

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 187 of 2013**

1. Sahaduram Nareti S/o Ramji Nareti, aged about 60 years.
2. Ramsai Nareti S/o Sahaduram Nareti, aged about 30 years.

Both R/o village - Jepra, Post Office & Police Station -
Durgkondal, District - Uttar Bastar Kanker (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : The District Magistrate, Uttar Bastar Kanker, District Uttar Bastar Kanker (C.G.)

---- Respondent

For Appellants	:	Shri R.K. Pali, Advocate.
For Respondent/State	:	Shri Avinash Mishra, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****27/02/2018**

01. This appeal arises out of the judgment of conviction and order of sentence dated 06.02.2013 passed by Additional Sessions Judge, North Bastar, Kanker (C.G.), in Sessions Trial No.23/2012 convicting the accused/appellants under Sections 302/34, 201/34 of IPC and sentencing them to undergo rigorous imprisonment for life with fine of Rs.100/- and R.I. for three years with fine of Rs.100/-, plus default stipulation respectively.

02. As per the prosecution case, on 12.10.2011, deceased Jailal entered the house of the appellants to meet the daughter of

accused/appellant No.1-Sahaduram Nareti and sister of accused/appellant No.2-Ramsai Nareti. Seeing him inside the house, accused persons committed murder of the deceased by throttling him. Further case of the prosecution is that before entering the house of the accused/appellants, deceased was in the company of Sanjay Nareti (PW/10), Vinod (PW/11), Panduram (PW/12) and Mohan (PW/14) and these witnesses saw the deceased entering the house of the accused persons. On 14.10.2011, body of the deceased was found near road side and Nathuram (PW/2), brother-in-law of the deceased, gave the said information to Birju Ram (PW/3), uncle of the deceased, and at whose instance merg intimation (Ex.P/4) was recorded on 15.10.2011. On 16.10.2011, FIR (Ex.P/13) was registered against unknown person under Sections 302 and 201 of IPC. On 15.10.2011, inquest on the body of deceased was conducted vide Ex.P/6 and body was sent for postmortem examination which was conducted on the same day by Dr. B.S. Thakur (PW/13) who gave his report Ex.P/10 noticing following injuries/symptoms:-

- (i) Body was cold, supine and swollen position. Foul smelling and massive maggot present. Peeling off skin started on all over body. Greenish blackish discolouration of skin and purple colour under skin present.
- (ii) Tongue protruded, eyes were opened and eye balls were putrefied. Both upper and lower limbs extended hard and rigor mortis passed off. No external injury was seen all over body.
- (iii) Fracture of hyoid bone and cricoid cartilage were noticed.
- (iv) 3rd and 4th cervical vertebra were detached.

The Autopsy Surgeon opined the cause of death of deceased to be asphyxia due to throttling which obstructed air passages by compressing the trachea.

03. On the basis of diary statement of PW/10, PW/11, PW/12 and PW/14 wherein they have stated that they saw the deceased entering the house of the appellants, appellants were made accused and after filing of charge sheet, the trial Court framed charge under Sections 302/34 and 201/34 of IPC against the accused/appellants.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 15 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, they examined one defence witness namely Sonsai (DW/1).

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellants submit :-

- That there is no eye-witness to the occurrence and the conviction of accused/appellants is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellants can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellants who committed the murder.

- That so called statements of last seen by Sanjay Nareti (PW/10), Vinod (PW/11), Panduram (PW/12) and Mohan (PW/14) Najmin Begum (PW/6) are not reliable. It has been argued that according to these witnesses, they saw the deceased entering the house of the accused/appellants on 12.10.2011, whereas body of the deceased was found on 14.10.2011 i.e. after two days and, thus, considering the time gap possibility of any third person committing the offence in question cannot be ruled out. Even otherwise, the accused/appellants cannot be convicted merely on the basis of last seen which is a weak type of evidence and cannot be relied upon for basing conviction unless the same is corroborated by other piece of evidence.
- That from the evidence it appears that it is PW/10, PW/11, PW/12 and PW/14 who have killed the deceased and to save themselves, they, after taking legal assistance, have falsely implicated the accused/appellants. Learned counsel has referred the statements of Biraju (PW/6) and Sonsai (DW/1).

07. On the other hand, supporting the impugned judgment it has been argued that conviction of the accused/appellants is in accordance with law and there is no infirmity in the same.

08. We have heard counsel for the parties and perused the material available on record.

09. R.D. Manikpuri (PW/1) is a Patwari who prepared spot map vide Ex.P/1.

10. Nathuram (PW/2), brother-in-law of the deceased, has turned hostile. In para 4 of his cross-examination, he has stated that his house

is just opposite to the house of accused persons and that on the date of incident, deceased Jailal, Sanjay Nareti (PW/10), Vinod (PW/11), Panduram (PW/12) and Mohan (PW/14) consumed liquor in his house. He has further stated that they had also dine in his house and after about four days, the body of deceased was found. This witness has also stated that during these four days, PW/10, PW/11, PW/12 and PW/14 have not disclosed anything to anyone and possibility that it is they who might have killed the deceased cannot be ruled out and to save themselves they have implicated others.

11. Birjoram (PW/3) is uncle of the deceased at whose instance merg intimation (Ex.P/4) was recorded.

12. Brijlal (PW/4) is a witness to inquest made under Ex.P/6. Arun Nareti (PW/5) is a formal witness.

13. Biraju (PW/6), father of the deceased, has been declared hostile. He has stated that the deceased had gone along with Sanjay Nareti (PW/10), Vinod (PW/11), Panduram (PW/12) and Mohan (PW/14) and thereafter he did not return. On being asked, these witnesses did not inform anything and simply said that they are not aware about the deceased.

14. Pardesi Ram (PW/7) has stated that Sanjay Nareti (PW/10), Vinod (PW/11), Panduram (PW/12), Mohan (PW/14) and the deceased had come to the house of appellants and thereafter it is the deceased who entered the house of the appellant. This witness has further stated that he came to know about all these facts after two days in a meeting and the same was disclosed by Nathuram (PW/2).

15. Rambhajan (PW/8) has been declared hostile. This witness, in

para 6 of his cross-examination, has stated that friends of the deceased have not disclosed the incident to anyone for about 3-4 days and, therefore, he had suspicion in his mind that it is they who might have killed the deceased and thereafter maintained silence. He has admitted the fact that the accused persons had made complaint to higher officers of police requesting for independent inquiry as they were falsely implicated in the crime. He has also stated that his house is opposite to the house of accused persons and after hearing the cries of “चोर चोर” all of them reached the house of appellant No.1 and saw him standing there. At that time he was not having any weapon and it is he who informed him that somebody had entered the house and he had bolted the room from outside. All of them waited for about two hours but they could not get any idea as to who had come there and at the relevant time Nathuram (PW/2), brother-in-law of the deceased, was also there.

16. Sanjay Nareti (PW/10), Vinod (PW/11), Panduram (PW/12) and Mohan (PW/14) are those witnesses in whose company deceased Jailal was seen when all of them left for house of PW/2 for their livelihood. According to these witnesses, deceased entered the house of appellants and as soon as he went inside the house, these witnesses ran away from the spot. It is relevant to note here that these witnesses remained silent for about two days and only after recovery body of the deceased, they disclosed this fact to the villagers. It is further relevant to note that Biraju (PW/6), father of the deceased, has shown his suspicion that his son might have been killed by these four witnesses. PW/10 and PW/11 have further admitted the fact that they have consulted a lawyer and according to PW/11, he has stated before the police and the Court in the

manner as advised by his lawyer.

17. Dr. B.S. Thakur (PW/13) conducted postmortem examination on the body of deceased and gave his report (Ex.P/10) opining the cause of death of deceased to be asphyxia due to throttling which obstructed air passages by compressing the trachea.

18. D.K. Markam (PW/15) - Investigating Officer, has duly supported the prosecution case.

19. Sonsai (DW/1) is neighbour of the accused/appellants. He has stated that after hearing the cries of “चोर चोर” he reached the house of accused/appellants. This witness has further stated that a complaint (Ex.D/1) was made by the villagers seeking independent inquiry about the incident and involvement of the accused persons.

20. Close scrutiny of the evidence makes it clear that the accused/appellants have been convicted solely on the basis of circumstantial evidence main being the statements of last seen by Sanjay Nareti (PW/10), Vinod (PW/11), Panduram (PW/12) and Mohan (PW/14). It is well settled position of law that the conviction cannot be recorded against an accused merely on the ground that he was last seen with the deceased. In other words, conviction cannot be based only on the circumstance of last seen together and normally the Court is required to look for some other corroborative piece of evidence. Most importantly, the theory of last seen comes into play where the time gap, between the point of time when accused and deceased were seen last alive and when the deceased found dead, is so small that possibility of any person other than accused being the perpetrator of crime, becomes impossible.

The Supreme Court in the matters of **State of Goa V. Sanjay Thakran¹**, **Yusuf V. State of West Bengal²**, **Anjan Kumar Sharma V. State of Assam³**, **Nijam V. State of Rajasthan⁴**, **Kanhaiyalal V. State of Rajasthan⁵** and this Court in the matter of **Smt. Jiteshwari Bai V. State of CG⁶** has held that while basing the conviction on the last seen theory, it is safer to look for corroboration from other circumstance and evidence adduced by the prosecution.

21. In the present case, according to evidence of PW/10, PW/11, PW/12 and PW/13, they saw the deceased entering the house of accused/appellants and thereafter these witnesses fled from the spot. Even if the entire statement of these witnesses is taken as it is, what picture emerges is that on 12.10.2011 they only saw the deceased entering the house of accused/appellants and not in the company of accused/appellants. Further, after two days i.e. on 14.10.2011 the body of deceased was found near road side in village Jepra and till 14.10.2011 these witnesses kept quite. That apart, in merg intimation (Ex.P/4), PW/10, PW/11, PW/12 and PW/14, on being asked, showed their ignorance whereas it has come in their evidence that they have disclosed the fact of deceased being entered the house of accused/appellants after four days that too on the advise of their lawyer. It is relevant to note here that when the deceased went missing from 12.10.2011, these witnesses should have disclosed this fact immediately to the family members of the deceased and also to the villagers. Most

1 2007 (3) SCC 755

2 AIR 2011 SC 2283

3 2017 SCC 622

4 AIR 2015 SC 3430

5 2014 (4) SCC 715

6 2015 (S) SCC 393

importantly, after hearing the cries of “चोर चोर”, PW/8 reached the house of accused/appellants and stayed there for about two hours but he could not get any idea as to who had come there. That apart, father of the deceased (PW/6) had shown suspicion that his son might have been killed by PW/10, PW/11, PW/12 and PW/14. PW/10, PW/11, PW/12 and PW/14 cannot be treated as witnesses to last seen for the reason that they have not seen the deceased with the accused/appellants and saw him only entering the house of accused/appellants on 12.10.2011 and the body of deceased was found on 14.10.2011. There is a long gap between the deceased entering the house of accused/appellants and recovery of his dead body. The evidence of PW/10, PW/11, PW/12 and PW/14 is not very conclusive in nature and on the basis of aforesaid evidence it cannot be said with certainty that it is the accused/appellants who have committed murder of the deceased. Therefore, the finding of the trial Court accepting testimonies of these witnesses for the purpose of last seen is not justified.

22. The Supreme Court in the matters of **Sattatiya @ Satish Rajanna Kartalla V. State of Maharashtra, (2008) 3SCC 210** and **Sharad Birdhichand Sarda V. State of Maharashtra [(1984) 4 SCC 116]** has held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any

reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

23. Thus, considering the quality of evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Sections 302/34 and 201/34 IPC is not based on proper appreciation of the evidence available on record and being so they are entitled for benefit of doubt. Consequently, the judgment impugned convicting the accused/appellants under Sections 302/34 and 201/34 IPC is set aside and they are hereby acquitted of the charges levelled against them. Appellants are reported to be in jail. They be set at liberty forthwith, if not required in any other case.

24. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE