

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 195 of 2014**

- Jitesh Kashyap S/o . Late Lalsingh Aged About 36 Years R/o. Khaprabhat, Post And P.S. Devri, Tah. Daundilohara, Distt. Balod C.G., Chhattisgarh

---- Appellant.**Versus**

1. Parmanand Sahu S/o . Anand Ram Sahu Aged About 26 Years R/o. Vill. Bilai, P.S. Bemetara, Distt. Bemetara C.G., Chhattisgarh
2. Yogendra Kumar @ Montu S/o . Nandkumar Sahu Aged About 20 Years R/o. Vill. Bilai, P.S. Bemetara, Distt. Bemetara C.G., District : Bemetara, Chhattisgarh
3. Rishi Patel S/o . Dwarika Patel Aged About 29 Years R/o. Vill. Bamhani, P.S. Arjunda, Distt. Balod C.G., District : Balod, Chhattisgarh
4. Kumeshwar Nishad S/o . Attri Ram Nishad Aged About 26 Years R/o. Vill. Sankripat Rudgaon P.S. Dongargaon, Distt. Rajnangaon C.G., District : Rajnandgaon, Chhattisgarh
5. Vijay Sahu S/o . Toran Lala Sahu Aged About 28 Years R/o. Vill. Pangrikala, P.S. Dongargaon, Distt. Rajnangaon C.G., District : Rajnandgaon, Chhattisgarh
6. Kumari Himani Rajput @ Punnu D/o . Mochan Singh Aged About 25 Years R/o. Vill. Nahda, P.S. Devri, Tah. Daundilohara, Distt. Balod C.G., District : Balod, Chhattisgarh

(Accused Persons)---- Respondents

7. The State of CG through SHO- Dongargarh, District Rajnandgaon (CG).

(Prosecution)

For Appellant : Mr.A.K. Prasad, Panel Lawyer

For respondents : None.

For respondent No.7/State: Mr. Arvind Kumar Dubey, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Oral Judgment

Per Ram Prasaanna Sharma, J

1-2-2018

1. This acquittal appeal is preferred against the judgment dated 19-9-2014 passed by the Sessions Judge, Rajnandgaon (for short, "the trial Court") Sessions Division Rajnandgaon in Sessions Trial No. 7 of 2013 wherein the trial Court acquitted all the six respondents from the charges under Sections 302 read with Section 34, 302 read with Section 120-B and 201 of IPC for commission of murder of one Virendra Bahaddur Kashyap between 18-9-2012 to 19-9-2012 in furtherance of common intention/conspiracy and causing disappearance of evidence.
2. In the present case, name of the deceased is Virendra Bahaddur Kashyap. It is alleged that the dead body of the deceased was found near Bagbuda *Nalah* of village Gondalwahi on 19-9-2012. Upon information by one Manjoj Kumar, Incharge of Police Station registered merg intimation as per Ex. P/1 and *Dehati Nalishi* Ex. P/2 after reaching the village Gondalwahi by the authorities. It is alleged that all the accused/respondents had conversation over telephone with the deceased. It is further alleged that the deceased was having illicit relation with respondent No.6 Ms. Himani Rajput, therefore, they conspired to eliminate the deceased. During investigation certain seizures of articles were made. After completion of investigation charge-sheet was filed against the respondents. Respondents did not plead guilty, therefore, trial was conducted. After examination of prosecution witnesses, statements of respondents under Section 313 of Cr.P.C., were recorded and after hearing both the parties, the trial

Court acquitted all the six respondents as mentioned above.

3. Learned counsel for the appellant submits as under:

- i) There is ample evidence regarding call details pertaining to mobile phone of the deceased and other mobile phones possessed by the respondents.
- ii) Memorandum and seizure have been proved by the witnesses but the trial Court did not believe the same. Seizure of burnt sandal and slipper from respondent No.3 Rishi Patel goes to suggest his involvement in the crime in question.
- iii) Motive for committing the offence is also established and money was recovered from respondent No.3 Rishi Patel which is incriminating piece of evidence.
- iv) (PW/4) Bhajanlal Sonkar and (PW/5) Ramsaran stated that some person contacted the deceased and the deceased left their company to go with his friend which is sufficient to establish conspiracy because direct evidence of conspiracy is rarely available.

- 4. We have heard learned counsel for the parties and perused the record of the trial Court.
- 5. To substantiate the charge, prosecution has examined as many as 28 witnesses.
- 6. PW/1 Manoj Bhuarya, PW/2 Gopal Singh, PW/7 Ramavatar, PW/8 Gannu Ram,, PW/9 Constable Bhanu Pratap, PW/10 Patwari Jayabharat Ramtek, PW/11 Kiran Kashyap, PW/13 Mulesh Nishad, PW/18 Nand Kumar Sahu, PW/19 Constable Dineshwar Das, PW/20 Dwarika Prasad, PW/21 Shailendra Kumar, PW/25 Constable Akhilesh Sahu, PW/26 Constable Suresh Kumar Tiwari and PW/27

Constable Sanjay Kumar are the persons who assisted in investigation during seizures of certain articles in hospital and other place and some other act after registration of FIR.

7. Dr. D. S. Parihar is the person who conducted autopsy of deceased Virendra Bahaddur Kashyap at Community Health Center, Dongargaon on 19-9-2012. After autopsy he opined that deceased died due to shock on account of burn injuries and died since 18 – 24 hours of his examination. Version of this witness is not challenged during cross examination and there is no other expert's opinion on the record. When version of public servant is unrebutted, there is nothing to disbelieve the same. It is established that deceased died due to shock on account of burn injuries.

8. Admittedly, there is no eyewitness to the incident. The case of the prosecution is based on circumstantial evidence. In the matter of **Jaharlal Das Vs. State of Orissa**¹, it is held by Hon'ble the Apex Court as under:

“The circumstantial evidence in order to sustain the conviction must satisfy three conditions;

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

In cases depending largely upon circumstantial

1 (1991) 3 SCC 27

evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. When the main link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable doubts. It is at this juncture the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be short step between moral certainty and the legal proof. At times, it can be a case of "may be true". But there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions."

9. Police Inspector K.P. Markam (PW/1) is the Investigating Officer. As per version of this witness, on discovery statement made by respondent Yogendra Kumar Sahu, he seized one Yamaha Motorcycle bearing registration No. CG 07 AD 3695 at village Bhilai. He further deposed that on the basis of discovery statement of respondent Yogendra, he seized one mobile phone and some other plastic articles which were burnt. As per this witness, on the basis of discovery statement of respondent Parmanand Sahu, he seized one mobile phone of Samsang Company with SIM. He further deposed that on the basis of discovery statement of respondent Rishi Patel, he seized Rs.30,000/- from him and one mobile phone of Vilacom company and one mobile phone and two SIM cards. He further deposed that he seized one wire from accused Rishi Patel and again seized one Santro Car bearing registration No. CG 07 6040, one

burnt slipper from him. He would further depose that on discovery statement made by respondent Kumeshwar Nishad, he seized one mobile phone of Micromax Company and two SIM cards, one motor-cycle and currency notes of Rs.10,000/-. He further deposed that on the basis of discovery statement of respondent Vijay Sahu, he seized one mobile phone of Micromax Company and two SIM cards and on discovery statement made by respondent Kumari Himani Rajput, he seized one mobile phone of Nokia Company and one SIM card. Version of this witness is supported by the version of Mulesh Kumar (PW/24) and Khilawan (PW/17).

10. As per version of PW/25 Akhilesh Sahu, while working as computer operator in Crime Branch, Rajnandgaon, he inquired call details, but he was unable to explain about the call details and also unable to state as to whose call details were searched. No person has been examined from the Mobile company to establish that any of the respondents had conversation with the deceased.
11. In absence of any expert's evidence, there is no iota of evidence regarding conversation between deceased and any of the respondents. Mere seizure of mobile or SIM is not sufficient to establish conversation between two persons and again it is not established what was the subject matter of conversation. In absence of evidence, it is not established that deceased talked with any of the respondents on the date of incident. As there is no link between respondents and the deceased, the trial Court is right in holding that the seizure of mobile phone and SIM is not incriminating evidence in the facts of the case.

12. Jitesh Kashyap (PWE/23) is the person who is neighbour of the deceased. As per version of this witness he was in constant touch with the deceased. He deposed that deceased was living in village Khaparabhata. As per version of this witness, on 18-9-2012 deceased informed him that he was with respondent Ms. Himani Rajput at village Nawagaon. On 17-9-2012 while going to village Khaparabhata from Bothipara he met the deceased near Nohada Hotel and Narendra Dewangan, Bhajan Sonkar, Ramsaran, Surendra Yadav were in the company of the deceased. He further deposed that he met the deceased next day at village Peri. The deceased left village Peri at 6.30 pm for village Arjuni along with Bhajan Sonkar and Ramsaran. From the evidence of the this witness, it is not established that he has seen the deceased in the company of any of the respondents and from his evidence there is no application of last seen theory. There is no iota of evidence to connect any of the respondents with burn injuries of the deceased. When not a single link was established before the trial Court, the finding arrived at by the trial Court is the only view possible in the facts and circumstances of the case.
13. Accordingly, the appeal being devoid of substance, is liable to be, and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

