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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
AJAY RASTOGI; J., BELA M. TRIVEDI; J.
SPECIAL LEAVE PETITION (Crl.) No. 9221 OF 2018; 17.02.2023
RAM GOPAL S/O MANSHARAM *versus* **STATE OF MADHYA PRADESH**

Indian Evidence Act 1872 - Last Seen Theory - Once the theory of "last seen together" was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased-If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence. (Paras 6 to 9)

Indian Evidence Act, 1872; Section 106 - It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. *(Para 6)*

(Arising out of impugned final judgment and order dated 13-07-2018 in CRLA No. 70/2000 passed by the High Court of M.P. at Gwalior)

For Petitioner(s) Mr. Yogesh Tiwari, Adv. Mr. Sanjay K. Agrawal, AOR Ms. Ms Neema, Adv. Mr. Vikrant Singh Bais, Adv. Amna Darakhshan, Adv.; For Respondent(s) Mr. D.S. Parmar, AAG Mr. Harmeet Singh Ruprah, Adv. Mr. Sunny Choudhary, AOR Mr. Rushant Malhotra, Adv.

J U D G M E N T

BELA M. TRIVEDI, J.

1. The impugned judgment and order dated 13.07.2018 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 70/2000 has been sought to be challenged by the petitioner-accused by way of present petition. The said appeal was dismissed by the High Court confirming the judgment and order dated 17.01.2000 passed by the First Additional Sessions Judge, Morena (hereinafter referred to as the "Sessions Court") in ST No. 205/1996, whereby the petitioner was convicted for the offence under Section 302 IPC and was sentenced to undergo life imprisonment with fine of Rs. 5,000/-, in default thereof to suffer further rigorous imprisonment for a period of two years.

2. The petitioner-accused Ramgopal *alias* Gopal was the Ex-Sarpanch of the village Har Gangoli. On 20.12.1995 at about 09:30 AM, the complainant Upendra Singh (PW-1) reported at the Police Station Baghchini that on 19.12.1995 at about 5 PM his uncle (Tau) Pratap Singh Sikarwar was taken by the Sarpanch Ram Gopal from Arhela, and the dead body of his uncle Pratap Singh was lying on the road near the house of Bharosibaba at village Chachiha. He further alleged in the complaint that there were injuries found on the head and ear of his uncle and blood was oozing out from the said parts. The said complaint was registered at the Police Station Baghchini as FIR No. 132/95 on 20.12.1995. The Investigating Officer after carrying out the investigation submitted the chargesheet against the petitioner-Ramgopal along with other three accused i.e., Suresh Singh, Chhotalli @ Chhotey Singh and Mintoo @ Karan Singh. The Sessions Court framed charge against the accused for the offence

under Section 302 and in the alternative Section 302 read with 34 IPC. The Sessions Court after appreciating the evidence on record convicted the petitioner-Ramgopal for the charged offence under Section 302 IPC, however acquitted the other three accused giving them benefit of doubt. Being aggrieved by the same, the petitioner had preferred the appeal before the High Court, which came to be dismissed by the impugned order.

3. The learned Senior Counsel Mr. Salman Khurshid appearing for the petitioner submitted that the case of the prosecution rested solely on the circumstantial evidence, however the prosecution had miserably failed to prove the entire chain of circumstances leading unerringly to the guilt of the petitioner-accused. According to him, the courts below have committed an error in convicting the petitioner merely on the theory of "last seen together", however there was a big time gap between the time when the petitioner was lastly seen with the deceased and the time when the dead body of the deceased was recovered. The alleged recovery of weapon axe from the petitioner also could not be a ground for conviction, more particularly when the doctor who had carried out the post-mortem of the dead body of the deceased, had not opined that the injuries found on the dead body of the deceased were possible with the said weapon. According to Mr. Khurshid, there was no animosity between the deceased and the petitioner, and on the contrary as per the evidence of PW-1 Upendra Singh and PW-8 Ramshree, their relations were quite cordial. In absence of examination of any independent witness, runs the submission of Mr. Khurshid, the benefit of doubt deserves to be given to the petitioner, when the other three co-accused were given such benefit. Mr. Khurshid has placed heavy reliance on the decision of this Court in the case of ***Padala Veera Reddy vs. State of Andhra Pradesh and others***[1], in case of ***Shahaja alias Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra***[2], and in case of ***Nizam and another vs. State of Rajasthan***[3] in support of his submissions.

4. However, the learned Advocate Mr. D.S. Parmar appearing for the respondent-State submitted that there being concurrent findings of the guilt recorded by the courts below against the petitioner, this Court should not interfere with the same. He further submitted that the petitioner in his further statement under Section 313 had failed to explain as to when and how he departed from the company of the deceased, when undisputedly he was with the deceased during the previous evening of his death, and therefore both the courts below had rightly held the said circumstance as a circumstance adverse to the petitioner.

5. It cannot be gainsaid that when the entire case of the prosecution hinges on the circumstantial evidence, the entire chain of circumstances has to be completely proved, which unerringly would lead to the guilt of the accused and none else. So far as the evidence on record in the present case is concerned, it emerges that it was not disputed that on 19.12.1995 at about 5 PM, the petitioner-accused had taken the deceased Pratap Singh from his house. Thereafter, the deceased and the petitioner were also seen together at the shop of one Shripal at village Arhela by the witness Vijay Singh (PW-4). It was also not disputed that on the next day morning the dead body of the deceased was found lying near one field at village Chachiha. Hence, the

[1] 1989 Supp (2) SCC 706
[2] (2022) SCC OnLine SC 883
[3] (2016) 1 SCC 550

death of the deceased Pratap Singh had taken place during the night hours of 19th and 20th December, 1995, and that the petitioner was lastly seen with the deceased on the previous evening. Thus, it was the petitioner alone, who knew as to what happened after the evening of 19th December, 1995.

6. It may be noted that once the theory of "last seen together" was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or nonfurnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution was proved against him.

7. In case of ***Rajender vs. State (NCT of Delhi)***[4], it was observed as under:

"12.2.4. Having observed so, it is crucial to note that the reasonableness of the explanation offered by the accused as to how and when he/she parted company with the deceased has a bearing on the effect of the last seen in a case. Section 106 of the Evidence Act, 1872 provides that the burden of proof for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are *specially within his/her knowledge* and which cannot support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances."

8. In ***Satpal Vs. State of Haryana***[5], this Court observed as under: -

"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the

[4] (2019) 10 SCC 623
[5] (2018) 6 SCC 610

accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

9. In view of the afore-stated legal position, it is discernible that though the last seen theory as propounded by the prosecution in a case based on circumstantial evidence may be a weak kind of evidence by itself to base conviction solely on such theory, when the said theory is proved coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused does owe an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death might have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence.

10. So far as the facts in the instant case are concerned, it was duly proved that the death of the deceased was homicidal. It was not disputed that the petitioner had taken the deceased with him on the previous day evening and thereafter he was also seen with the deceased by the witness Vijay Singh (PW-4) and the very next day early morning, the dead body of the deceased was found lying in the field at village Chachiha. The time gap between the period when the deceased was last seen with the accused and the recovery of the corpse of the deceased being quite proximate, the non-explanation of the petitioner with regard to the circumstance under which and when the petitioner had departed the company of the deceased was a very crucial circumstance proved against him. Having regard to the oral evidence of the witnesses, the enmity between the deceased and the petitioner had also surfaced. The corroborative evidence with regard to recovery of the weapon – axe alleged to have been used in the commission of crime from the petitioner, also substantiated the case of prosecution.

11. The entire oral as well as documentary evidence having been threadbare considered by the Sessions Court as also High Court while holding the petitioner guilty of the charged offence, this Court need not again reappreciate the same in the petition under Article 136 of the Constitution of India. Suffice it to say that the learned Senior Advocate Mr. Khurshid has failed to point out during the course of his arguments any perversity or illegality in the impugned orders passed by the courts below, which would shake the conscience of this Court warranting interference in the impugned judgments.

12. In that view of the matter, we are not inclined to interfere with the impugned judgments and orders passed by the courts below. The Special Leave Petition stands dismissed accordingly.