

Shiv Kumar and Another Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Mar-06-2012

Judge : Sunil Kumar Sinha & the Honourable Mr. Justice Radhe Shyam Sharma

Appeal No. : CRIMINAL APPEAL NO. 677 OF 2007

Appellant : Shiv Kumar and Another

Respondent : State of Chhattisgarh

Judgement :

Sunil Kumar Sinha, J.

(1) This appeal is directed against the judgment dated 9.7.2007 passed in Session Trial No. 8/2007 by the Additional Session Judge, Balod, District Durg (C.G.). By the impugned judgment, the appellants have been convicted and sentenced in following manner with a direction to run the sentences concurrently:-

Conviction	Sentence
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Appellant- Shiv Kumar: u/s 302 IPC	Life imprisonment and fine of Rs.1000/- in default R.I for 1 year.
u/s 364 IPC	R.I. for 5 years and fine of Rs.1000/- in default R.I. for 1 year.
Appellant- Tikendra Kumar: u/s 302/34 IPC	Life imprisonment and fine of Rs.1000/- in default R.I. for 1 year.
u/s 364 IPC	R.I. for 5 years and fine of Rs.1000/- in default R.I. for 1 year.

(2) The facts, briefly stated, are as under:-

On 21.8.2006 at about 4.00 p.m. accused Shiv Kumar and his brother- Basant went to the house of Shivram Sinha. They were demanding their money. Shivram Sinha called Vijay Kumar (since deceased). Thereafter Shiv Kumar returned from the house of Shivram Sinha. On 22.8.2006 at about 8-9.00 a.m. accused persons started abusing Vijay Kumar (since deceased) saying that he should pursue

Shivram Sinha for paying their money. Vijay Kumar resisted their demand saying that the money will not be paid. The quarrel was pacified by the villagers. Vijay Kumar told the villagers that Shivram Sinha has allegedly brought 25 litres liquor for sale and the accused persons were demanding money of the said liquor. The case of the prosecution is that in the evening the accused persons went to the house of Vijay Kumar making his search. Thereafter they went to Dewangan Tea-Stall, where they found Vijay Kumar. They stated him that Anil Kumar is calling him for giving money. On this Vijay Kumar went along the accused persons on their motorcycle towards Junwani Road. Vijay Kumar then was found in injured condition in the field of Subedar. Receiving the above information Samotin Bai (PW-14 - mother of Vijay Kumar) went to that place and found that Vijay had received multiple serious injuries. He was lying in pool of blood. Vijay Kumar was taken to BSP Hospital, from where, he was referred to Bhilai, Sector-9 Hospital. In the meanwhile, an offence u/s 307/34 IPC (Ex.-P/9) was registered against unknown persons on the report of village Sarpanch- Sukhit Ram. Vijay Kumar died during the course of his treatment on 26.8.2006. Thereafter an offence u/s 302 IPC was also added. The accused persons were taken into custody on 23.8.2006. Their memorandum statements u/s 27 of the Evidence Act were recorded on 24.8.2006 and iron portion of plough, motorcycle and one T-shirt was seized at the instance of accused- Shiv Kumar vide seizure memos- Ex.-P/7, P/5 and P/6. The dead body of the deceased was sent for post-mortem. The post-mortem examination was conducted by Dr. V.S. Baghel (PW-12). He noticed multiple serious injuries on the dead body of the deceased. On internal examination, it revealed that there were multiple fractures on parieto-temporal bone. Many pieces of above bone have pierced into brain. The brain tissue was badly ruptured. The Autopsy Surgeon opined that the deceased died on account of shock due to extensive head injuries. The injuries were ante- mortem and the death was homicidal. The post-mortem report is Ex.-P/21. Prior to that the deceased, while alive, was examined by Dr. K. Thakur (PW-10) in Sector- 9 Hospital, Bhilai. He had also noticed multiple injuries on the skull of the deceased. CT-Scan was advised on which the above fractures, found in the post-mortem, were detected. The injury report and bed- head-ticket are Ex.-P/19. The seized articles were sent for their chemical examination to Forensic Science Laboratory (F.S.L.), Raipur

vide memo Ex.- P/26. According to the F.S.L. report (Ex.-P/31), blood stains were found on all articles except the plain earth. However no report relating to origin and group of blood stains could be filed. In further investigation, Test Identification Parades (T.I.Ps.) were conducted on 16.10.2006 and the 2 accused persons were identified by Aatmaram (PW-4), Dayaluram (PW-5) and Samotin Bai (PW-14). The T.I.P. memos are Ex.-P/16 and P/17.

The case of the prosecution is that on 22.8.2006 at about 4-5.00 p.m., the accused persons took the deceased on their motorcycle and thereafter the deceased was found in injured condition in a field. The accused persons were not known to the witnesses, particularly Aatmaram (PW-4), Dayaluram (PW-5) and Samotin Bai (PW-14) who identified them in the T.I.Ps. Therefore, the prosecution came with the 2 main circumstances- one of identification of the accused persons during the trial and also during the T.I.Ps. and the other they lastly seen the deceased in the company of the accused persons. The learned Session Judge held that both the circumstances were proved by the prosecution. It was proved that the deceased had gone along with the accused persons on their motorcycle. The accused persons were identified in the T.I.Ps. and also during the trial and thus the deceased was last seen together with the accused persons. Therefore, the accused persons were liable for punishment under the aforementioned Sections of IPC.

(3) Mr. N.S. Dhurandhar, learned counsel appearing on behalf of the appellants, argued that the witnesses had seen the accused persons prior to the T.I.Ps.; they admitted that since the police had arrested the accused persons in connection with aforesaid offences, therefore, they believed that the accused persons would have committed the offence; the T.I.Ps. were conducted after a very long period; therefore, the same vitiates and the evidence of identification on dock becomes doubtful. He also argued that if the evidence of identification of the accused persons becomes doubtful then theory of last seen cannot stand for want of proper identification of the accused persons.

(4) On the other hand, Mr. D.K. Gwalre, learned Govt. Advocate appearing on behalf of the State/respondent, opposed these arguments and supported the

judgment passed by the Session Court.

(5) We have heard learned counsel for the parties at length and have also perused the records of the session case.

(6) Admittedly, there is no direct evidence in this case and the case of the prosecution is based on circumstantial evidence. In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have to be fully established and all the circumstances so established should be of conclusive nature and tendency. They must point only towards the guilt of the accused. The circumstances should not be capable of being explained and the chain of the circumstantial evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. This is what the Supreme Court said in many cases. Therefore, we ought to be satisfied that the circumstances on which the prosecution relies leave no option but to hold that the crime imputed has been established beyond a reasonable doubt.

(7) Firstly, we shall consider the circumstance of identification of the accused persons.

(8) The law in relation to Test Identification Parades (T.I.Ps.), their evidentiary value, the effect of not conducting the T.I.Ps. and delay in conducting the T.I.Ps. and the principles relating to dock-identification have been elaborately discussed by the Supreme Court in Mulla and Another -Vs- State of Uttar Pradesh, (2010) 3 SCC 508. We would like to quote the relevant paragraphs (Paras- 41 to 55) of the above judgment to make it clear as to what are the principles on which the veracity of the evidence of Test Identification Parade (T.I.P.) as also the dock- identification has to be judged:

"41. Now, let us consider the arguments of the learned amicus curiae on the delay in conducting the test identification parade. The evidence of test identification is admissible under Section 9 of the Evidence Act, 1872. The identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in

itself relevant at the trial. The actual evidence regarding identification is that which is given by witnesses in court. There is no provision in Cr PC entitling the accused to demand that an identification parade should be held at or before the inquiry of the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court.

42. Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in court, it should not form the basis of conviction.

43. As was observed by this Court in *Matru -Vs- State of U.P.*, (1971) 2 SCC 75 identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroboration of the statement in court. (Vide *Santokh Singh -Vs- Izhar Hussain*, (1973) 2 SCC 406.)

44. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

45. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to

be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

46. In *Subash -Vs- State of U.P.*, (1987) 3 SCC 331, the parade was held about three weeks after the arrest of the accused. Therefore, there was some room for doubt if the delay was in order to enable the identifying witnesses to see him in jail premises or police lock-up and thus make a note of his features. Moreover, four months had elapsed between the date of occurrence and the date of holding of the test identification parade. The descriptive particulars of the appellant were not given when the report was lodged, but while deposing before the Sessions Judge, the witnesses said that the accused was a tall person with shallow (sic fallow) complexion. The Court noted that if on account of these features the witnesses were able to identify the appellant Shiv Shankar at the identification parade, they would have certainly mentioned about them at the earliest point of time when his face was fresh in their memory.

47. It is important to note that since the conviction of the accused was based only on the identification at the test identification parade, the Court in *Subash* case gave him the benefit of doubt while upholding the conviction of the co-accused. This is also a case where the conviction of the appellant was based solely on the evidence of identification. There being a delay in holding the test identification parade and in the absence of corroborative evidence, this Court found it unsafe to uphold his conviction.

48. In *State of A.P. -Vs- Dr. M.V. Ramana Reddy*, (1991) 4 SCC 536 the Court found a delay in holding the test parade for which there was no valid explanation. It held that in the absence of a valid explanation for the delay, the approach of the High Court could be said to be manifestly wrong calling for intervention.

49. In *Brij Mohan -Vs- State of Rajasthan*, (1994) 1 SCC 413 the test identification parade was held after three months. The argument was that it was not possible for the witnesses to remember, after a lapse of such time, the facial expressions of the accused. It was held that generally with lapse of time memory of witnesses would get dimmer and therefore the earlier the test identification parade is held it

inspires more faith. It was held that no time-limit could be fixed for holding a test identification parade. It was held that sometimes the crime itself is such that it would create a deep impression on the minds of the witnesses who had an occasion to see the culprits. It was held that this impression would include the facial impression of the culprits. It was held that such a deep impression would not be erased within a period of three months.

50. In *Rajesh Govind Jagesha -Vs- State of Maharashtra*, (1999) 8 SCC 428 the accused was apprehended on 20-1-1993, while the identification parade was held on 13-2-1993. It was also not disputed that at the time of identification parade the appellant was not having a beard and long hair as mentioned at the time of lodging of the first information report. It was also not disputed that no person with a beard and long hair was included in the parade. The witnesses were alleged to have identified the accused at the first sight despite the fact that he had removed the long hair and beard. This Court held that the Magistrate should have associated 1-2 persons having resemblance with the persons described in the FIR and why it was not done was a mystery shrouded with doubts and not cleared by the prosecution. In these circumstances, the Court observed that the possibility of the witnesses having seen the accused between the date of arrest and the test identification parade cannot be ruled out. This case also rests on its own facts, and mere delay in holding the test identification parade was not the sole reason for rejecting the identification.

51. In *Daya Singh -Vs- State of Haryana*, (2001) 3 SCC 468 the test identification parade was held after a period of almost eight years inasmuch as the accused could not be arrested for a period of 7 + years and after the arrest the test identification parade was held after a period of six months. It was pointed out that the purpose of test identification parade is to have the corroboration of the evidence of the eyewitnesses in the form of earlier identification. It was held that the substantive evidence is the evidence given by the witness in the court and if that evidence is found to be reliable then the absence of corroboration by the test identification is not material. It was further held that the fact that the injured witnesses had lost their son and daughter-in-law showed that there were reasons for an enduring impression of the identity on the mind and memory of the

witnesses.

52. This Court in *Lal Singh -Vs- State of U.P.*, (2003) 12 SCC 554 while discussing all the cases germane to the question of identification parades and the effect of delay in conducting them held that (SCC p. 571, para 43):

"43. It will thus be seen that the evidence of identification has to be considered in the peculiar facts and circumstances of each case. Though it is desirable to hold the test identification parade at the earliest possible opportunity, no hard-and-fast rule can be laid down in this regard. If the delay is inordinate and there is evidence probalising the possibility of the accused having been shown to the witnesses, the court may not act on the basis of such evidence. Moreover, cases where the conviction is based not solely on the basis of identification in court, but on the basis of other corroborative evidence, such as recovery of looted articles, stand on a different footing and the court has to consider the evidence in its entirety."

53. In *Anil Kumar -Vs- State of U.P.*, (2003) 3 SCC 569 this Court observed as under (Para-9):

"9. ...It is to be seen that apart from stating that delay throws a doubt on the genuineness of the identification parade and observing that after lapse of such a long time it would be difficult for the witnesses to remember the facial expressions, no other reasoning is given why such a small delay would be fatal."

A mere lapse of some days is not enough to erase the facial expressions of assailants from the memory of father and mother who have seen them killing their son.

54. In another case of *Pramod Mandal -Vs- State of Bihar*, (2004) 13 SCC 150 placing reliance on *Anil Kumar* this Court observed that (Pramod case, Para-20):

"20. It is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test

identification parade must be held, it would only benefit the professional criminals in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness. Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification. "

55. The identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Therefore, the following principles regarding identification parade emerge:

(1) an identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses;

(2) this condition can be revoked if proper explanation justifying the delay is provided; and

(3) the authorities must make sure that the delay does not result in exposure of the accused which may lead to mistakes on the part of the witnesses."

(9) Ex.-P/16 is the T.I.P. memo of accused- Tikendra Kumar and Ex.-P/17 is the T.I.P. memo of accused- Shiv Kumar. Tikendra was identified by Aatmaram (PW-4), Dayaluram (PW- 5) and Samotin Bai (PW-14). Shiv Kumar was also identified

by Dayaluram (PW-5) and Samotin Bai (PW-14), but he was not identified in the T.I.P. by Aatmaram (PW-4). Aatmaram (PW- 4) identified both the accused persons on dock. He deposed that the deceased was taken by these accused persons on their motorcycle. In the cross-examination, he admitted that he had never seen the accused persons prior to the incident. After 2-3 days of the incident police caught the accused persons and they were brought in the village and were kept in Panchayat Bhawan. Many villagers had gathered there. Samotin Bai (PW-14), Gangdeo (PW-1) and Sahadeo were also present in Panchayat Bhawan. He saw the accused persons for the first time in Panchayat Bhawan. He deposed in clear words that he thought that since the police has caught the accused persons, therefore, they must have murdered the deceased. He admitted that in the T.I.P he had identified accused- Tikendra only and had not identified accused- Shiv Kumar. In the last paragraph of his cross- examination, he clearly admitted that he identified the accused persons because he had seen them in Panchayat Bhawan.

(10) Dayaluram (PW-5), another witness of T.I.Ps. and dock- identification, also admitted in Para-5 of the cross- examination that the police had arrested the accused persons and had brought them to the village. The accused persons were kept in Panchayat Bhawan. Many villagers had gathered there. He had seen the accused persons in Panchayat Bhawan.

(11) Samotin Bai (PW-14) also identified the accused persons in T.I.Ps. and on the dock. The case of the prosecution is that the accused persons had visited her house in the day time on the date of the incident searching the deceased. She had a talk with the accused persons as she told them that the deceased was not present in the house and he had gone out after taking his meal. She was not a witness of last seen. In her Court evidence, she deposed that after hearing about her son, when she went to the place of occurrence, she saw the accused persons also present there, who escaped after seeing her at the place of occurrence. The fact that she had seen the accused persons at the place of occurrence and the accused persons escaped in her presence are omissions in her case diary statement (Ex.- D/3). In appreciation of evidence of Aatmaram (PW-4), Dayaluram (PW-5) and Samotin Bai (PW-14), we find that Aatmaram (PW-4), Dayaluram (PW-5) and Samotin Bai (PW-14) had seen the accused persons in Panchayat

Bhawan and after that they identified them in T.I.Ps. Though Samotin Bai (PW- 14) did not admit that she had also seen the accused persons in Panchayat Bhawan, but Aatmaram (PW-4) admitted that when they had gone to Panchayat Bhawan, Samotin Bai (PW-14) was also with them. Therefore, all the above 3 witnesses of identification had seen the accused persons in Panchayat Bhawan when the police party brought them on the acquisition that they were the assailants of the deceased. Not only this, Aatmaram (PW-4) admitted in clear words that since the police party had arrested the accused persons saying that they were the assailants, they believed that the accused persons must have committed murder of the deceased.

(12) The T.I.Ps. are conducted to check the veracity of the witnesses when the accused persons are not previously known to them. In the T.I.P. witnesses who claimed to have seen the culprits at the time of occurrence are to identify them among many persons alike without any aid, assistance or other source. As stated by the Supreme Court, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon their first impression about the accused persons.

(13) In the instant case, the above witnesses admitted that they had seen the accused persons in Panchayat Bhawan. The accused persons were in police custody. It was stated that they were the assailants of the deceased. Therefore, the identification of the accused persons in the two T.I.Ps. vitiates for the reason that they did not identify the accused persons on their memories and first impression of seeing them, but they did identify them after they had seen them in police custody after the incident.

(14) The incident took place on 22.8.2006 and the accused persons were arrested on 23.8.2006. Their recovery statements were recorded on 24.8.2006 and then they were put in judicial custody in sub-jail, Balod. The test identification parades were conducted on 16.10.2006. Thus, the T.I.Ps. were conducted after 1 month, 23 days. In Mulla (supra) while dealing with the object of conducting the T.I.Ps., the Supreme Court held that the T.I.Ps. must be conducted as soon as possible to avoid any mistake on the part of the witnesses. Therefore, emphasis is on early

conducting the T.I.Ps., though, properly explained delay, proved on record, may be considered. In the instant case, there is no plausible explanation by the prosecution as to why the T.I.Ps. were conducted at such a delayed stage. From the order-sheets of remand Court, we gather that in between 23.8.2006 and 16.10.2006 i.e. between arrest and T.I.Ps., the accused persons were produced before the remand Court on 26.8.2006, 8.9.2006, 20.9.2006 and 3.10.2006. It does not reveal that while production before the concerned Court and on the way from concerned jail to the Court, the accused persons were Baparda. Therefore, a possibility of them being seen by the witnesses can also not be fully ruled out. This further makes the T.I.Ps. doubtful. Therefore, we do not deem it appropriate to rely on the circumstance that the accused persons were genuinely identified by the witnesses in their T.I.Ps. conducted after 1 month and 23 days of their arrest by the police.

(15) Though the above witnesses identified the accused persons on dock, but their dock-identification, in light of their above evidence relating to test identification parades, becomes shaky. If their independent evidence of dock-identification is appreciated in light of the above facts that they had seen the accused persons in police custody and they believed them to be the assailants and then they identified them in the test identification parades, their very basis of dock-identification becomes suspicious. Had there not been the T.I.Ps., we would have differently appreciated their evidence of dock- identification.

(16) In light of the above facts and circumstances of the case, we are unable to hold that the above 3 witnesses, on whom the reliance was placed, had identified the persons who visited the house of Samotin Bai (PW-14) in day time and who took the deceased on their motorcycle in the evening from Dewangan Hotel. Therefore, the evidence of identification is shaky and doubtful and the same cannot be relied on.

(17) Now we shall consider the evidence of last seen together.

(18) 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.

(19) In case on hand, Samotin Bai (PW-14) was not a witness of last seen together because she had allegedly seen the accused persons alone in the day time. About the 2 witnesses of last seen i.e. Aatmaram (PW-4) and Dayaluram (PW-5), we have already held that they could not identify the persons who took the deceased with them. Therefore, though identification of the deceased was established, but identification of the accused persons was not established, and, thus it was not at all established that the deceased was lastly seen in the company of the accused persons. Therefore the circumstance of last seen together fails.

(20) Reliance was also place on the evidence of Gangdeo (PW- 1) and Punaram (PW-7). Gangdeo deposed that on the fateful day at about 4-5.00 p.m., he was in Dewangan Hotel. Vijay Kumar was also sitting in the hotel. 2 accused persons came there and they took Vijay Kumar on their motorcycle. They went towards Junwani Road. Vijay Kumar himself was driving the motorcycle. After half an hour, they received the message that Vijay Kumar was lying in injured condition in the field of one Subedar. He further added that on the fateful day in the morning at about 9.00 a.m. he had seen quarrel between Vijay Kumar and accused Shiv Kumar and had pacified the quarrel. From records we gather that Gangdeo (PW-1) is witness of memorandum and seizure. He also admitted in the cross-examination that police party had brought the accused persons to their village on 24.8.2006. They were kept in Panchayat Bhawan. Many villagers had visited Panchayat Bhawan. About seizure of the iron portion of the plough, he deposed that the same was seized from a dam which was filled with water. He did not depose that the above article was stained with blood or blood like substance. How an article, kept submerged in water for 2-3 days would carry blood stains for such a long time. In the cross-examination, he was confronted by his case diary statement (Ex.-D/1). There is omission in his case diary statement that he was also present in Dewangan Hotel and the accused persons came there and called the deceased

who accompanied them. There is also omission in his case diary statement (Ex.-D/1) that in the morning, he had seen quarrel between the deceased and accused- Shiv Kumar and had pacified the quarrel. On scrutiny of his entire evidence, we find that the prosecution has presented him as witness of memorandum and seizure, but he exaggerated his evidence to the effect that he had seen quarrel in the morning between the deceased and accused- Shiv Kumar and had also seen the deceased in the company of the accused persons. He could not give any explanation about the above omissions. We are of the view that the above omissions were vital omissions and on account of above omissions and exaggeration made by Gangdeo (PW-1) his evidence becomes unreliable.

(21) Punaram (PW-7) deposed about the alleged incident of demand of money by Shiv Kumar from Shivrām Sinha on 21.8.2006. He further deposed about quarrel on the nala at about 8-9.00 a.m. on 22.8.2006. He deposed that on 22.8.2006 he had a talk with the deceased. He had asked the deceased as to why the quarrel was going on, on which, the deceased told him that accused- Shiv Kumar had given 25 litres of liquor and he was quarreling demanding the price of liquor. PW-7 appears to be a chance witness. He claims to remain present on all instances relating to alleged demand of money and quarrel between the accused and the deceased which occurred at different times on different dates. His conduct appears to be unnatural. There are many contradictions in his case diary statement (Ex.-D/2). Apart from the above we note that his case diary statement was recorded on 17.11.2006, that means after about 2 months and 25 days. No explanation has been offered for inordinate delay in recording the statement of Punaram (PW-7). He has been examined by the prosecution to prove motive. Looking to the conduct of this witness that he claimed his presence at all instances prior to the incident as a chance witness and that his case diary statement was recorded after about 2 months and 25 days, we do not find his evidence to be wholly reliable.

(22) Mr. D.K. Gwalre, learned Govt. Advocate, has also argued on the circumstance of discovery statements and seizure of articles. It was proved that T-shirt, iron portion of plough and a motorcycle were seized at the instance of accused- Shiv Kumar. Motorcycle belongs to the accused. Blood stains were

found on the T-shirt and iron portion of the plough in F.S.L. report. There is no report that the blood stains found over these articles were human blood and they were of the blood group of the deceased. Iron portion of the plough, on which, much emphasis was supplied by the Govt. Advocate is a common agricultural equipment normally found in the house of every villager. Therefore, in absence of origin and group test of the blood stains found over it or on the T-shirt, the same cannot be held to be much incriminating and in absence of proof of any other circumstance, the same cannot be based for conviction.

(23) Lastly we shall examine the circumstance of motive.

(24) In a case mainly based on circumstantial evidence, motive has greater relevancy but like any other circumstantial evidence proof of existence of motive is necessary.

(25) In the instant case, the motive suggested is that the accused persons had given 25 litres of liquor to one Shivram Sinha. When the accused persons came to Shivram Sinha for demanding their money, the deceased was called by Shivram Sinha and then the accused persons went back. The case of the prosecution is that on the next morning the accused persons caught deceased- Vijay Kumar and started abusing him saying that he should pursue Shivram Sinha for paying their money and deceased- Vijay Kumar had stated that money will not be paid. The prosecution had tried to bring all these facts by the evidence of Gangdeo (PW-1) and Punaram (PW-7). We have held their evidence as unreliable on their conduct and vital omissions in their case diary statements recorded u/s 161 Cr.P.C. for which they could not give any explanation. Therefore, the motive set-forth by the prosecution was also not established.

(26) For the foregoing reasons, we are unable to sustain the conviction of the appellants/accused persons on the above set of circumstantial evidence. We are of the view that the circumstances set-forth by the prosecution are not established beyond all reasonable doubts and the appellants/accused persons are entitled to benefit of doubt.

(27) In the result, the appeal is allowed. The conviction and sentences awarded to the appellants/accused persons u/ss 302, 302/34 and 364 IPC are set-aside. They are acquitted of the charges framed against them. The appellants/accused persons are continuously in jail since 25.8.2006. They be released forthwith, if not required in any other case.

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