

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 880 of 2013

Ramasheesh S/o Sudarshan Yadav Aged About 36 Years R/o. Vill. Amarpura,
P.S. Mau, Rev. and Civil Distt. Mau U.P., Uttar Pradesh

---- Appellant

Versus

State Of Chhattisgarh Through P.S. Pali, District Korba C.G., Chhattisgarh

---- Respondent

For Appellant : Shri Manoj Paranjpe and Shri Vaibhav Goverdhan,
Advocates

For State : Shri Anand Verma, Dy. Govt. Advocate

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment On Board

18/04/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 29th July 2013 passed by learned Sessions Judge, Katghora, Korba whereby and whereunder the appellant has been held guilty of commission of offence punishable under Section 302 read with Section 34 IPC and sentenced to undergo life imprisonment with fine of Rs.1000/- and in default of payment of fine, additional RI for 6 months.
2. The prosecution story, as unfolded from the records of the case is that the dead body of one Anil Singh was found on the road. A morgue intimation in Ex.P-6 was recorded in the police station at the instance of one Murli Kumar, in which, it was recorded that his cousin Anil Singh (deceased) had proceeded towards Monet Factory, Raipur on 21.9.2011 along with his driver- Ramasheesh, the appellant, but did not return and on 28.9.2011, one Anand informed that the loaded truck was found by the side of the

road near Bheemsenia forest. When he reached at the spot, dead body of Anil was found. On the basis of morgue intimation, the police proceeded to spot and inquest over dead body was prepared on 29.9.2011 in Ex.P-8 in the presence of witnesses. The dead body was sent for postmortem and the postmortem report revealed number of injuries and according to doctor, cause of death was injury and it appeared to be homicidal in nature. FIR in Ex.P-22 was also recorded after about 6 days of the incident against unknown persons. During investigation, needle of suspicion pointed towards the appellant, helper-Akhilesh and Virendra who was the tenant of the deceased. All the three accused were arrested. Investigation eventually resulted in filing of charge sheet against the appellant. Charges were framed against all the three accused on the allegation that the accused killed the deceased and caused disappearance of the evidence and allegation of conspiracy was also made.

Records shows that during pendency of the trial, one of the accused Virendra Ram absconded.

3. In order to prove its case, the prosecution mainly came out with circumstantial evidence. The prosecution evidence was that the appellant-Ramasheesh was employed as Driver to drive the truck owned by the deceased Anil Singh. He had a grievance with regard to non-payment of salary for certain months. He was last seen with the deceased in the loaded truck, the dead body of Anil was found near the truck and the appellant was absconding until arrested. Learned trial Court relied upon the aforesaid circumstances based on evidence led by the prosecution and convicted the appellant for the offence alleged. During the pendency of this appeal, co-accused Akhilesh died.
4. Learned counsel for the appellant would argue that the entire case of the prosecution is based only on circumstantial evidence and nobody had seen the incident. He would argue that the conviction of the appellant rests on unreliable and untrustworthy evidence of last seen. According to him, except this, there is no other incriminating circumstance to involve the appellant in alleged commission of offence. He would further argue that there is no specific and clinching evidence of any strong motive as to why the appellant would kill his own employer. Learned counsel for the

appellant would argue that the evidence of last seen as deposed by Dhananjay Paswan (PW5) is extremely doubtful because his case diary statement recorded under Section 161 Cr.P.C., which formed a part of the record, even though, not used for the purpose of any contradiction or omission, may be taken into consideration, which shows that this witness had not stated regarding last seen in his diary statement and for the first time, the statement was made by him in the Court. It is next argued that the dead body was recovered after about 8-9 days of the last seen, as according to Dhananjay Paswan (PW5), the deceased was last seen with the present appellant and other co-accused on 21.9.2011, whereas dead body was seen for the first time on 28.9.2011. Thus, there was long gap. Learned counsel for the appellant would further submit that only on the basis that appellant happened to be the Driver of the vehicle, employed by the deceased, the entire case of the prosecution has been built up against him. It is argued that there is no specific evidence led by the prosecution that from 21st September 2011 onwards, the present appellant was not seen or absconding. Unless the prosecution proves this conduct of the appellant, it could not be used as an incriminating circumstantial evidence against him. Further submission is that the prosecution could not come out with any other clinching evidence to connect the appellant, therefore, on the set of said circumstantial evidence, conviction of the appellant was not sustainable. According to learned counsel for the appellant, even if it is held that there is evidence of last seen, as no other circumstance of incriminating nature has been firmly established against the present appellant, last seen evidence, particularly when the dead body was recovered after 8-9 days, could not be made a basis to convict the appellant. In order to doubt the prosecution story, learned counsel for the appellant also highlighted that if there was suspicion against the present appellant and other accused, as is reflected in the inquest proceedings and the diary statement of the prosecution witnesses, non-mentioning of the appellant's name as one of the accused while lodging FIR after about 5-6 days, also renders the prosecution story doubtful. In support of his submissions, learned counsel for the appellant placed reliance upon **Tahsildar Singh and Anr. Vs. State of U.P.** (AIR 1959 SC 1012), **Anjan Kumar Sarma and Ors. Vs. State of Assam** (AIR 2017 SC 2617), **Bharat**

Vs. State of Madhya Pradesh (1992 CRLJ 3218), **Ramdayal Vs. State of Madhya Pradesh** (1993 MPLJ 532), **Chunnilal Vs. State of Madhya Pradesh**, (2015) ILR (MP) 1048 and **Shankar Lal Vs. State of M.P.** 1997 (II) M.P. Weekly Note 146.

5. Per contra, learned counsel for the State would submit that even though there is no direct evidence, the prosecution has come out with clinching evidence of incriminating nature which only leads towards the inference of guilt of the appellant. He would argue that the appellant was employed as Driver of the truck owned by the deceased. There is evidence led by the prosecution to prove that the appellant had a grievance against the deceased because of non-payment of salary for several months. He would further argue that the evidence of Dhananjay Paswan (PW5) has remained uncontroverted in his cross-examination that he had seen the deceased in the truck going along with present appellant and other co-accused. It is next argued that the diary statement of Dhananjay Paswan (PW5) could not be made a basis to impeach the credibility of uncontroverted testimony of Dhananjay Paswan (PW5) particularly when no attempt was made to contradict the statement of this witness by confronting him with his earlier diary statement. Next submission of learned State counsel is that once the presence of the appellant along with deceased is proved particularly when he was the Driver of the vehicle, the dead body of Anil found near the truck and the appellant not seen around nor came to inform anybody including wife of the deceased, until arrested by the police, establishes his blameworthy conduct that he remained absconded. According to him, if all these circumstances are put together, they form a complete chain. Therefore, the impugned judgment of conviction does not warrant any interference.
6. We have heard learned counsel for the parties and perused the records.
7. The prosecution case is based on circumstantial evidence as there is no direct evidence of the deceased having been assaulted or murdered by present appellant. As one of the co-accused Virendra Ram has remained absconding and Akhilesh died during pendency of appeal, while referring to material on record, we shall be referring to the evidence which is relevant in so far as the present appellant- Ramasheesh is concerned.

8. We need not burden our decision with plethora of decisions to express the settled legal position with regard to proof of guilt where the entire case of the prosecution is based only on circumstantial evidence. The principles which have been succinctly laid down in various decisions, however, need to be stated. One of the earlier judgments of the Supreme Court, in this regard is rendered in the case of **Sharad Birdhichand Sarda v. State of Maharashtra**, AIR 1984 SC 1622, wherein Hon'ble the Supreme Court, delineated the principles and laid down as to what is required to be proved by the prosecution to base conviction on circumstantial evidence. In para 152 of the said judgment, it was held as below -

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahebrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

‘certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and must be’ is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of 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."

9. The aforesaid principles known as five golden principles, have held the field since long and, therefore, the entire case of the prosecution has to be tested on the aforesaid principles.

10. We shall first look into the evidence with regard to death of the deceased to find out whether it was homicidal in nature. In this regard, the evidence of Dr. C.L. Ratre (PW8), who conducted postmortem, leaves no manner of doubt that Anil died homicidal death because of number of injuries sustained by him. Dr. C.L. Ratre (PW8) deposed that when the dead body was brought before him, it was in decomposed condition. Doctor, however, noted certain injury on the ribs which was in the middle of the chest. He found that there was sharp fracture on second and third ribs. According to him, the injuries were caused by hard and sharp object and antemortem in nature. Head was mutilated. Duration of injury was 6-10 days. It was on this basis that the doctor came to an opinion that cause of death was excessive bleeding because of injury sustained on vital parts and in fact, head of the deceased was mutilated. We could not find anything elicited from his cross-examination which should lead to any doubt with regards to opinion as regards the injury sustained by the deceased.

11. As to whether, the appellant had murdered the deceased, is to be decided only on the basis of circumstantial evidence.

12. The appellant was employed as Driver to drive the truck owned by deceased Anil Singh which is proved from the evidence of Kumkum Singh

(PW4) wife of the deceased.

13. According to the evidence of Kumkum Singh (PW4) wife of the deceased, Ramasheesh, the appellant, was not paid his salary for about 2-3 months. As far as the aforesaid evidence of appellant being Driver of the deceased and that he was not paid his salary for couple of months is concerned, it has remained uncontroverted, though, it has come in the cross-examination that at times, the deceased also used to drive his vehicle.
14. The most incriminating circumstance on which the conviction of the appellant rests is that of last seen. Before dealing with evidence, we notice that Kumkum Singh (PW4), wife of the appellant, has deposed that on 21.9.2011, her husband left for Raipur in the truck and, thereafter, he did not return and she received information only on 29.9.2011 that her husband was murdered. From the evidence of wife, it is seen that the deceased left for Raipur in his truck. In her evidence, she does not talk of presence of appellant going along with the deceased.
15. The evidence of last seen rests mainly on what has been deposed by Dhananjay Paswan (PW5) before the Court. Dhananjay Paswan (PW5) has deposed in his evidence that on 21.9.2011, a trailer No.CG-04-JA-4872 loaded with coal was being taken to Monet factory, Raipur and on Sirki turning, he met with Anil (the deceased), Virendra, Ramasheesh and Akhilesh. Anil informed him that the vehicle is loaded for being taken to Monet factory. This witness states that he himself was driving a truck which belonged to one U.K. Singh. He further deposes that on 29.9.2011, he was informed by Anand Choksey that Anil's vehicle is found standing near Bhimseni forest and dead body of Anil is also lying at some distance. The matter was then informed to younger brother of Anil. This witness states that during enquiry, he had informed the police, the names of Akhilesh, Ramasheesh and Virendra. He states that some quarrel had taken amongst them. He is also a witness of inquest and proved his signature in the inquest proceedings (Ex.P-8). He has been subjected to cross-examination. It has been stated in his cross-examination that on the basis of information given by Anil he was able to tell before the police that vehicle was being taken to Monet factory. He states that he was residing as tenant in the house of the deceased and one of the co-accused Virendra (absconding)

was also residing as tenant. He admits that as Akhilesh (dead co-accused), and Ramasheesh (the appellant) and Virendra all belonged to district Mau, Uttar Pradesh, they used to frequently come to the house of Virendra. He further deposes that he learnt regarding quarrel amongst accused from outside. According to evidence of this witness Dhananjay Paswan (PW5), who is known to all the accused as also the deceased, he is one of the tenant of the deceased, he met with deceased and the present appellant on 21st September 2011 near Sirki turning when Anil was taking loaded truck to Monet factory. Though, this evidence of Dhanjay Paswan (PW5) has not been controverted in his cross-examination, the submission of learned counsel for the appellant is that in case diary statement recorded under Section 161 Cr.P.C. of this witness, there is no mention of he being the witness of last seen, therefore, the evidence of this witness becomes doubtful.

We find that this witness was not confronted with any formal statement much less any case diary statement.

Some of the decisions have been relied upon by learned counsel for the appellant to buttress his submission that even if 161 Cr.P.C. statement was not used for the purpose of confronting the witness, the same could always be taken into consideration to assess the evidentiary value and to impeach credibility of this witness.

16. No doubt, in view of decision of the Supreme Court in the case of **Tahsildar Singh** (supra), provision contained in Section 162 Cr.P.C. is conceived in an attempt to find a via media, namely, while it enacts an absolute bar against the statement made before a police-officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness, as is reflected from the provision contained in Section 161 Cr.P.C. as also from the aforesaid decision of the Supreme Court, this could be done only in the manner provided under Section 145 Cr.P.C. of the Evidence Act by drawing witness's attention to parts of the statement intended for contradiction. This is clear from the provision contained in Section 162 Cr.P.C., which is extracted below:-

"162. Statements to police not to be signed: Use of statements in evidence. (1) No statement made by any

person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

We would also notice that the explanation attached to provision makes it clear that an omission could also be treated as contradiction, as below :

“Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a

question of fact.”

17. In the case of **Tahsildar Singh** (supra), the Supreme Court held that though the law enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 the Evidence Act by drawing his attention to parts of the statement intended for contradiction. In the present case, we find that witness was not confronted with his case diary statement.
18. Even if we except the argument that in order to impeach the credibility, the witness was not required to be confronted with case diary statement, nothing prevented from giving suggestion to the witness that he had not seen the deceased and the appellant together. We find that there is absolutely no suggestion given to this witness that he had not seen the deceased and the appellant together going in a loaded truck on 21.9.2011. Therefore, even if we except on principle, the submission of learned counsel for the appellant which is loaded with number of decisions cited before us, it is difficult for us to ignore and discredit the testimony of prosecution witness Dhananjay Paswan (PW5) only on the basis of case diary statement. We also find that this witness Dhananjay Paswan (PW5) is known to all the parties and, in fact, he was one of the tenants of the deceased. There is no reason why this person should speak lie against anybody including the appellant.
19. There is no evidence on record to prove that after 21st September 2011, the deceased was seen somewhere else. The postmortem report and the evidence of doctor also prove that the deceased died between 6-10 days before the date of postmortem which is somewhere between 19th to 24th September 2011. 19th, 20th and 21st are completely ruled out because the deceased was seen alive on 21st September 2011. That means, the death had taken place on or after 21st September 2011.
20. In the present case, we also notice the conduct of the appellant. It is proved that he was the Driver of the vehicle and was seen along with the deceased on 21st September 2011 when the vehicle was being taken to Monet factory, Raipur. The appellant has not come out with any

explanation as to when and how he parted with the company of the deceased. We must hasten to add here that it is not a case that the appellant and the deceased just met together and travelled together. It is a case where appellant happens to be the Driver of the vehicle of the deceased and both of them were last seen together. Moreover, it is a case where the evidence shows that the dead body was found near the vehicle. It is not a case that the place where dead body was found was so dissociated with the location of the vehicle that it would create doubt whether the deceased was at all in his vehicle at the time of commission of offence of murder. In the present case, it is vividly clear, dead body was found near the truck itself.

21. There are at least two witnesses of the prosecution. Rajkumar Singh (PW1) and Arvind Yadav (PW2) who have stated that after the incident, the appellant absconded. In examination under Section 313 Cr.P.C., when this incriminating evidence was put forth to seek appellant's explanation, the appellant could not explain except simple denial of the evidence. Even if we accept the submission of learned counsel for the appellant that as far as Arvind Yadav (PW2) is concerned, he is a student and, therefore, how would he know that the appellant was absconding, but first witness Rajkumar Singh (PW1) is known to the parties and he has clearly stated that appellant was not traceable. We also find that when inquest was prepared on 29th November 2011, at that stage, itself it was noticed that the present appellant and other co-accused Akhilesh and Virendra all were absconding. Non-explanation of this conduct in the circumstances of the case where the dead body is found near the vehicle and the appellant was last seen going along with the deceased, he being the Driver of his truck and, thereafter, suddenly gone missing clearly points towards the guilt of the appellant.
22. The submission of learned counsel for the appellant has been that as FIR was lodged 5-6 days after inquest, yet in the FIR, appellant was not named, in our opinion, does not render the prosecution story doubtful because by that time, the appellant was not arrested and only a suspicion was raised that the appellant was the Driver, last seen with the deceased and thereafter, he was not traceable. Therefore, on this count, prosecution case cannot be doubted.

23. Having considered all the circumstances of the case we come to the conclusion that in the present case, the prosecution has been able to establish beyond doubt that:

- (1) the appellant was employed and working as Driver of the truck owned by deceased -Anil Singh.
- (2) the deceased was last seen with the appellant in his truck on 21.9.2011 and it was informed that truck was being taken to Monet factory, Raipur.
- (3) After 21.9.2011, the deceased was not seen.
- (4) On 29.9.2011, dead body of Anil was found near his truck.
- (5) Anil Singh died homicidal death because of injury found on his body.
- (6) The appellant's conduct is blameworthy. He did not inform anybody regarding whereabouts and absconded until he was arrested.
- (7) the appellant had a grievance on account of non – payment of salary for couple of months.

Therefore, in our opinion, complete chain is formed on the basis of the aforesaid established circumstances, which lead us to draw an inference that in all probability, the appellant must have killed the deceased.

24. Therefore, we are not inclined to interfere with the judgment of conviction and order of sentence. The appeal fails and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge