitled for the benefit of doubt.

14. Consequently, the appeal is allowed. Impugned judgment convicting and sentencing the accused/appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. Accused/appellant is in jail, he be set free forthwith if not required in any other case.

Sd/-
(Pritinker Diwaker)

Judge

Sd/-
(Sanjay Agrawal)

Judge