

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1112 of 2018**

Arising Out of PS. Case No.-151 Year-2014 Thana- BATHNAHA District- Sitamarhi

Santosh Chaudhary, Son of Late Bachha Chaudhary, Resident of Village Rajwara (Mushaharnia), P.S. Sonbarsa, District Sitamarhi.

... .. Appellant

Versus

1. The State of Bihar.
2. Rajendra Raut, Age 64 years, Son of Late Mantun Raut, Resident of Village Lachhua Surgahia, P.S. Bathanaha, District Sitamarhi.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Mr. Ashok Kumar Jha, Advocate Mr. Ranjan Kumar Jha, Advocate Mr. Sanjeev Kumar @ Deepak
For the State	:	Mr. Binay Krishna, Special P.P.
For Res. No.2	:	None

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 25-09-2023

This appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) against the judgment of conviction dated 18.07.2018 and order of sentence dated 23.07.2018, passed by learned 1st Additional Sessions Judge-cum-Special Judge (S.C./S.T. Act), Sitamarhi in Sessions Trial No.275 of 2015/19 of 2015, arising out of Bathnaha P.S. Case No.151 of 2014, whereby the concerned Trial Court has convicted the sole appellant Santosh Chaudhary for the offences punishable under Sections 302/34 of



the Indian Penal Code and under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as 'the SC/ST Act') and sentenced him to undergo life imprisonment under Sections 302/34 of the Indian Penal Code and further to undergo life imprisonment under Section 3(2)(v) of the SC/ST Act and also to pay a fine of Rs.5,000/- in each sections and in default of payment of fine, further to undergo simple imprisonment for six months in each offences. Both the sentences shall run concurrently.

2. The prosecution story, in brief, is as under:

On 20.05.2014 at 08:30 hours the informant gave information before the S.I. of Bathnaha Police Station stating that in the night the day before yesterday, he was taking meal on the roof of his house then he saw his son-in-law, Santosh Chaudhary (appellant) alongwith Bhola Chaudhary, Anjani Kumar Chaudhary and son of Prabhu Chaudhary were gossiping. After sometime they went away. The informant further alleged that his daughter was residing in his house with his mother for 2-3 months and Santosh Chaudhary used to visit there. On 20.05.2014, Santosh Chaudhary (appellant) came at the house of the informant at 08:00 p.m. and asked Sulekha Devi to accompany him. The mother of the informant told them



to go in the morning, but Santosh Chaudhary and Sulekha Devi proceeded from the house of the informant after taking her bag. Thereafter the son-in-law of the informant called the son of the informant at 01:17 a.m. on his mobile and told him that he has killed Sulekha Devi and asked him to bring the dead body of his sister in the morning. It is further alleged that on 21.05.2014, the informant heard *hulla* that someone killed a lady and hanged her dead body on a bamboo clump of Kapleshwar Bhagat near *Devi Asthan*. Thereafter the informant reached there with his family and identified the dead body of Sulekha Devi in hanging condition. It is further alleged that the son-in-law of the informant Santosh Chaudhary (appellant), Anjani Kumar Chaudhary, Bhola Chaudhary and son of Prabhu Chaudhary have killed Sulekha Devi.

3. After registration of the FIR, the Investigating Officer started investigation and during course of investigation, the Investigating Officer had recorded the statement of the witnesses and also collected the other material. After investigation was concluded, he filed charge-sheet against the appellant-accused before the concerned Magistrate Court. As the case was exclusively triable by Court of Sessions, the concerned Magistrate committed the same to the Sessions Court under



Section 209 of the Code where the same was registered as Sessions Trial No.275 of 2015/19 of 2015.

4. During course of trial, the prosecution has examined 5 witnesses, namely, PW1 Mukesh Raut, PW2 Rajendra Raut, PW3 Laxman Paswan, PW4 Dr. Shakeel Anjum and PW5 Ganga Kumar Soren and also produced documentary evidence. Thereafter the statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned order whereby the appellant-accused has been convicted in the manner stated above and against which the appellant has preferred the present appeal.

5. We have heard the arguments of Mr. Ajay Kumar Thakur learned counsel for the appellant, assisted by Ashok Kumar Jha and Mr. Binay Krishna, learned Special P.P. for the State. None appears on behalf of respondent no.2-original informant.

6. As the case is pending since the year 2018 and the appellant is in custody, the instant appeal is listed for hearing and the same is taken up for final hearing.

7. Learned counsel appearing for the appellant has mainly contended that there is no eye-witness to the occurrence



in question and the prosecution has simply relied upon the so called extra judicial confession given by the appellant-accused before the brother of the deceased, i.e., PW1. However, it is submitted that the Investigating Officer had not collected the CDR of the mobile numbers which are referred in the *fardbeyan* given by PW2, who is father of the deceased. It is further submitted that PW3 Laxman Paswan, who is a villager and independent witness, had not supported the case of the prosecution and he was declared hostile. Thus, the prosecution has simply placed reliance upon the deposition of two witnesses PW1 and PW2 who are brother and father of the deceased respectively. Even from the deposition of the said witnesses, it cannot be said that the appellant had committed the alleged offences. Despite this, the Trial Court has recorded the order of conviction. The prosecution has failed to complete the chain of circumstance, hence, the impugned order passed by the Trial Court be quashed and set aside.

8. Learned counsel for the appellant has placed reliance upon the various decisions rendered by the Hon'ble Supreme Court in the cases of **Anjan Kumar Sarma Vs. State of Assam**, reported in (2017) 14 SCC 359, **Ravi Vs. State of Karnataka**, reported in (2018) 16 SCC 102 and **Reena**



Hazarika Vs. State of Assam, reported in **(2019) 3 SCC 289**.

9. On the other hand, learned APP has referred the deposition of the prosecution witnesses and submitted that though there is no eye-witness to the occurrence in question, the prosecution has proved the case against the appellant-accused beyond reasonable doubt and, therefore, no error is committed by the Trial Court while passing the impugned judgment and order of conviction. He, therefore, urged that this appeal be dismissed.

10. We have considered the submissions canvassed by learned counsel appearing for the parties and we have also perused the entire evidence produced by the prosecution before the Trial Court. PW1 Mukesh Raut is the brother of the deceased. The said witness stated in his examination-in-chief that the occurrence took place on 20th May, 2014 between 08:00 p.m. in the night hours up to 01:00 a.m. At that time he was in his PHC quarter. At that time at about 01:17 hours, Santosh Chaudhary, who is appellant herein, called him on telephone and informed that his sister has been killed by him and dead body of her be taken on the next day morning. The name of the sister of the witness is Sulekha Devi. He, therefore, immediately informed to his father about the said telephonic talk. However,



during the night hours, they did not inform anybody. On the next day morning, he came to know that Santosh Chaudhary, Bhola Chaudhary, Anjani Chaudhary and younger son of Prabhu Chaudhary have killed Sulekha Devi. Police was informed about the said incident. The said witness further stated that it was a love marriage of his sister with the appellant. The appellant is of *Bhumihar* Caste whereas she belongs to *Mehtar* Caste.

11. During the cross-examination, the said witness has specifically admitted that he is not an eye witness to the occurrence in question. However, he got information on telephone which was made by Santosh Chaudhary (appellant). The dead body was found at the place of occurrence. He went at the place of occurrence with his father, grand-father, grand-mother and other village people. He further stated during cross-examination that he did not know the number from which the phone call was made by Santosh Chaudhary. However, at 01:17 hours on 21.05.2014 he received the call. His sister got married with the appellant against their will. His statement was recorded by the police on the next day. The said witness also denied the suggestions made by the defence that his sister has committed suicide as they were torturing her as she married to the appellant



against the will of the said witness.

12. P.W.2 who is the father of the deceased and the first informant of the present case. The said witness has stated in his examination-in-chief that the Santosh Chaudhary is his son-in-law. He further stated that Santosh Chaudhary called on mobile phone of his son that he has killed the sister of his son, thereafter, they went at the place of occurrence for getting dead body of the deceased. The dead body was hanging on the bamboo clumps. Thereafter, the dead body was sent for post-mortem.

12.1. During cross-examination, the said witness also stated that it was a love marriage of his daughter with Santosh Chaudhary. He has further stated that he is not an eye-witness to the occurrence. His daughter had never made any complaint against Santosh Chaudhary and as the villagers have asked him to file the case, he has filed the said case.

13. P.W.3 Laxman Paswan has not supported the case of the prosecution and, therefore, he was declared hostile.

14. P.W.4 Dr. Shakeel Anjum is the doctor who had conducted post-mortem on the dead body of the deceased. The said witness found the following external and internal injuries on the dead body of the deceased which are as under:

“External Findings-



1. Bloody Foam, coming out of nostrils, face cyanosed, lips blue, conjunctiva of eyes congested.

2. Neck – a portion of saari tied around her neck. On removing the knot, ligature mark, one inch wide well defined depressed found on neck encircling the neck horizontally and completely.

Internal Findings-

1. Skull – Cranium intact, brain intact and congested.

2. Neck – Extravasation of blood in the subcutaneous tissues under ligature mark in neck, neck muscles lacerated, larynx and trachea congested and contain frothy mucus.

3. Chest – Both rib cage intact, both lungs intact and congested Bronchial tubes contained bloody froth and are congested, heart intact right side chambers full, left side chambers empty.

4. Abdomen – All abdominal viscera intact and congested, stomach contains semi digested food urinary bladder empty uterus of normal size.

Time elapsed since death to post-mortem done within 24 hours.

Cause of Death -

Asphyxia, cerebral anoxia and shock leading to cardio respiratory failure and death caused by strangulation by cloth material.”

15. P.W.5 Ganga Kumar Soren is the Investigating Officer who had carried out the investigation. The said witness has stated in examination-in-chief that on the date of occurrence i.e. on 21.05.2014 he was working as police officer in Bathnaha Police Station. Investigation of the case was handed over to him by S.H.O. Before that, he had recorded fardbeyan of Rajendra



Raut and after recording of the F.I.R., he once again recorded the statement of the said witness. He visited the place of occurrence. The dead body of Sulekha Devi was hanging on bamboo clumps of one Kapleshwar Bhagat. Thereafter, he had recorded the statement of one Shanti Devi, Nantun Raut, Mukesh Raut, Laxmi Paswan. Post-mortem report was also prepared. Accused was arrested and after completion of investigation he filed the charge-sheet against the accused.

15.1. During cross-examination, the Investigation Officer has stated that none of the witnesses had stated that they have seen the occurrence in question. He had not recorded the statement of the persons who were residing near the place of occurrence.

16. From the aforesaid evidence led by the prosecution before the trial court, it would emerge that there is no eye-witness to the occurrence in question and P.W.1 Mukesh Raut got the information on telephone that too by the appellant himself by saying that he has killed the sister of the said witness and, therefore, he immediately informed to his father. It is relevant to note that during night at 01:17 hours, the said information was received on telephone. In the fardbeyan, number of both the mobile phones i.e. mobile number of P.W.1



as well as mobile number of the accused are referred. However, the Investigating Officer has not collected CDR of both the said mobile numbers. In fact, P.W.1 has specifically admitted during his cross-examination that he did not know the mobile number from which the accused called him. It is further revealed that during night hours both the aforesaid witnesses have not gone to the place of occurrence, though it is alleged that the accused informed them that the dead body is lying at a particular place. P.W. 3 who is independent witness and villager had not supported the case of the prosecution. It is pertinent to note, at this stage, that both the prosecution witnesses P.W.1 and P.W.2 have admitted that Sulekha Devi the daughter of the informant got married with the appellant-accused against the will of the family and both of them are of different castes. When it is not a case of direct evidence, it is the duty of the prosecution to complete the chain of circumstance from which it can be established that the appellant-accused alone and none others has killed the deceased. However, the prosecution has failed to complete the chain of circumstance. Simply relying upon the so-called telephonic call received by P.W.1, the appellant-accused has been implicated. Even the prosecution has failed to prove the motive on the part of the appellant to kill the deceased who



was the wife of the appellant.

17. We would also like to refer and rely upon the decision rendered by the Hon'ble Supreme Court in the case of **Anjan Kumar Sarma Vs. State of Assam** (supra), wherein the Hon'ble Supreme Court has observed in paragraphs 14, 17 and 23 as under:

“14. Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(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. (See Sharad Birdhichand Sarda v. State of Maharashtra, SCC p. 185, para 153; M.G. Agarwal v. State of Maharashtra, AIR SC para 18.)

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17. It is settled law that inferences drawn by the court have to be on the basis of established facts and not on



conjectures. (See Sujit Biswas v. State of Assam [Sujit Biswas v. State of Assam, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] , SCC paras 13-18.) The inference that was drawn by the High Court that the death was caused on 28-12-1992 within the time of 48 hours as mentioned in the post-mortem report is not correct. The post-mortem examination was conducted on 30-12-1992 at 12.00 noon and it was opined by PW 11 that the death occurred 24 to 48 hours prior to the time of post-mortem examination. Even if the time is stretched to the maximum of 48 hours, the death was after 12.00 noon on 28-12-1992. The deceased was in the company of the accused till 9.00 p.m. on 27-12-1992. The inference drawn by the High Court that the accused had killed the deceased on 28-12-1992 in the night-time and thrown the body on the railway track is not on the basis of any proved facts. The trial court is right in holding that there is no evidence on record to show that the deceased was with the accused after 12.00 noon on 28-12-1992.

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23. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in State of Goa v. Sanjay Thakran in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before



the commission of crime in the intervening period. It was held in the above judgment as under: (SCC p. 776, para 34) “34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen



together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

18. We would also like to refer and rely upon the decision rendered by the Hon’ble Supreme Court in the case of **Ravi Vs. State of Karnataka** (supra) wherein the Hon’ble Supreme Court has observed in paragraphs 3 and 5 as under:

“3. The appellant-accused and the deceased along with Suma (PW 1) and Rama Nayak (PW 2) were together on 26-12-2004, the precise time being around 1.30 p.m. The dead body was recovered after a gap of four (4) days i.e. on 30-12-2004. The post-mortem report indicated that the death had occurred 30 hours prior to the time of post-mortem examination. The medical evidence, therefore, would be suggestive of the fact that the dead body was recovered after about two (2) days from 1.30 p.m. of 26-12-2004.

5. “Last seen together” is certainly a strong piece of circumstantial evidence against an accused. However, as it has been held in numerous pronouncements of this Court, the time-lag between the occurrence of the death and when the accused was last seen in the company of the deceased has to be reasonably close to permit an inference of guilt to be drawn. When the time-lag is considerably large, as in the present case, it would be safer for the court to look for corroboration. In the present case, no corroboration is forthcoming. In the absence of any other circumstances which could connect the appellant-accused with the crime alleged except as indicated above and in the absence of any



corroboration of the circumstance of “last seen together” we are of the view that a reasonable doubt can be entertained with regard to the involvement of the appellant-accused in the crime alleged against them. The burden under Section 106 of the Evidence Act, 1872 would not shift in the aforesaid fact situation, a position which has been dealt with by this Court in *Malleshappa v. State of Karnataka* [*Malleshappa v. State of Karnataka*, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] wherein the earlier view of this Court in *Mohibur Rahman v. State of Assam* [*Mohibur Rahman v. State of Assam*, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] has been extracted. The said view in *Mohibur Rahman* [*Mohibur Rahman v. State of Assam*, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] may be profitably extracted below: (*Malleshappa case* [*Malleshappa v. State of Karnataka*, (2007) 13 SCC 399 : (2009) 2 SCC (Cri) 394] , SCC p. 408, para 23)

“23. ... ‘10. 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. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place. As already noted the dead body has been recovered about 14 days after the date on which the deceased was last seen in the company of the accused. The distance between the two places is about 30-40 km. The event of the two accused persons having departed with the deceased and thus last seen together (by Lilima Rajbongshi, PW 6) does not bear



such close proximity with the death of the victim by reference to time or place. According to Dr Ratan Ch. Das the death occurred 5 to 10 days before 9-2-1991. The medical evidence does not establish, and there is no other evidence available to hold, that the deceased had died on 24-1-1991 or soon thereafter. So far as the accused Mohibur Rahman is concerned this is the singular piece of circumstantial evidence available against him. We have already discussed the evidence as to recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable number of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal.’ (Mohibur Rahman [Mohibur Rahman v. State of Assam, (2002) 6 SCC 715 : 2002 SCC (Cri) 1496] , SCC pp. 720-21, para 10)”

19. At this stage, we would like to refer and rely upon the decision rendered by the Hon’ble Supreme Court in the case of **Reena Hazarika Vs. State of Assam** (supra), wherein the Hon’ble Supreme Court has observed in paragraph 9 as under:

“9. The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to observe that in a case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere



invocation of the last-seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given.”

20. From the aforesaid decision, it can be said that if the prosecution is unable to establish a prima facie case leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused and the benefit of doubt will have to be given to the accused. Further, mere invocation of the last seen theory, sans the facts and the evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, unless the prosecution first establishes a prima facie case.

21. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that the circumstances from which the conclusion of guilt is to be drawn should be fully established. Further the fact so established should be consistent with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the



one to be proved, and 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. The inferences drawn by the Court have to be on the basis of the established facts and not on conjectures.

22. Keeping in view the aforesaid decisions, if the facts of the present case, as discussed hereinabove, are carefully examined, we are of the view that the prosecution has failed to prove the complete chain and even the prosecution has also failed to prove by leading cogent evidence that the appellant-accused was lastly seen in the company of the deceased. Thus, the prosecution has failed to prove the case against the appellant beyond reasonable doubt and, therefore, we are of the view that the appellant-accused is required to be acquitted.

23. Looking to the over all facts and circumstances of the present case, we are inclined to allow this appeal and, accordingly, the appeal stands allowed. The impugned judgment of conviction and order of sentence dated 18.07.2018 and order of sentence dated 23.07.2018 passed by learned 1st Additional Sessions Judge-cum-Special Judge (S.C./S.T. Act), Sitamarhi in connection with Sessions Trial No. 275 of 2015/19 of 2015



arising out of Bathnaha P.S. Case No.151 of 2014 is quashed and set aside. The appellant, namely, Santosh Chaudhary is acquitted of the charges levelled against him by the learned trial court. Since appellant, above-named is in jail, he is directed to be released forthwith, if his presence is not required in any other case.

24. It goes without saying that if the appellant-accused has deposited the fine, the same shall be returned to him.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjay/Rajeev

AFR/NAFR	NAFR
CAV DATE	NA
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