

Sheo Kumar Vs. State of Chhattisgarh

Sheo Kumar Vs. State of Chhattisgarh

SooperKanoon Citation : sooperkanoon.com/496473

Court : Chhattisgarh

Decided On : Apr-24-2009

Reported in : 2009CriLJ3165; 2009(3)MPHT50(CG)

Judge : Rajeev Gupta, C.J. and; Sunil Kumar Sinha, J.

Appellant : Sheo Kumar

Respondent : State of Chhattisgarh

Disposition : Appeal allowed

Judgement :

Sunil Kumar Sinha, J.

1. Challenge in this appeal is to the judgment dated 9-4-2003 passed by the Additional Sessions Judge, Balod, District Durg (CG) in Sessions Trial No. 394/2001, where by the appellant has been convicted and sentenced in the following manner with a further direction to run the sentences concurrently:

Conviction Sentence under Section 302, IPC Imprisonment for life and fine of Rs.1,000/-, in default of payment of fine to further undergo RI for 3 months. under Section 376, IPC RI for 10 years and fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for 3 months. under Section 363, IPC RI for 5 years and fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for 3

months.under Section 201, IPC RI for 5 years and fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for 3 months.

2. The facts, briefly stated, are as under:

On 23-7-2001, Musnu Ram Dhimar (P.W. 2) saw that the dead body of a minor girl, aged about 12 years, was lying in the bushes near his field. It was wearing blue skirt and white shirt (school dress). The dead body could not be identified. Nagkesar (P.W. 1), Baliram, Village Kotwar (P.W. 3) and Musnu Ram (P.W. 2) went to the police outpost and merged intimation (Exh. P-3) was lodged by Musnu Ram (P.W. 2). Dehati Nalishi was recorded under Exh. P-24. Investigating Officer reached to the scene of occurrence, gave notice (Exh. P-1) to the Panchas and prepared inquest (Exh. P-2) on the body of the deceased. The dead body of the deceased was sent for its post-mortem to PHC Palari, where the post-mortem examination was conducted by a team of 2 Doctors including Dr. R.K. Nayak (P.W. 16). They prepared their report (Exh. P-18). According to the post-mortem report, a ligature was found around the neck and there was a ligature mark beneath the thyroid. Blood was coming out of vagina and hymen was recently ruptured. The Autopsy Surgeons opined that the cause of death was asphyxia resulting in respiratory arrest due to strangulation and it was homicidal in nature. Since nobody could identify the dead body, it was buried by the police.

In fact, it was the dead body of Chainbati, aged about 12 years, who was resident of Village Shukladih and was missing from the village. Her father Jamruram (P.W. 14) and his other family members were searching the girl but they could not find her. Any how, they heard about a dead body recovered by the police in Village Deokot which is a nearby village. They went to Police Station Gurur and saw the photograph of the unidentified girl recovered by the police. It was identified that the photograph was of Chainbati, daughter of Jamruram (P.W. 14). The body was exhumed. The father identified that it was the dead body of his daughter Chainbati. Again an inquest (Exh. P-5) was prepared to this effect and the dead body was handed over to the family members.

During the course of investigation, the appellant was arrested under Exh. P-28 and was sent for his medical examination on 26-7-2001. Dr. R.K. Nayak (P.W. 16)

examined the appellant and found some abrasions on his body. He gave his report (Exh. P-19). Many articles, including cloths of the appellant and the deceased, were seized during the course of investigation and were sent for their chemical examination to Forensic Science Laboratory, Raipur, from where, a report (Exh. P-31) was received. Blood stains were found on the cloths of the deceased as also slide and the pepal leaf which was seized from the place of occurrence. No blood stains or human spermatozoa were found on the cloths of the appellant and other articles. Though blood stained articles were sent for further investigation about origin and group, but no such report could be filed by the prosecution.

3. After completion of usual investigation, the chargesheet was filed in the Court Judicial Magistrate, First Class, Balod, who in turn committed the matter to the concerned Sessions Court, from where, it was received on transfer by the Additional Sessions Judge, Balod, who conducted the trial and convicted and sentenced the accused/appellant as aforementioned.

4. The story of the prosecution was that firstly, the deceased was kidnapped by the appellant from Village Shukladih, who took her on his bicycle to Village Deokot, where she was subjected to forcible intercourse by the appellant in the pump house of Musnu (P.W. 2) and thereafter the appellant committed her murder and the dead body was thrown in the bushes near the said pump house for causing disappearance of evidence.

5. There is no direct evidence in this case and the conviction of the appellant is mainly based on evidence of last seen together for which the prosecution examined 3 witnesses namely: Kartik Ram (P.W. 6), Keshaw Ram (P.W. 19) and Takhat Ram (P.W. 20).

6. Mr. Ram Krishna Sharma, learned Counsel appearing on behalf of the appellant, has not disputed the homicidal death of the deceased. He has also not disputed that the deceased was subjected to forcible sexual intercourse. Moreover, it comes in the evidence of Dr. R.K. Nayak (P.W. 16) that the deceased died a homicidal death and the cause of death was asphyxia resulting in respiratory arrest. He also noticed that there were injuries in vagina and hymen was recently ruptured. Therefore, it was established that the death of the

deceased was homicidal in nature and the deceased was subjected to forcible intercourse before her death.

7. Mr. Sharma has mainly argued that there is no evidence to show that the deceased was lastly seen with the appellant. He submitted that the above 3 witnesses, examined by the prosecution to establish the theory of last seen together, have not said that it was the deceased, who was with the appellant as they only deposed that they had seen the appellant taking one school going girl in school dress on his bicycle.

8. On the other hand, Mr. Akhil Agrawal, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment and order passed by the learned Session Judge.

9. We have heard the learned Counsel for the parties at length and have also perused the records of the sessions case.

10. In *Dhananjay Chhatterjee v. State of W.B.* (1994) 2 SCC 22, the Apex Court held that 'In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the Court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof'.

11. Further in *Bodh Raj alias Bodha and Ors. v. State of Jammu and Kashmir* : 2002 CriLJ4664 , the Apex Court laid down that there is no doubt that conviction can be based solely on circumstantial evidence but the conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They 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 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.

12. Admittedly, there are no eye-witnesses in this case and the conviction of the appellant is mainly based on the circumstance of 'last seen together', found proved by the Sessions Court on the basis of evidence of above 3 witnesses namely - Kartik Ram (P.W. 6), Keshaw Ram (P.W. 19) and Takhat Ram (P.W. 20).

13. Kartik Ram (P.W. 6), deposed that appellant Sheo Kumar was known to him. On Sunday, Sheo Kumar was taking a girl on his bicycle. The girl was wearing white shirt and blue coloured skirt. After two days, he heard that one girl of Village Shukladih was missing and he further heard that the dead body of a girl was found in Village Deokot. He has very categorically stated that he had not seen the dead body.

14. Keshaw Ram (P.W. 19), deposed that on the fateful day, he was going along with Kartik Ram (P.W. 6). They saw that Sheo Kumar was taking a girl on his bicycle. He has also very specifically mentioned that he was not knowing as to whom was that girl. However, the girl was wearing school dress, she was aged about 8-10 years and was sitting on the carrier of the bicycle.

15. Takhat Ram (P.W. 20), deposed that Sheo Kumar has met him near a rice mill. He was on a bicycle. A girl was also sitting on the carrier of the bicycle. She was wearing a kurta. This witness also identified the appellant in the Court saying that he was the same person who was carrying the girl.

16. What has been mentioned about the depositions of the above 3 witnesses, examined by the prosecution to establish the theory of last seen together, is the only evidence in this regard. On due appreciation, we find that though these witnesses have deposed about the identity of appellant Sheo Kumar but they have never deposed that, in fact, the girl who was being taken by Sheo Kumar was the deceased. The learned Sessions Judge has given much weightage to the fact that 2 of these witnesses have said that the girl who was being taken by the appellant was wearing white shirt and blue skirt (school dress), therefore, the identity of the girl accompanying the appellant as the deceased was fully established.

17. In last seen theory, an element of identification is an important and strong factor. If either of the party, i.e., culprit or the victim was not identified by a witness of lastly seen saying that they were in the company of each other, the circumstance of last seen fails because in that case it would not be established by the prosecution that who accompanied whom. If in a case based on last seen together, the identity of the culprit or the victim is doubtful or is not established beyond reasonable doubt, the circumstance shall not be held to be proved and the conviction based on such circumstance cannot be sustained.

18. In the present case, the prosecution has utterly failed to prove that it was the deceased who was accompanying the appellant on his bicycle on the fateful day. Therefore, in our considered view, the guilt of the appellant was not proved beyond all reasonable doubt and he was entitled to get benefit of doubt.

19. Accordingly, the appeal is allowed. The conviction and sentences awarded to the appellant under Sections 302, 376, 363 and 201, IPC are set aside. The appellant is acquitted of the charges framed against him. It is stated that the appellant is in jail since 26-7-2001. He be set at liberty, forthwith, if not required in any other case.

