

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1134 of 2013

1. Anand Uraon S/o Shri Dukhilal Uraon Aged About 25 Years R/o Village Koriyadadar, PS Chakradharnagar Civil And Rev. Distt. Raigarh C.G. , Chhattisgarh
2. Nirabai W/o Anand Ram Aged About 25 Years R/o Village Regda, PS Chakradharnagar Civil And Rev. Distt. Raigarh C.G. , District : Raigarh, Chhattisgarh

---- Appellants

Versus

State Of Chhattisgarh Through SHO, PS Chakradharnagar Distt. Raigarh C.G., Chhattisgarh

---- Respondent

For Appellants	:	Shri Rishi Rahul Soni, Advocate
For State	:	Shri Wasim Miyan, Panel Lawyer

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

25/10/2018

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 01.10.2013 passed by learned First Additional Sessions Judge, Raigarh in ST No.42 of 2012 whereby and whereunder the appellants/accused have been held guilty of commission of offence alleged against them and sentenced as described below:-

Conviction	Sentence
U/s. 302/34 IPC	Life imprisonment and fine of Rs.15,000/-, in default of payment of fine, additional RI for 1 year
U/s. 201/34 IPC	RI for 3 years and fine of Rs.5000/-, in default of payment of fine, additional RI for 6 months

2. According to prosecution story, Bakku @ Sushil Kumar, S/o Ageet Ram (PW2) was missing since 14.12.2011 and after 4 days, it was informed by one Beena that the dead body has been found. When the witness went to the spot, he found that the dead body of his son was lying. Report was made in the police station leading to registration of FIR in Ex.P-13 on 18.12.2011 at 20:55 hrs. The report was made against unknown person. On suspicion, later on, the appellants were taken into custody. According to the case of the prosecution, memorandum statement of the appellants were recorded by the police on 20.12.2011 and it is stated that on the basis of said memorandum statements, shovel alleged to be used in commission of offence as also a towel, said to be used for tying limbs of the deceased were recovered from the house of the appellants. During investigation, the police claims to have recorded statement of Sunny Uraon, according to whom, deceased was last seen together with the appellants Anand Uraon and Neerabai. After filing of charge sheet, charges were framed against the appellants alleging that they had murdered Bakku. The appellants, having abjured guilt, were put to trial. The prosecution examined as many as six witnesses. The appellants were separately examined under Section 313 Cr.P.C. and the appellants stated that they had not committed any offence and are falsely implicated.
3. Learned trial Court, relying upon the sole evidence of last seen together and recovery of weapon i.e. shovel and towel from the house of the appellants, held the appellants guilty of commission of offence alleged against them and sentenced as described above.
4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellants made pointed submission that in the entire case of the prosecution, the only feeble evidence of last seen together and motive collected by the prosecution, by itself, would not warrant conviction of the appellants because no other circumstantial evidence has been proved in accordance with law. It is argued that shovel and towel both are the articles of common use and unless they are found to be tainted with blood and particularly that of the group and origin of the deceased, it could not be treated as incriminating

circumstantial evidence. It is next submitted that evidence of a stray incident that the appellant- Anand Uraon, in the state of intoxication, used to quarrel with Ageet Ram (PW2) father of the deceased, hardly constitutes the background of motive because no specific details of any such quarrel has been given nor the witness states that this was complained anywhere. Therefore, what is left is the last seen together evidence which also is highly improbable and the appellants are entitled to be acquitted by giving them benefit of doubt. In support of his submissions, reliance is placed on **Kanhaiya Lal Vs. State of Rajasthan** (2014) 4 SCC 715, **Ashok Vs. State of Maharashtra** [2015 (150) AIC 207 (SC)] and **State of Karnataka Vs. Chand Basha** (2016) 1 SCC 501.

5. On the other hand, learned counsel for the State supports the impugned judgment of conviction and order of sentence and submits that it is not only the evidence of last seen together but also recovery of weapon by which the deceased was assaulted i.e. shovel, though, normally used for agricultural purposes and the towel by which the limbs of the deceased were tied, recovered from the possession of the appellant. He further submits that the evidence has come that in the state of intoxication, the appellant used to quarrel with the father of the deceased. Therefore, it is not only last seen but other proved circumstantial evidence to bring home the guilt of the appellant.
6. We have considered rival submissions made by learned counsel for the parties and perused the records.
7. As far as alleged recovery of shovel or towel is concerned, though, prosecution has come out with recovery of shovel at the instance of appellant on the basis of disclosure statement given by him, shovel is an agricultural tool which is commonly found in the house of all the agriculturists. The other article seized is towel which according to the prosecution was allegedly used to tie limbs of the deceased. These two articles were not sent for examination of Forensic Science Laboratory (FSL) nor any report has been received to the effect that these articles were stained with the human blood much less the blood of the group and origin of the deceased. Therefore, mere recovery of agricultural tool and a towel,

without any blood stain on it, does not by itself, constitutes an incriminating circumstantial evidence. Cloths of the appellants and that of the deceased have also been seized but we do not find that there is any report of the FSL or any serological report to prove that clothes of the appellants were stained with human blood much less of the blood group and origin of the deceased. Therefore, recovery of shovel, towel and clothes from the possession of the appellants do not constitute any incriminating evidence by themselves.

8. Ageet Ram (PW2), father of the deceased, has though deposed that appellant-Anand Uraon was a drunkard and used to enter into abuses, no specific incident of any quarrel, *marpeet* has been stated by him. The said statement is too vague. Moreover, in his cross-examination, he has admitted that he did not lodge any report against the appellant and stated that he was a near and dear person. He further admits that he had not disclosed the fact of abuses hurled by the appellant to Sarpanch or Panchas of the village. Therefore, the inference of enmity or hostility between the parties so much so that the appellants would have strong motive to kill son of this witness cannot be drawn.
9. The evidence of last seen also appears to be somewhat doubtful. Sunny Uraon (PW1) claims to have seen the deceased going along with the appellant Anand Uraon towards jungle while he was sitting in the house of his uncle. He then says that, thereafter, he left house of his uncle and again came in the evening and at that point of time, he saw the appellant coming back from jungle along with shovel in his hand. According to him, during this period, he did not see any other person going towards jungle. This statement appears to be improbable because according to this witness, he came to the house of his uncle twice specifically only on two times, firstly when Bakku is said to be going along with the appellant- Anand Uraon and secondly, when Anand Uraon was returning from jungle. We find that statement of this witness under Section 161 Cr.P.C. was recorded on 19.12.2011 after lodging of FIR on 18.12.2011. Ageet Ram (PW2) does not say that during the period he was searching his son all around in the village, at any point of time, Sunny Uroan informed him that he had seen his son going along with appellant Anand Uraon. We also find that the

prosecution own document (Ex.P8-C) proved by the Investigating Officer K.K. Wasnik (PW4) shows that information given in the police station was recorded in *rojnamcha sanha* on 17.12.2011 that Ageet Ram was informed by the appellant- Anand Ram regarding his son Bakku seen in Sambalpur near Chopda-badi. This being the prosecution document, even according to the prosecution, Ageet Ram (PW2) was informed by the appellant that his son was seen in Sambalpur near Chopda-badi. This conduct of the appellant is against the hypothesis of guilt because if the appellant committed offence, it would have been against his natural conduct to inform regarding whereabouts of the deceased.

10. We are thus of the opinion that it is a case where except the evidence of last seen, there is no other clinching circumstantial evidence to involve the appellants.

11. The consistent judicial trend has been to treat the case of the prosecution doubtful when it is sought to be established only on the basis of last seen together without there being anything more to prove involvement in the crime. In this regard, the Supreme Court has repeatedly laid down the principles for application. In the case of **Kanhaiya Lal** (supra), it was held as under:-

“12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.”

In the case of **Ashok** (supra), it was held as under :-

“12. The latest judgment on the point is *Kanhaiya Lal v. State of Rajasthan*, (2014) 4 SCC 715. In this case this Court has held that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who

committed the crime. There must be something more establishing the connectivity between the accused and the crime. Mere non-explanation on the part of the accused by itself cannot lead to the proof of guilt against the accused.

13. From the study of above stated judgments and many others delivered by this Court over a period of years, the rule can be summarized as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of Indian Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused etc., non-explanation of death of the deceased, may lead to a presumption of guilt."

In the case of **State of Karnataka** (supra), it was held as under:-

"13. This Court in *Bodhraj v. State of J & K*, held that:

"31. 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."

Reiterating the above ratio, this Court recently in *Krishnan v. State of Tamil Nadu* held that,:

“23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.”

It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and deceased were last seen together.”

12. In the result, we are of the view that the prosecution has failed to prove involvement of the appellants in the alleged commission of offence beyond reasonable doubt, benefit of which necessarily go to the accused. Accordingly, the appellants are required to be acquitted by giving them benefit of doubt.

13. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is set aside. The appellants be set at liberty forthwith if not required in any other case.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge