

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-615-MA-2017 (O&M)

Date of reserve:02.02.2023

Date of Pronouncement: 10.02.2023

Ranjit Kaur

...Appellant.

Versus

State of Haryana and others

...Respondents.

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Argued by: Ms. Deipa Singh, Advocate for the appellant.

Mr. Arun Beniwal, DAG, Haryana.

Sukhvinder Kaur, J.

Appellant-Ranjit Kaur has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 17.08.2016, passed by learned Sessions Judge, Yamuna Nagar at Jagadhri, vide which respondents No.2 and 3 have been acquitted.

Alongwith the instant application, an application seeking condonation of delay of 107 days has also been moved.

The factual scenario, as highlighted by the prosecution, is that on 16.11.2015, an information was received at Police Station, Bilaspur, that dead body of some unknown person was lying at *Kacha Passage* in front of Krishna Nand Dera, Kapal Mochan. The police party on reaching there, found that dead body was lying at *Kacha Passage* leading to the office of Ekta Sahayata Samiti. A shirt, a trousers, a Parna (a cloth for wrapping around head) a single shoe and a bunch of hair were also lying near the dead body, which were converted into separate parcels. Blood stained earth was

lifted from the spot and was also converted into sealed parcel. The other shoe was also lying nearby, which was also converted into sealed parcel. Photographs of the dead body with surroundings were taken. Inquest report was prepared. The dead body was shifted to Mortuary of Civil Hospital, Jagadhri, where it was identified to be that of Jaswinder Singh @ Sinda, by his son Balkar Singh and brother Jasbir Singh. Their statements were recorded wherein they stated that on 15.11.2015, in the evening, Kamal Singh and Tony Kumar (the accused in this case) had taken the deceased from his house and thereafter, the deceased had not come back and it was suspected that the deceased had been killed by them. On 20.11.2015, both the accused were produced before the Investigating Officer by their respective fathers. On interrogation, they suffered disclosure statements Ex. PL and Ex.PM, but no recovery was effected pursuant to these statements. Then accused suffered again disclosure statements Ex.PN and Ex.PO on 22.11.2015, pursuant to which they got recovered an iron pipe and an axe and the blood stained clothes from the kitchen of Ekta Sahayata Samiti, Kapal Mochan which were also converted into sealed parcels. Both the accused also demarcated the place of occurrence. After completion of investigation, challan was presented in the Court against both the accused.

After finding a prima facie case against the accused, they were charge-sheeted for the offence under Section 302 IPC read with Section 34 IPC, to which they did not plead guilty and claimed trial.

After concluding the trial, the trial Court acquitted the accused, namely, Kamal Singh and Tony Kumar.

Aggrieved by the said decision, appellant-Ranjit Kaur widow of Jaswinder Singh @ Sinda has preferred the present application for seeking

leave, to file an appeal against acquittal of both the accused.

We have heard Ms. Deipa Singh, Advocate for the appellant and Mr. Arun Beniwal, Deputy Advocate General, Haryana, and have also perused the record.

Learned counsel for the appellant has vehemently contended that the trial court, while acquitting respondents No.2 and 3 has held that PW12-Balkar Singh in his cross-examination has stated that on 15.11.2015, respondents No.2 and 3 had visited their house and took away alongwith them his father and thereafter, his father did not come back. She has contended that as deceased was not only last seen with the accused persons, rather he was taken away alongwith them by the accused persons, then it is a strong circumstance that the murder of the deceased was committed by the accused persons. She has contended that though there is no direct evidence in the present case yet the chain of circumstantial evidence is complete to connect the accused with the crime. She has argued that this fact has also not been considered by the trial Court that recovery of weapons of offence and blood stained clothes were effected on the basis of disclosure statements suffered by the accused persons, which also indicates that the offence in the present case was committed by the accused persons. There is also scientific evidence on record to connect the accused with the crime in the present case. The recovered articles were sent to the FSL and 'B' blood group was found on the recovered articles, which matches with the 'B' blood group of deceased-Jaswinder Singh @ Sinda. Trial Court has also failed to consider the fact that PW4- Dr. Priya, Medical Officer, General Hospital, Jagadhri, has specifically stated that possibility of injuries being caused with reverse blow of axe and iron pipe could not be ruled out. She has

contended that thus the chain of circumstantial evidence is complete in the present case and the evidence on record is sufficient for conviction of both the accused persons and has prayed that appellant may be granted leave to appeal against the judgment of acquittal qua respondents No.2 and 3.

It is well settled proposition of law that judgments of acquittal should not be interfered with lightly and courts have to be extremely careful while hearing such appeals. The Appellate Court is to interfere with the order of acquittal only, when there is perversity of facts and law.

This is not a case of direct evidence as there is no such witness in this case who had witnessed the alleged occurrence. There is no doubt that conviction can be based solely on the circumstantial evidence, but it should be tested by the touch stone of law relating to the circumstantial evidence. The prosecution is to prove that the chain of the circumstantial evidence is complete and there should be no gap left in the chain of evidence.

In ***Padala Veera Reddy Vs. State of A.P. and others (AIR 1990 Supreme Court 79)***, it was laid down by the Hon'ble Apex Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,
- (2) those circumstances. should be of a definite tendency unerringly pointing towards guilt of the accused.
- (3) 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
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any. other

hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

The prosecution has relied upon the last seen evidence in the present case. In this context, prosecution has examined PW12-Balkar Singh, who has stated that on 15.11.2015 the accused had come to their house and took alongwith them his father and thereafter, the deceased did not come back home. PW12 has admitted in his cross-examination that he had seen the accused only once prior to the incident when they were wandering in Bilaspur and he did not know the accused personally or by name. So it remains a mystery that when PW12 had met them only once and did not know them by name, then how he came to know about their names and how he could name all the accused persons in the FIR.

It has been held by the Apex Court in **Bodh Raj @ Bodha and others Vs. State of J. and K., 2002 (8) SCC 45;** and **Ramreddy Rajesh Khanna Reddy and another Vs. State of Andhra Pradesh, 2006(10) SCC, 172** that the last seen theory comes into play where the time gap between the point of time when the accused and 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 author of crime becomes impossible. In the absence of any positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

Thus crux of the last seen theory is that the last seen theory comes in to play where the time gap between the point of time when the accused and 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 author of crime becomes impossible.

Now adverting to the present case, PW12 has stated that on 15.11.2015 the accused had come to their house and took alongwith them, his father Jaswinder Singh @ Sinda. Trial Court has rightly observed that even it has not been mentioned whether it was the morning time or the evening time. As per the prosecution version, the dead body was spotted on the next day i.e. 16.11.2015 at 11.30 A.M. So the trial Court has rightly held that it is difficult to establish the gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead. Thus the possibility of any other person meeting the deceased in the intervening period can not be ruled out. It was the bounden duty of the prosecution to lead such an evidence that likelihood of any person other than the accused being the author of the crime was ruled out but such nature of evidence is missing in the present case.

It has been held by the Apex Court in *Sahadevan and another Vs. State of Tamil Nadu (SC) :Law Finder DOC Id # 356004* that “with the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and deceased were last seen together, it may raise suspicion, but it is not independently sufficient to lead to a finding of guilt.”

So, keeping in view the ratio of law laid down in the case supra the other circumstantial evidence relied upon by the prosecution is also to be scrutinized. The other circumstantial evidence relied upon by the prosecution is that the weapons of offence and blood stained clothes were

recovered on the basis of disclosure statements suffered by the accused persons. Admittedly, no independent witness was joined at the time of the said alleged recoveries. Both the accused persons were produced by their respective fathers on 20.11.2015 and they suffered the disclosure statements Ex.PL and Ex.PM. on 21.11.2015, before PW8-SI Joginder Singh. They stated in their disclosure statements that they had concealed their clothes and the weapons in the cattle shed of their uncle, but no recovery pursuant to these disclosure statements was effected. At that time, SI Raj Phul, was also one of the members of the police party and a witness. On 22.11.2015, the investigation was handed over to said SI Raj Phul, who recorded the fresh disclosure statements of the accused Ex.PN and Ex.PO, in the presence of PW13-EHC Vijay Kumar. This time, the accused persons stated in their disclosure statements that they had concealed the weapons and the clothes in the kitchen of Ekta Sahayata Samiti office. Thereafter, SI Raj Phul is alleged to have effected recoveries vide memos Ex.PR and Ex.PT respectively. As per the site plan Ex.PV, the axe and iron rod were recovered from a corner in the kitchen, while the clothes were recovered from behind the door lying under the gunny bags containing cattle feed.

Trial Court has rightly observed that it is not the case of the prosecution that the spot from where the weapons were recovered was not visible to anybody. Even from the site plan Ex.PV, it appears that point 'A' and point 'C' respectively, from where the weapons were allegedly recovered, were visible to an open eye, so, it could have been noticed by anybody entering the kitchen. It is also not the case of the prosecution that office of the Ekta Sahayata Samiti remained closed from 15.11.2015 to 22.11.2015 when the alleged recoveries were effected. It is also not the case

of the prosecution that nobody had entered the kitchen during the said period. PW2-Karan Singh, who was working in the office of Ekta Sahayata Samiti has stated that he used to remain on duty in the office during day and night. But even he has not stated that he was not present in the office from 15.11.2015 to 22.11.2015, meaning thereby, that during this period the office was open and PW2 was also present there. So it does not appeal to reason, that during this period, the accused persons could have concealed the weapons and clothes in the kitchen of Ekata Sahayata Samiti office and these were not seen by anybody during all this period.

Trial Court has further rightly observed that the alleged occurrence took place on 15.11.2015 and the accused surrendered on 20.11.2015. So it seems quite improbable, that the above said intervening period was not used by the accused persons to destroy the evidence against them and rather they preferred to leave the weapons and the clothes in the kitchen of Ekta Sahayata Samiti, where they could be easily found and were visible to the open eye. Thus, the alleged recovery of the weapons of offence and the clothes alleged by the prosecution becomes highly doubtful.

Trial Court has further rightly held that if blood group of the deceased was 'B' and the weapons and clothes of the accused were also found stained with the same blood group, then it cannot be taken as a incriminating circumstance, as millions of people are having the 'B' blood group.

The Investigating Officer has stated that clothes of deceased were found lying on the spot and were sealed there and then. But PW12-Balkar Singh has stated that the clothes were shown to him and his uncle in the Police Station by SHO, which falsifies this version of the Investigating

Officer that the clothes had been sealed at the spot. Moreover, PW12 was shown the pant Ex.MO-7, who stated that it was not belonging to his father and his father was wearing blue coloured jean, which was shown to him in the Police Station. There is a specific Court observation that the pant Ex.MO-7 was not a blue jean, which leads to the inference that the case property was also tampered with.

So, taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being last seen, the chain of the circumstantial evidence can not be said to be complete in the present case, for convicting the accused persons and as such they have been rightly acquitted by the trial Court.

In view of the above, no case is made out for grant of leave to appeal against acquittal of respondents No.2 and 3 and the same is declined. Moreover, there is inordinate delay of 107 days in filing the application for leave to appeal. Though an application (CRM-9726-2017) has been moved seeking condonation of delay but since no ground is made out to condone the said delay, the application for leave to appeal without having any merits as well as the application for condonation of delay stand dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

10.02.2023

Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No