

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 408 of 2014

1. Chandan Singh Rathiya S/o Nohar Sai Rathiya Aged About 45 Years, Occupation Agriculture, R/o Dangbeera, P.S. Lailunga, Distt. Raigarh, Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh, Through P.S.Lailunga, Distt. Raigarh, Chhattisgarh

---- Respondent

For Appellant

Mr. Gurudev I. Sharan, Advocate

For Respondent/State

Ms. Madhu Nisha Singh, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.Judgment on BoardByPrashant Kumar Mishra, J.3-3-2020

1. Appellant would call in question his conviction under Section 302 of the Indian Penal Code (for short 'the IPC') and sentence of life imprisonment by the Sessions Judge, Raigarh, in ST No.173/2011.
2. The appellant was sent for trial for committing murder of Sulturam Rathiya (since deceased) between 12.00 noon to 2.00 pm on 5-7-2011 pursuant to a dispute relating to grazing of groundnut crop belonging to the appellant by the cattle (Oxen) belonging to the deceased. The First Information

Report (FIR) (Ex.P/1) was lodged by Sukhram (PW-1), who is the son of the deceased, informing the police that his father had gone towards the agricultural field of the appellant for grazing the cattle, however, the Oxen returned to house at 1.45 pm, but the deceased did not return, therefore, his mother Mankunwar @ Teejmati (PW-3) went towards the agricultural field to search for the deceased and found the deceased lying dead on the road near Rohadargaon agricultural field. He had sustained injuries over his neck by sharp weapon. Sukhram (PW-1) also lodged merger intimation vide Ex.P/2 having similar contents, as mentioned in the FIR (Ex.P/1). The inquest (Ex.P/4) was prepared and the memorandum statement of the appellant was recorded on 7-7-2011 vide Ex.P/6 pursuant to which bloodstained *tabbal* was seized from his possession vide Ex.P/7. Bloodstained *lungi* of the appellant was recovered vide Ex.P/9 and the towel (*gamcha*) of the deceased was recovered vide Ex.P/10. The map and khasra papers of the land where the dead body was found have been proved vide Ex.P/12 & Ex.P/13. Postmortem was carried out by Dr. Yogeshwar Singh Saratiya (PW-11) and submitted his report vide Ex.P/14 opining that the cause of death is due to acute massive hemorrhage with spinal shock from chopped injury over neck by hard and sharp object.; antemortem & homicidal in nature; and death within 24-30 hours from the time conducting the postmortem. The appellant was also sent for medical examination and his MLC was conducted vide Ex.P/15 by Dr. Yogeshwar Singh Saratiya (PW-11), however, no injuries were found on the body of the appellant. The seized articles were sent for forensic examination for confirming presence of blood over the seized articles, but the FSL report is not filed before the trial

Court.

3. After completing necessary investigation including recording the diary statements of the witnesses; charge sheet was filed; and the appellant was charged for committing offence under Section 302 of the IPC.
4. In course of trial the prosecution examined 12 witnesses to bring home the charges. The appellant abjured the guilt and pleaded innocence, but did not examine any defence witness. Upon appreciation of evidence, the trial Court convicted & sentenced the appellant as mentioned above.
5. Learned counsel appearing for the appellant would submit that there being no eye witness to the crime and the circumstantial evidence being not of conclusive nature proving the guilt of the appellant, the impugned conviction and sentence deserve to be set aside.
6. Learned counsel appearing for the State, *per contra*, would support the impugned judgment.
7. In absence of eyewitness account of the incident case of the prosecution is based on circumstantial evidence in form of evidence of last seen together and recovery of bloodstained *tabbal* and clothes. This Court shall, therefore, examine as to whether the circumstantial evidence produced by the prosecution is of such nature, which excludes the possibility of any other person committing the crime and concludes that it was the appellant alone who had committed the murder.
8. Before proceeding further, it would be apt to bear in mind the principle as to when a conviction on the basis of

circumstantial evidence can be recorded against the accused.

9. In *Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116, the Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-153 as under:

“153. 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.”
10. In a recent judgment in *Nathiya Vs. State represented by Inspector of Police, Bagayam Police Station, Vellore*, (2016) 10 SCC 298, the Supreme Court has reiterated the above principles.
11. We shall now examine the evidence available on record to assess as to whether it falls within the prescribed parameters laid down by the Supreme Court or not to sustain conviction on the basis of circumstantial evidence.
12. Sukhram (PW-1), son of the deceased, lodged the FIR (Ex.P/1) and merged intimation (Ex.P/2). He has not seen the occurrence nor is a witness to the last seen together. Manglu (PW-2) is the younger brother of the deceased. He is also not throwing any light about the incident or about the last seen together.

13. Mankunwar @ Teejmati (PW-3), Sukhmati Rathiya (PW-7) & Maniram Rathiya (PW-8) are the witnesses who had allegedly seen the appellant and the deceased together just before the incident.
14. In fact, Mankunwar @ Teejmati (PW-3), wife of the deceased, claims to have seen the occurrence, however, in her case diary statement she did not inform the police about this fact. Sukhmati Rathiya (PW-7) had seen Chandan Singh (appellant herein), Matwar (father of the deceased) & Maniram (PW-8) under a *mahua* tree at 12.00 noon. Mankunwar @ Teejmati (PW-3) did not reveal about the incident to this witness. Sukhmati Rathiya (PW-7) has been declared hostile. In her cross-examination, she admits that she had seen the appellant, deceased and Maniram (PW-8) together under a *mahua* tree. Thus, the appellant and the deceased were not seen alone, but either Matwar (father of the deceased) or Maniram (PW-8) was also present with them. Therefore, it is not a case of seeing only the appellant and the deceased together for the last time before the incident.
15. Maniram Rathiya (PW-8) speaks about seeing the appellant and deceased together near *tendu* tree, however, he claims to be returning along with Sukhmati Rathiya (PW-7) after bathing in the village pond. Sukumati (PW-7) says that she was coming alone from the village pond and had seen the appellant, deceased and Maniram (PW-8) together. Maniram (PW-8) also says that after some time he proceeded towards his house and the appellant & deceased went towards the village pond.

16. In the map (Ex.P/18) the village pond is on the rear side of the agricultural fields whereas the dead body was found over the road, which is the place where the appellant, deceased & Maniram (PW-8) were sitting together. Thus, either Maniram (PW-8) had seen the occurrence, but is not making such statement or if he had seen the deceased & appellant going towards pond then it is difficult to appreciate as to how the dead body was found over the road and not near the pond.
17. Interestingly, Mankunwar @ Teejmati (PW-3) has informed the police in her diary statement (Ex.D/1) that they had doubts over the appellant as well as Maniram (PW-8) being responsible for committing murder of the deceased, but later on Maniram (PW-8) informed that he had returned to his house.
18. The statements of the witnesses, who claim to have last seen the deceased & appellant together, is not inspiring confidence as there are contradictions in their statements. Even otherwise conviction only on the basis of evidence of last seen together is not sustained because the evidence of last seen is a week kind of evidence. To base conviction on such evidence there has to be necessary corroboration in form of presence of blood of the same origin over the weapon or clothes or any other article recovered from the accused, but in the case at hand there is no FSL report. It is also to be seen that in such cases where conviction is to be based on circumstantial evidence motive plays very important role, but in the present case the alleged motive is very trivial. As per prosecution the murder happened on a dispute relating to grazing of groundnut crop of the appellant by the oxen belonging to the

deceased. There is no strong previous animosity, which might have propelled or compelled the appellant to commit murder of the deceased, therefore, conviction only on the basis of evidence of last seen together is not justifiable.

19. In view of the above, we are of the view that the guilt of the appellant has not been proved by the prosecution beyond reasonable doubt. Therefore, the trial Court has committed serious illegality while convicting the appellant herein.
20. Accordingly, conviction and sentence imposed on the appellant under Section 302 of the IPC are hereby set aside and he is acquitted of the said charge. The appellant is in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of six months as required under the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.
21. As a sequel, the instant criminal appeal is allowed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri