

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 122 of 2013**

- Shyamsingh @ Jhakku Gond S/o Sawant Ram Aged About 35 Years R/o Village Pandrikhar, P.S. Kukdur, Distt. Kabirdham C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - SHO, P.S. Kukdur, Distt. Kabirdham C.G.

---- Respondent

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CRA No. 295 of 2013

- Krishna Kumar @ Krishna S/o Naval Singh Dhruve Aged About 30 Years R/o Village Pandrikhar, P.S. Kukdur, Distt. Kabirdham C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - SHO, P.S. Kukdur, Distt. Kabirdham C.G.

---- Respondent

For respective Appellants :	Shri V.C. Ottalwar and Shri Rupesh Shrivastava, Advocates
For State :	Shri Ramakant Mishra, Dy.A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Order On Board****03/12/2018****Per Manindra Mohan Shrivastava, J.-**

The two appeals are directed against impugned judgment of conviction and

order of sentence dated 06/12/2012 passed by the Sessions Judge, Kabirdham (Kawardha) in Sessions Trial No.33/2012 by which the appellants in the aforesaid two appeals have been held guilty of commission of offence as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 302/34 of IPC	R.I. for life with fine of Rs.1000/- (in default of payment of fine, additional R.I. of 6 months)
2	U/s 201 of IPC	R.I. for five years with fine of Rs.1000/- (in default of payment of fine, additional R.I. of 6 months)
Both the sentences to run concurrently		

2. The factual details of prosecution case are in narrow encompass, as stated in the impugned judgment and the records of the case that Balram is stated to have gone along with the appellants in the morning and later on, next day, his dead body was found in a dam. At about 6:30 AM, Sitaram (PW2) lodged merg in Ex.P/3 intimating death. The police having reached the place of occurrence, prepared inquest report and the dead body was sent for post mortem. The post mortem was conducted by Dr. B.L.Raj (PW1) and he found that there was swelling in the testicle hyoid bone and gratis was found broken and linear fracture was also found in the skull. He opined that cause of death was Asphyxia caused due to rupture of hyoid bone and death appears to be homicidal in nature.

3. It being a case of blind murder, after sometime, on suspicion, the appellants were arrested. The investigation ended in filing of charge sheet against the appellant for alleged commission of offence of murder of the deceased – Balram. The prosecution could only come out with the evidence of last seen, as stated by Jankibai (PW3), wife of the deceased and the Trial Court rested conviction on that basis alone.

4. Learned counsel appearing for the appellants in two appeals made pointed submission before this Court that the conviction of the appellants could not be rested only on the basis of last seen evidence, without there being any other corroborating and incriminating circumstantial evidence. It is argued that all that the wife of the deceased Jankibai has stated that at about 9 AM, the appellants had come and Balram (the deceased) had gone along with them. In the cross examination, however, states that the relations of the deceased with the appellants were cordial and her husband never made any allegations against the appellant – Krishna Kumar nor was there any dispute. Except this, no other evidence has been brought by the prosecution to involve the appellants. Therefore, in these circumstances, the appellants are entitled to be given benefit of doubt. Reliance has been placed on the decision of the Supreme Court in the case of **Nizam and another v. State of Rajasthan, (2016) 1 SCC 550**.

5. On the other hand, learned State counsel submits that, even though, the prosecution case rests solely on the circumstantial evidence of last seen, the same is unimpeachable and fully reliable. As the appellants have failed to offer any explanation with regard to time and place as also the place where he parted with company of the deceased and there being no evidence led to show that after leaving the company of the appellants, the deceased was seen either alone or in company of other persons, circumstances points only towards the guilt of the appellants and the appellants alone.

6. Obviously, the impugned judgment of conviction appears to be based only on the last seen evidence and no other circumstantial evidence. In the cross examination, wife of the deceased – Jankibai (PW3) has denied suggestion of any enmity with the appellants. No other evidence has been brought by the prosecution

to establish that the appellants had strong motive to murder Balram. No incriminating recoveries have been made. The so called memorandum statement of the appellants, in the absence of any other incriminating material, cannot be made basis to convict them in the alleged commission of offence. Though, learned State counsel relied on the contents of the disclosure statement, the same is not admissible as the so called confession is alleged to be recorded by the police.

7. We are only left with a weak circumstantial evidence that the deceased had gone along with the appellants in the morning and nothing more. In view of authoritative pronouncement of the Supreme Court in the case of **Nizam** (supra), only on that weak evidence of circumstantial evidence, we find ourselves unable to uphold the impugned judgment of conviction. The settled legal position was reiterated in following words -

“9. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In *Bodhraj v. State of J & K* (2002) 8 SCC 45, wherein this court quoted number of judgments and held as under:-

“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* (1977) 2 SCC 99, *Eradu v. State of Hyderabad*, AIR 1956 SC 316, *Earabhadrapa v. State of Karnataka*, (1983) 2 SCC 330, *State of U.P. v. Sukhbasi*, (1985) Suppl. SCC 79, *Balwinder Singh v. State of Punjab* (1987) 1 SCC 1 and *Ashok Kumar Chatterjee v. State of M.P.*, 1989 Suppl. (1) SCC 560). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely

connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab*, AIR 1954 SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

8. In the result, the impugned judgment of conviction and order of sentence cannot be sustained and is, therefore, set aside. The appeals are allowed and the appellants be set free forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge