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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1057 of 2015**

- Gharau Das S/o Batula Das Panika Aged About 35 Years R/o Bamlaya, Police Station Sitapur District Surguja Chhattisgarh,

---- Appellant**In Jail****Versus**

- The State Of Chhattisgarh Through Station House Office, Police Station - Sitapur District Surguja Chhattisgarh

---- Respondent**CRA No. 1447 of 2015**

- Rambharosh S/o Late Bhakura Das Panika Aged About 33 Years R/o Village Devgarh, Bakripara, Police Station Sitapur, Civil And Rev. Distt. Surguja, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Sitapur, Distt. Surguja, Chhattisgarh.

---- Respondent

For Appellants	:	Shri Shakti Raj Sinha and Shri Anil Tripathi, Advocates.
For Respondent/State	:	Shri Chitendra Singh, P.L.

Hon'ble Shri Prashant Kumar Mishra &**Hon'ble Shri Gautam Chourdiya, JJ****Judgment On Board By Justice Gautam Chourdiya****14/08/2019**

Since both the above appeals arise out of the common judgment

of conviction and order of sentence dated 6.6.2015 passed by Special Judge, Surguja (Ambikapur) {Under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act}, in Special S.T.No.84/2012, they are being disposed of by this common judgment. By the said judgment, each of the appellants stands convicted under Section 302/34 of IPC and sentenced to undergo life imprisonment plus fine of Rs.1000/-, in default whereof to suffer additional imprisonment for one year.

02. As per the prosecution case, merged intimation (unnumbered) Ex.P/2 was lodged by Smt. Ahilya Bhagat, wife of deceased Ramashankar Rao Bhagat on 24.8.2012 at 12.30 hours informing that there is some land and property related dispute between appellant Ghurau Das and the deceased family prior to death of the deceased. On 16.8.2012 accused/appellant Ghurau Das had quarreled with Kendibai, sister of the deceased, on which report was lodged against Ghurau Das and that Ghurau Das had threatened to kill the deceased and his family members. On the date of incident i.e. 24.8.2012 deceased Ramashankar Rao Bhagat had gone to school at Bataikala by motorcycle. On the same day at about 10.30 am Deepak Ekka & Tilakdhari (Teachers) informed her over telephone that some unknown person committed murder of her husband Ramashankar Rao Bhagat near Algi Jhariya culvert, on which she immediately rushed to the spot and saw dead body of her husband lying beside the main road near culvert with injuries over his ear, cheek, neck and other parts of the body with a sharp-edged weapon. She stated that the incident has been witnessed by Lalita and Jeetni Uraon and expressed suspicion over appellant Ghurau Das that he along with some other persons

would have killed her husband due to land dispute. Thereafter, unnumbered FIR (Ex.P/1) was registered on the same day at 12:45 hours. Numbered merg (Ex.P/2A) was registered on the same day at 16:10 hours at Police Station – Sitapur, Distt. Surguja and based on that, FIR (Ex.P/1A) was registered on the same day at 16:15 hours against unknown person under Section 302/34 of IPC. During investigation, statements of Lalita Uraon (PW-11), Jeetani (PW-12) and Hiratan Beck (PW-13) were recorded wherein they have stated that they saw three persons going on motorcycle and assaulting deceased Ramashankar Rao Bhagat in the bushes and when they reached the place of incident, by that time Ramashankar Rao had died and that there were number of injuries on his face and other parts of the body.

On 24.8.2012 the dead body was sent for postmortem, which was conducted on the same day by Dr. Premsingh Marko (PW-7) vide Ex.P/8A wherein he noticed cut wound over neck, from right eye to right ear, deep abrasion over right arm, right side forehead, cut wound bone deep and cutting of trachea and also noticed fracture of skull bone. In his opinion, the cause of death was respiratory failure due to cut of trachea and the death was homicidal in nature.

03. On 25.8.2012 memorandum of accused Ghurau Das was recorded vide Ex.P/11, consequent to which his full pant and shirt worn at the time of incident bearing stains like blood were seized vide Ex.P/12. On the same day memorandum of accused Rambharos was recorded vide Ex.P/13 which led to recovery of one *Khukhri* (knife like weapon), his clothes worn at the time of incident having blood like

stains and one motorcycle Hero Honda Splendor Plus bearing No. CG 15 CK 0614 vide Ex.P/14. The seized articles were sent for chemical examination to FSL and vide FSL report Ex.P/26, blood was found on Article A (*Gamchha* of deceased), Article B (full pant of appellant Ghurau Das), Article C (full shirt of appellant Ghurau Das), Article F (*Khukhri*) and Article G (soil seized from spot). The report further mentions that blood found on Article G was human blood, however, origin of the blood on Articles A, B, C & F could not be determined due to its disintegration.

After completion of investigation charge sheet was filed against three accused persons namely Ghurau Das, Rambharos and Purushottam Das under Section 302/34 of IPC and Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act followed by framing of the charges accordingly by the trial Court. The accused persons denied the charges, pleaded innocence and prayed for trial. During trial, accused Purushottam Das died.

04. So as to hold the accused persons guilty, the prosecution examined 16 witnesses in all. 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. However, no witness was examined by them in defence.

05. 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 appellants as mentioned above

while acquitting them of the charge under Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

06. Counsel for the appellants submits as under:

(i) that there is no eyewitness account to the occurrence and conviction of the appellants 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 were the appellants who committed murder.

(ii) 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 appellants cannot be convicted.

(iii) merely on account of there being motive with the appellants, they cannot be held perpetrator of the crime in question.

(iv) that the circumstance of memorandum and seizure also loses its significance as in view of the FSL report (Ex.P/26) it is evident that the prosecution has failed to prove that the articles seized at the instance of the appellants had any nexus with the crime in question.

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

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

09. From the inquest report Ex.P/23, duly proved by PW-15 AR Bairagi, Addl. S.P., and the postmortem report Ex.P/8A, duly proved by PW-7 Dr. Premsingh Marko, it stands proved beyond all reasonable doubt that Ramashankar Rao Bhagat died on 24.8.2012 due to injuries caused to him by hard and sharp-edged weapon and his death was homicidal in nature.

10. Close scrutiny of the evidence makes it clear that there is no direct evidence against the appellants connecting them with the crime in question and their conviction rests upon circumstantial evidence i.e. availability of motive due to land dispute, evidence of last seen by PW-13 Hiratan Beck and recovery of bloodstained articles pursuant to their memorandum statements.

11. In the matter of ***Sharad Birdhi Chand Sarda vs State Of Maharashtra*** reported in ***1984 AIR 1622***, the Hon'ble Supreme Court while dealing with the case of circumstantial evidence held that before a case against an accused resting on circumstantial evidence can be said to be fully established, the following conditions must be fulfilled:

“1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;

2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

3. The circumstances should be of a conclusive nature and tendency

4. They should exclude every possible hypothesis except the one to be proved; and

5. There must be a chain of evidence so complete as

not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

12. In the matter of ***Rambraksh alias Jalim*** reported in ***AIR 2016 SC 2381*** it has been held as under:

“10. 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.

11. In a similar fact situation this Court in the case of Krishnan v. State of Tamil Nadu [(2014) 12 SCC 279, held as follows:

“21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar (1994) Supp (2) SCC 372)

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not

complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

22. *This Court in Bodhraj v. State of J&K (2002) 8 SCC 45) 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.”

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.

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.

24. In *Jaswant Gir v. State of Punjab (2005) 12 SCC 438*, this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot

be convicted solely on the basis of “last seen together” even if version of the prosecution witness in this regard is believed.

12. *In the present case as noticed above the Sessions Court as well as the High Court convicted the appellant/accused No.2 on the basis of last seen evidence, the correctness of which is also doubtful. The High Court had failed to appreciate the aforesaid fact and erred in affirming the judgment of conviction passed by the Sessions Court. We are satisfied that the conviction of the appellant cannot be sustained in law and liable to be set aside.”*

13. Likewise, in the case of **Kanhaiya Lal** reported in **2014 AIR SCW 1828** it has been 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.

14. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh vs. State of Rajasthan (2010) 15 SCC 588.”

14. In the matter of **Navaneethakrishnan Vs. State** By Inspector of

Police, reported in **(2018) 16 SCC 161**, the Hon'ble Supreme Court while dealing with a murder case based on circumstantial evidence of last seen and recovery of certain articles at the memorandum of the accused persons, held as under:

“It is a settled legal position that the law presumes that it is the person, who was last seen with the deceased, would have killed the deceased and the burden to rebut the same lies on the accused to prove that they had departed. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. However, this evidence alone can't discharge the burden of establishing the guilt of accused beyond reasonable doubt and requires corroboration. In absence of any other material evidence against appellant-accused, they cannot be convicted solely on basis of evidence of last seen together with deceased. Hence conviction of appellants stand set aside under Sections 302/34, 364 and 379 of IPC.”

“Information given by accused person to a police officer leading to discovery of a fact which may or may not prove incriminatory has been made admissible under Section 27 of the Evidence Act. Section 27 is applicable only if confessional statement leads to discovery of some new fact. Its relevance is limited as relates distinctly to fact thereby discovered in relation to the crime. In absence of any connecting link between the crime and things recovered/facts discovered thereby, recovery of objects at behest of accused will not have any material bearing on facts of the case, as in present case.”

15. In the present case, PW-11 Lalita Uraon and PW-12 Jeetani have not supported the prosecution case and turned hostile. Their

statements under Section 161 of CrPC were recorded by the police and on leading questions being put to them by the prosecution, they did not support the prosecution case.

16. The important witness in this case is PW-13 Hiratan Beck who has been cited as a witness of last seen. He states in his examination-in-chief that on the date of incident he had gone to Village Maheshpur for selling bread and while returning at 10.30 hours he found dead body of Ramashankar Rao lying near bushes. One club was lying near the dead body and three persons were standing there, whom he did not know but can identify on seeing. While he was standing there, those three persons threatened him to go away or else he would be killed. In para-2 he states that first all those three persons moved away from the spot and thereafter he followed them. He admits that he did not come to know about the names of those three persons after the incident. However, he states that the accused present in the Court are the same persons.

In cross-examination, in para-4, he states that after the incident, he did not inform about the same to anyone in the village and after one month of the incident he informed the police about the same. He states that he did not see the appellants assaulting the deceased and only saw them standing there. In para-5 he admits that while making statement to the police (Ex.D/2) he did not name the accused persons as he was not aware of their names by that time. He states that while he was present at the place of occurrence, the police reached there but before inquest proceedings he had moved away and he met the police

after 1-2 days of the incident. In para-7 he admits that no test identification of the accused was conducted by the police from him and that the accused persons were not shown to him in the police station. In para-8 he specifically states that being frightened he did not disclose anything to anyone but after one month he informed the police of his own and his statement was accordingly recorded.

17. From careful examination of the evidence of PW-13 Hiratan Beck, this Court does not find him a trustworthy witness for the reason that as per his own admission, he was present on the spot when the police reached there but he neither disclosed about seeing of accused persons near the dead body at the relevant time to any of the villagers, Sarpanch, Patel etc. or the police personnel and went to police station of his own after one month of the incident to inform about the said fact. However, a bare perusal of his statement Ex.D/2 recorded under Section 161 of CrPC makes it clear that the same was recorded on 26.8.2012 i.e. just two days after the incident which occurred on 24.8.2012 whereas in para-8 he specifically states that being frightened he did not disclose anything to anyone and after one month he informed the police of his own and his statement was accordingly recorded. Further, serious lacuna in this case is that according to PW-13 Hiratan Beck while making statement to the police (Ex.D/2) he did not name the accused persons as he was not aware of their names by that time, however, the statement of Ex.D/2 bears names of all the three accused persons. Therefore, considering the conduct of this witness and the material discrepancy in his diary statement and the Court statement, the evidence of this witness regarding appellants

being last seen near the dead body of the deceased is not worth reliance.

18. So far as the other circumstance of memorandum and seizure is concerned, memorandum of accused Ghurau Das (Ex.P/11) led to recovery of his full pant and shirt worn at the time of incident vide Ex.P/12 and likewise, on the memorandum of accused Rambharos (Ex.P/13), one *Khukhri* (knife like weapon), his clothes worn at the time of incident and one motorcycle Hero Honda Splendor Plus bearing No. CG 15 CK 0614 were seized vide Ex.P/14. However, as per FSL report Ex.P/26, though blood was found on Article B & C (full pant and shirt of appellant Ghurau Das) and Article F (*Khukhri*) but origin of the blood so found on these Articles could not be determined due to its disintegration. As such, the said circumstance has also not been proved by the prosecution to the hilt so as to establish complicity of the appellants in the crime in question.

From the record it is also noticed that the articles seized pursuant to the memorandum statements of the accused were neither produced before the Court nor were marked as Articles, which adversely affects its evidentiary value.

19. As regards the motive, though as per evidence of PW-1 Smt. Ahilya Bhagat (wife of the deceased), PW-2 Kendi Bai (sister of the deceased) and PW-3 Parvati, there was old land related dispute between the accused persons and the deceased family, but it is a well settled principle of law that mere availability of motive with the accused

is not sufficient to hold him guilty in absence of any cogent and trustworthy corroboratory piece of evidence proving his involvement in the crime because motive is a double-edged weapon as it may be the cause of a crime as well as the reason for false implication.

20. Thus considering the overall facts and circumstances of the case in light of above settled legal position governing the cases of circumstantial evidence, 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 appellants on the basis of circumstantial evidence of last seen, recovery of certain articles at their instance and motive, beyond all reasonable doubt. Though the circumstances, if taken together, raise suspicion against the appellants 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 appellants under Section 302/34 of IPC on the basis of such evidence. The appellants deserve to be acquitted of the said charge by extending them benefit of doubt.

21. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charge under Section 302/34 of IPC by extending them benefit of doubt.

The appellants are reported to be in jail, therefore, they are directed to be released forthwith on each of them furnishing a personal bond for a sum of Rs.25,000/- with two equivalent sureties to the satisfaction of the trial Court in view of provisions of Section 437A of CrPC for their appearance before the higher Court as and when

required. These bail bonds shall be in force for a period of six months from today.

Sd/

(Prashant Kumar Mishra)
Judge

Sd/

(Gautam Chourdiya)
Judge

Khan