

**Jagata Singh Vs. State**

**Jagata Singh Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/531714](http://sooperkanoon.com/531714)

**Court :** Orissa

**Decided On :** Jun-25-1997

**Reported in :** 1997(II)OLR192

**Judge :** A. Pasayat and ;S.C. Datta, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Jail Criminal Appeal No. 357/93

**Appellant :** Jagata Singh

**Respondent :** State

**Advocate for Def. :** S.C. Satapathy, Addl. Standing Counsel

**Advocate for Pet/Ap. :** B.K. Panda, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**A. Pasayat, J.**

1. In this appeal preferred by Jagta Singh (hereinafter referred to as 'the accused') from Jail, conviction for the offence punishable under Section 302 of the Indian Penal Code. 1860 (in short the I.P.C) and sentence of imprisonment for life as awarded by the learned Sessions Judge. Mayurbhanj-Baripada, are under

challenge.

2. Filtering out unnecessary details, prosecution case is as follows:

On 20th January, 1992, accused came to the house of Gake Singh (hereinafter referred to as 'the deceased') who was believed to be a sorcerer. In the afternoon the deceased was absent and therefore accused went away and again came to his house in village Sukhuapata in the night. By then deceased had returned. Accused requested him to come with him to his village for treating his brother's wife. Deceased and accused left together. Next morning deceased was found dead with multiple injuries on his face and head. His brother (P.W.5) got the news that his brother was lying dead at village Sukuapata. He was told that in the night some persons had heard the shouts of the deceased and saw the accused dealing are blows on him. Informant P.W.5 went, to Sarat Police Station and lodged information. Investigation was undertaken on receipt of the report, and charge-sheet was submitted During trial accused pleaded innocence.

3. In order to fasten guilt on the accused prosecution examined eight witnesses. P.Ws. 1 and 2 were stated to be eye-witnesses to the occurrence. Learned trial Judge applied the theory of last seen together to hold the accused guilty and convicted and sentenced as aforesaid. It is to be noted that though he entertained doubt about veracity of P.Ws, 1 and 2's evidence, he relied on it.

4. Mr. B.K. Panda learned counsel for the accused submitted that the evidence of P.Ws. 1 and 2 should not have been relied upon by the learned trial Judge. He should not have believed them to have seen the occurrence. Additionally, the time gap between the point of time when the accused and the deceased were stated to have been seen together, and the time when the latter was found dead was considerable. Therefore, the theory of last seen together has no application to the facts of the case.

5. Mr. S.G. Satapathy, learned counsel for the Slate submitted that P.Ws. 1 and 2, deposed to have seen the mutual assault in their examination-in-chief and merely because they have stated in the cross-examination that they had not seen, it is of no consequence. Further it is submitted that the time gap was not considerable but

was a short period and therefore, the principle of last seen together to attract culpability has been correctly applied by the learned trial Judge.

6. Coming to the acceptability of evidence tendered by P.Ws. 1 and 2, it is seen that in the cross-examination they have fairly accepted not to have seen the occurrence, but to have heard in the night some sound. They decided to find out what trouble had happened in the morning P.W. 1 has stated that when he heard the hullah, he called his brother. By the time the latter came the shouting had stopped. It was decided not to go to the spot then. He has stated that they visited the spot next day morning when the villagers had already gathered there. P.W. 2's evidence is to the effect that the Police has kept him for two days and he was told that the murder was held near their house and they may be responsible unless they disclosed name of the culprit. He has stated that the police has asked him and P.W.1 to name the appellant as the culprit. In view of what has been stated by P.Ws. 1 and 2 in the cross-examination, their evidence has very little value to the prosecution and learned trial Judge has committed inherent error in placing reliance thereon.

7. The further question is whether the alleged last seen together aspect is a clinching circumstance to fasten the guilt on the accused. The theory of last seen together can be considered to be a link in the chain when the case rests on circumstantial evidence. It is a well settled principle that merely because two persons are found together at a particular time and sometimes thereafter one of them was found un-naturally dead, the inevitable conclusion is not that the other is the author of the crime. Even if the prosecution version is accepted in the case at hand that in the evening the deceased and accused were seen going out together and former was found dead in the morning, in the absence of any positive material about the probable death of time, it would be difficult to positively establish the theory that the deceased was last seen in company of the accused as there is a possibility that during the long gap of time, some other person might have come in between. In the absence of any further positive material to show that the accused and the deceased were together immediately before the death of the deceased, it cannot be conclusively held that the accused is the author of the crime. True it is, when two persons are seen together and immediately thereafter one of them is

found dead, it would be a material link in the process of finding out as to who is the guilty person. When there is unexplained time gap of considerable length, the evidence that at some point of time prior to the discovery of the dead body accused was found together with the accused is not a conclusive link to fasten guilt on the accused. Where the case depends upon circumstantial evidence at the outset the well established principles governing the appreciation of evidence in a case depending upon circumstantial evidence may be borne in mind. Briefly, the principles are that each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence, that the circumstance relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstances must provide a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence. It is no good saying that there is a body of circumstantial evidence unless it is clear that the circumstantial evidence refers unerringly to the guilt of the accused.

8. The prosecution has failed to establish its accusations. Conviction and consequently, the sentence are set aside. Accused be set at liberty forthwith unless required to be in custody in connection with any other case.

**Datta, J.**

9. I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**