

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 179 of 2013

- Byasnarayan Sahu S/o Goutiya Ram Sahu Aged About 46 Years
R/o Village Sadak Para, Pawani, PS Bilaigarh, Distt. Raipur Now
Baloda Bazar - Bhatapara C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through PS Bilaigarh Distt. Raipur (Now
Baloda Bazar Bhatapara) C.G.

---- Respondent

For Appellant	:	Shri Uttam Pandey, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Justice Pritinker Diwaker

18/09/2018

This appeal arises out of the judgment of conviction and order of sentence dated 11.2.2013 passed by the 1st Additional Sessions Judge, Baloda Bazar, Distt. Raipur (CG) in S.T. No.05/2012 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, the accused/appellant is proprietor of a hotel which was just opposite to the hotel of PW-4 Hulesh Kumar Sahu. It is alleged that on 25.11.2011 PW-4 Hulesh Kumar, his father

Bhagirathi (deceased), PW-9 Dhaneshwar and the appellant Byasnarayan consumed liquor in the hotel of PW-4 and thereafter, PW-4 and PW-9 left the hotel saying that they were going back to their respective houses whereas the appellant and the deceased decided to stay at night in the hotel of PW-4. It is alleged that in the night as the appellant demanded more liquor from Bhagirathi, there was quarrel between the two and during quarrel the appellant assaulted Bhagirathi on his head with stone slab (फरशी पत्थर) resulting in his death. Next morning i.e. 26.11.2011 PW-4 Hulesh Kumar when returned to his hotel, he found the door of the hotel closed from outside and on opening the same he found dead body of his father Bhagirathi lying there in pool of blood. He immediately informed about the same to Chhedulal (PW-11) and on 26.11.2011 at 7.30 am merg intimation (Ex.P/10) was recorded at the instance of PW-11 Chhedulal. Based on this, FIR (Ex.P/11) was registered on 26.11.2011 at 7.40 am under Section 302 of IPC against unknown person. Inquest on the dead body was conducted on 26.11.2011 vide Ex.P/3 and thereafter the body was sent for postmortem which was conducted on the same day vide Ex.P/4 by Dr. M. Prakash Aditya which has been proved by PW-15 Dr. Narayan Singh. As per postmortem report, there were two crushed/lacerated wounds on the head and fracture of left temporal bone and depressed fracture at mid parietal region. The cause of death was opined to be hemorrhagic shock due to injury/lacerated wounds to major vessels of scalp and that the death was homicidal in nature.

On 27.11.2011 memorandum of the appellant (Ex.P/6) was recorded which led to seizure of stone slab vide Ex.P/7. The seized

articles were sent to Forensic Science Laboratory for chemical examination, however, there is no FSL report on record. While framing charge, the trial Judge charged the appellant u/s 302 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined 17 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence, the accused examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that there is no eyewitness account to the occurrence and conviction of the appellant is based on circumstantial evidence but none of the circumstances from which inference of guilt can be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that it was the appellant who committed murder.

(ii) that main piece of evidence against the appellant is the evidence of last seen by PW-4 Hulesh Kumar but the same is not reliable as he is not consistent in stating about the last seen of the appellant with the deceased;

(iii) that PW-9 Dhaneshwar has also not supported the prosecution case;

(iv) that the evidence of last seen in the present case is very weak in nature and unless the said evidence gets corroboration from some

other piece of evidence, the appellant cannot be convicted.

(v) even motive has not been proved by the prosecution for commission of the offence.

(vi) that on the alleged memorandum of the appellant, stone slab is said to have been seized but there is no FSL or serological report to connect the same with the crime in question.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the impugned judgment warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-4 Hulesh Kumar Sahu, son of the deceased, has stated that on 25.11.2011 the appellant came to his hotel and asked him to go home and he (appellant) would sleep in the hotel with the deceased. On that day, at about 9.30 pm he (PW-4), his father Bhagirathi, the appellant and Dhaneshwar (PW-9) had their meals in his hotel and also consumed liquor there. In the night his father told him (PW-4) that he and the appellant would sleep in the hotel and therefore, he (PW-4) left the hotel and slept in his house. Next morning when he returned to his hotel he found the door of the hotel bolted from outside and on opening the same, found dead body of his father Bhagirathi lying there in pool of blood with injury on his head. He immediately called Dhaneshwar and his uncle Chhedulal and at the instance of his uncle, report was lodged. He is also a witness to inquest (Ex.P/3). He states that the appellant used to sleep in his house, however, on the date of incident

he slept in his hotel.

09. PW-9 Dhaneshwar has stated that he had his meals in the hotel of deceased Bhagirathi and thereafter he, PW-4 Hulesh Kumar and the appellant returned to their houses. PW-2 Baliram has stated that after consuming liquor he returned to his house.

10. PW-1 Punimati, wife of the deceased, is a hearsay witness. PW-3 Mohanlal Sahu, Patwari, prepared the spot map Ex.P/1. PW-5 Chitrekha, wife of PW-4 Hulesh, is also a hearsay witness and has turned hostile. PW-6 Manharan and PW-7 Dilharan Sahu have turned hostile. PW-8 Indu Bhushan, Sarpanch, is a hearsay witness. PW-10 Shankar Das, Village Kotwar, witness to memorandum and seizure has turned hostile. PW-11 Chhedulal is the person at whose instance merger intimation and FIR were registered. PW-12 Ghasiya Ram Sahu is a witness to seizure of certain articles from the spot (Ex.P/13 & P/14). He has not fully supported the prosecution case. PW-13 Udho Prasad is a formal witness. PW-14 Dinesh is a witness to seizure Ex.P/13 & P/14. He has also not fully supported the prosecution case. PW-15 Dr. Narayan Singh has proved postmortem report of the deceased (Ex.P/4) which was conducted by Dr. M. Prakash Aditya. As per postmortem report, there were two crushed/lacerated wounds on the head and fracture of left temporal bone and depressed fracture at mid parietal region. The cause of death was opined to be hemorrhagic shock due to injury/lacerated wounds to major vessels of scalp and that the death was homicidal in nature. PW-16 Ghanshyam, witness to memorandum and seizure, has turned hostile. PW-17 Sandeep Chandrakar, investigating officer, has supported the prosecution case.

11. Defence witnesses (DW-1 Ramesh Kumar Sahu & DW-2 Rupesh Kumar) have stated that the appellant has been falsely implicated in the crime in question. According to DW-2 who is son of the appellant, on the date of incident, the appellant had come to his house for sleeping at around 10.30 pm.

12. Close scrutiny of the evidence makes it clear that but for the evidence of PW-4 Hulesh Kumar, there is no other evidence much less clinching and legally admissible evidence against the appellant. Even PW-4 Hulesh Kumar does not appear to be a trustworthy witness. He states that the appellant and the deceased stayed together in his hotel and he slept in the other hotel whereas according to PW-9 Dhaneshwar after having their meals, he, PW-4 and the appellant had left the hotel of the deceased. Further, the evidence of PW-9 finds corroboration from the evidence of DW-2 Rupesh Kumar who states that on the date of incident, the appellant had come to his house for sleeping at around 10.30 pm. The evidence of DW-2 remains unchallenged in cross-examination. Thus, considering the statements of PW-9 & DW-2, it will not be safe to hold the appellant guilty of commission of murder of the deceased merely on the basis of the evidence of PW-4. Further, there is no evidence on record to show that the appellant was having any ill-will against the deceased or there was any quarrel or dispute between the two at the place of occurrence. Though on the memorandum of the appellant, stone slab allegedly used for commission of the crime was seized, but neither the witnesses to the memorandum and seizure have supported the prosecution case nor is there any FSL or serological report to establish any nexus between the seized article and the crime in question.

13. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused. 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 the deceased were last seen together.

14. In the present case, according to PW-4 Hulesh Kumar, the singular piece of circumstantial evidence against the appellant is that in the fateful night he was with the deceased in his hotel. However, this circumstance has not been proved conclusively by the prosecution, as observed above. The conviction of the appellant cannot be maintained merely on suspicion, howsoever strong it may be. This fact assumes further importance on account of absence of proof of motive particularly when it has come in the evidence that there was cordial relationship between the accused and the deceased for a long time.

15. Thus considering the overall facts and circumstances of the case in light of the settled legal position, the nature and quality of evidence adduced, we are of the opinion that the prosecution has not been

successful in proving the guilt of the appellant on the basis of evidence adduced by it beyond reasonable doubt. Though the circumstances raise suspicion against the appellant but mere suspicion can not be the basis of conviction, howsoever strong it may be. Being so, the trial Court has committed an illegality in convicting the appellant under Section 302 of IPC on the basis of such evidence. The appellant deserves to be acquitted of the said charge by giving him benefit of doubt.

16. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 302 of IPC by extending him benefit of doubt. The appellant is reported to be in jail, therefore, he be set free forthwith if not required in any other case.

(Pritinker Diwaker)
Judge

(Rajani Dubey)
Judge