

SUPREME COURT OF INDIA

Anjan Kumar Sarma

Vs.

State of Assam

Crl.A.No.560 of 2014

(L.Nageswara Rao and Navin Sinha,JJ.,)

23.05.2017

JUDGMENT

L.Nageswara Rao,J.,

1. The Appellants along with Jitendra Nath Kakati alias Jit Kakati were charged for committing offences under Section 302, 376 (2) (g), 201 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). Accused Jit Kakati was separately charged under Section 366-A IPC. The Appellants and Jit Kakati were acquitted of all the charges framed against them. The High Court reversed the acquittal and convicted the Appellants and Jit Kakati for offences under Section 302, 201 read with Section 34 IPC and sentenced them to life imprisonment after acquitting them for an offence under Section 376 (2) (g) read with Section 34 IPC. Jit Kakati was acquitted for offences under Section 366-A IPC. Aggrieved by the conviction under Section 302 read with 34 IPC, the Appellants have filed these Appeals. It is relevant to mention here that Jit Kakati filed Criminal Appeal No.1305 of 2014 which abated due to his death.

2. Appellant 1, 2 and Jit Kakati worked as Assistant Managers of Gotanga tea estate at the relevant time. Appellant No.3 was working as a welfare officer of Sangsua tea estate and Appellant No.4 was working as the Assistant Manager of Gobindapur tea estate. Both Gotanga and Sangsua tea estate were under the same management. Jit Kakati and Anjan Kumar Sharma, the first Appellant, were living in bungalow No.17 in Gotanga tea estate. Jit Kakati was staying in one part of the Director's bungalow situated in Sangsua tea estate when he was working as Assistant Manager at Sangsua tea estate prior to his transfer to Gotanga tea estate. Even after his transfer and allotment of bungalow No. 17 in Gotanga tea estate, Jit Kakati was still in occupation of the Director's bungalow at Sangsua tea estate.

3. Rekha Dutta was residing in a house situated near the Director's bungalow at Sangsua tea estate. Jit Kakati developed intimacy with Rekha Dutta. On 27.12.1992 Rekha Dutta went inside the Director's bungalow of Sangsua tea estate to fetch water. Jit Kakati called her inside the bungalow and Rekha Dutta stayed in the bungalow for a considerable period of time. Sarumai Halwai (PW-1) informed Jibon Dutta (PW-20) the elder brother of Rekha

Dutta about his sister spending considerable time inside the bungalow along with Jit Kakati. PW-20 who was working as a Chowkidar at Sangsua tea estate at the relevant time sent his sister Jun Moni Dutta (PW-2) to the Director's bungalow to see whether Rekha Dutta was in the bungalow. PW-2 visited the bungalow and found that Rekha Dutta was sitting in a room along with Jit Kakati. On the basis of the said information, PW-20 went to the Director's bungalow and questioned the conduct of Jit Kakati. Jit Kakati informed PW-20 that he proposes to marry Rekha Dutta. PW-20 told Jit Kakati that a decision regarding the marriage can be taken only after consultation with his relatives. As per the prosecution version, PW-20 sent one Ranjit Halwai to call his relatives. All the accused along with Rekha Dutta left the Director's bungalow of Sangsua tea estate on two motor cycles before the relatives of PW-20 reached the spot. They went to bungalow No.17 in the adjacent Gotanga tea estate. Rekha Dutta was seen at bungalow No.17 on the evening of 27.12.1992 till 9:00 pm by Fulu Turi (PW-4) and Bhai Turi (PW-5). As the whereabouts of Rekha Dutta thereafter were not known to PW-20 and her other family members, they started making enquires on 28.12.1992. As they could not locate Rekha Dutta, PW-20 approached the officer in charge Pulibar Police Station, District Jorhat and submitted an ejarah (F.I. statement). PW-20 stated in the ejarah that Jit Kakati eloped with Rekha Dutta at 4:30 pm on 27.12.1992 and thereafter her whereabouts were not known.

4. An FIR was registered at 10:15 am on 29.12.1992. The Investigating Officer (PW-21) commenced his investigation by going to the Sangsua tea estate and started examining witnesses. At about 1:50 pm he received information about a dead body lying on the railway track. He went to the railway track near Gotanga tea estate and found the severed pieces of a girl's dead body lying on the railway track. He conducted inquest on the body of the girl which was cut into pieces by the train. The body parts were found lying scattered within 40 feet area of the railway track. The head and left leg were not found with the other parts of the body. The right leg was cut into pieces from thigh to knee, the leg was almost severed but for a strand of skin. The left hand was broken but attached to the body. The left leg was missing. The body was identified by PW-20 to be that of Rekha Dutta, on the basis of the clothes that she was wearing. The Appellants and Jit Kakati voluntarily surrendered before the police. Pursuant to a disclosure statement made by Jit Kakati on 31.12.1992, a Khukri was recovered from the wardrobe of Jit Kakati at bungalow No.17, Gotanga tea estate.

5. The post mortem on the body was conducted by Dr. Golap Chandra Deka (PW-11) on 30.12.1992 who opined that death was due to shock and coma as a result of craniocerebral injuries. The following injuries were found on the body of the deceased:-

“1. "A portion of the calvarium including frontal, temporal and parietal region is detached with one bone deep incised wound of size 10 m x 2 cm on the left side with total avulsion on the remaining sides. The detached portion of the skull bone was covered with skull and long black hairs. The cut margin of the left side of the separated skull shows bevelling. Blood clot present in an around the cut edges and beneath the scalp. The brain matter is not found in situ.

2. Remaining portion of the skull with periorbital region with its contents are crushed just above the upper lip and up of nose upwards. Right ear absent, left ear only attached with skin.
3. Multiple, almost parallel superficial bruises obliquely placed, encircling the distal portion of both forearms.
4. Multiple small superficial bruises are found around both the well-developed breasts. Cut section shows extravasation of blood and tissue fluid in sub-cut.
5. Multiple, small superficial bruises on back of trunk on both sides. Cut section shows extravasation of blood.
6. Swelling and bruises present in an around the vulva, majora and minora. Cut section shows extravasation of blood.
7. The whole left arm is completely crushed, limb being attached only with crushed muscles. No evidence of any fresh bleeding.
8. Left leg is completely detached from the limb below the lower part of the thigh by crush injury. Detached leg fits with the limb. No evidence of any fresh bleeding.
9. The right thigh completely crushed and the leg is attached by crushed muscles. No evidence of any fresh bleeding.
10. One lacerated injury 2" x 1 V2" over the right side of right ankle joint. No evidence of any fresh bleeding.
11. Multiple fractures of almost all the ribs on both sides of the chest.
12. One lacerated injury on the lateral side of right abdominal wall mostly in the upper part 4" x 2" x 1" exposing the intestinal coils, ruptured stomach and right kidney. No evidence of any fresh bleeding."

6. PW 11 deposed that injuries Nos. 1, 3, 4, 5 and 6 were ante mortem. He also stated that there was evidence of sexual intercourse. He further deposed that the death occurred 24 to 48 hours before the time of post-mortem examination which was conducted at 12.00 noon on 30.12.1992. The Sessions Judge, Jorhat framed the following charges:-

"Firstly- That you, on or about the 27.12.92 at Sangsua Tea Estate under Pulibar P. S. committed gang rape on Smt. Rekha Dutta in furtherance of your common intention. And thereby committed an offence punishable under Section 376(2) (g) / 34 the Indian Penal Code and within (3) my cognizance.

Secondly - That you, on or about the same day time and place committed murder of Smt. Rekha Dutta by intentionally causing her death and in further of your common

intention and hereby committed an offence punishable under Section 302/34 of the Indian Penal Code and within (4) my cognizance.

Thirdly - That you, on or about the same date, time and place at knowing that certain offence to (sic) murder punishable its death has been committed, dies cause certain evidence of the said offence to disappear with dead body was thrown into a rail track with the intention of screening yourselves from legal punishment and hereby committed an offence punishable under Section 201 my cognizance."

7. The prosecution relied upon the following circumstances to prove the charges against the accused:-

"1. "The deceased was last seen with the accused persons in Bungalow No.17 on the night of 27.12.1992 in the company of the accused persons but not seen alive thereafter anywhere.

2. When the relatives of Rekha Dutta enquired about her whereabouts on the next date i.e. on 28.12.1992 the accused persons failed to give any definite reply.

3. The dead body of the victim was found/ lying on the railway track on 29.12.1992. The said railway track passes through the tea garden where bungalow No.17 is situated.

4. Rekha was wearing material Exhibit 1 (Frock) when she was last seen in the company of the accused persons and the same frock was also found on her dead body when it was discovered on the railway track on 29.12.1992.

5. The surgeon (PW 11) who conducted the autopsy, while issuing the post mortem certificate (Exhibit 4) categorically stated that death of the victim was a result of the ante mortem incised wound found on the skull which could be caused by weapon like material Exhibit 3 (Khukri).

6. Recovery of material Exhibit 3 (Khukri) from the bungalow of accused Dhruba Jyoti Bhuyan on the basis of disclosure statement made by accused Jit Kakati.

7. Mark of blood stains found in the said khukri.

8. The Investigating Officer also noticed blood stains in the bathroom of bungalow No.17.

9. The failure of the accused persons to offer any explanation in respect of the incriminating circumstances as narrated above, which, according to prosecution, can be counted as providing missing links for completing the chain of circumstances."

8. The Trial Court considered each of the circumstances in a detailed manner. Regarding the last seen theory propounded by the prosecution, the Trial Court held that the prosecution proved through the evidence of PW-4 and PW-5 that Rekha Dutta was seen in the company of the accused till 9:00 pm on 27.12.1992. There is no conclusive proof that Rekha Dutta stayed at the bungalow over night. Considering the medical evidence on record, the Trial Court held that the death should have been after 12.00 noon on 28.12.1992 and there was no evidence that the deceased was seen with the accused persons around that time or thereafter. According to the Trial Court the mere fact that the accused were with the deceased till 9:00 pm on 27.12.1992 will not by itself lead to an irresistible inference that they committed the crime.

9. The Trial Court accepted the evidence of PW 11 regarding the ante mortem injury No. 1 which was caused by a sharp weapon due to which Rekha Dutta died. The recovery of khukri pursuant to the disclosure statement was the subject matter of strict scrutiny by the Trial Court. It was observed that the four witnesses to the disclosure statement and recovery memo, PW 13, PW 14, PW 15 and PW 19 were declared hostile. There was no corroboration to the statement of the investigating officer PW 21 either about the disclosure or seizure. The Court also examined whether the prosecution proved that the weapon seized was used for commission of the offence. PW 19 in whose presence the weapon was seized deposed that there were no blood stains on the weapon. The report of the Forensic Science Laboratory, Guwahati found blood stains but the origin of the blood could not be established. There was no evidence to show that there was human blood on the weapon. The investigating officer spoke about the detection of blood stains in the bathroom of bungalow No.17. The blood which was collected was sent for chemical analysis and the report of the Serologist revealed that the sample gave negative test for blood.

10. The Trial Court categorically held that the prosecution was unable to prove the charge of Section 366-A against Jit Kakati as the deceased was in the company of Jit Kakati of her own volition. A thorough examination of the entire evidence on record led the Trial Court to hold that the charge under Section 376 (2) (g) against all the accused was not proved. The Trial Court further held that there was no motive on the part of the accused for committing the offence alleged against them. On an overall consideration the Trial Court held that the Accused were not guilty of the offences under Section 302, 201 read with 34 as well. It was further held the circumstance of the accused and deceased last seen together on the night of 27.02.1992 by itself is not sufficient to convict the Accused.

11. The High Court confirmed the findings of the Trial Court regarding acquittal of the accused under Section 366-A and 376 (2) (g). The High Court found that the deceased was 24 years of age at the time of the offence. The High Court was conscious of the fact that the judgments of acquittal are not interfered with normally only because another view is possible. The High Court referred to the findings of the Trial Court that the deceased was in the company of accused till 9:00 pm on 27.12.1992 and the dead body was recovered at 3:00 pm on 29.12.1992. The High Court proceeded on the basis that there was no inordinate delay between the time when they were last seen together and the recovery of the dead body. The

High Court also held that it was inferable that death was caused on the night of 28.12.1992 and the dead body was thrown on the railway track. According to the High Court, that will coincide with the time of death as per the post-mortem report which was around 12:00 noon on 28.12.1992. The High Court held that the onus was on the accused persons to explain and exculpate themselves when the last seen theory was established. In the absence of any satisfactory explanation the presumption would suggest the guilt of the accused. On the basis of the aforementioned reasoning, the High Court reversed the acquittal of the accused and convicted them for offences under Section 302, 201 read with 34 IPC and sentenced them to undergo imprisonment for life.

12. Jit Kakati was acquitted for committing an offence under Section 366-A and his acquittal was confirmed by the High Court. Jit Kakati died during the pendency of the Criminal Appeal before this Court and the appeal filed by him abated. The acquittal of the Appellants under Section 376 (2) (g) was confirmed by the High Court which remains unchallenged. The point that falls for our consideration is whether the conviction of the Appellants by the High Court under Section 302, 201 read with 34 IPC is justified. The High Court was conscious of the fact that interference with the judgment of an acquittal by the Trial Court is unwarranted except when it suffers from the vice of perversity (See: *Brahm Swaroop v. State of U.P.*,. There is neither a discussion nor finding recorded by the High Court about any perversity in the judgment of the Trial Court. The only ground on which the High Court reversed the judgment of the Trial Court is that the prosecution proved that the accused and the deceased were last seen together and there was no explanation which led to the presumption of guilt of the Accused.

13. 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*²; *M.G. Agarwal v. State of Maharashtra*³)

14. Mr.R.Venkataramani, learned Senior Counsel appearing for the State of Assam, supported the judgment of the High Court. He submitted that the deceased was seen along with the accused till 9.00 pm on 27.12.1992 and no explanation was given by them as to what happened thereafter. On the next day, Akhil Bordoloi (Appellant no. 3) misled the family members of the deceased by initially stating that the deceased was with Jit Kakati and will return soon and changing his version in the afternoon by saying that the deceased was not with Jit Kakati. Mr.R.Venkataramani submitted that the incident occurred in a tea estate which is sparsely populated with no access to general public. The railway track is adjacent to the tea estate and there was no possibility of anybody else having committed the crime. He argued that total denial on the part of the accused in their examination under Section 313 Cr. PC is a strong circumstance against the accused.

15. It is no more *res integra* that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and the legal proof. At times it can be a case of "may be true." But there is a long mental distance between "may be true" and "must be true" and the same divides conjunctures from sure conclusions. (See: *Jaharlal Das v. State of Orissa*⁴,

16. 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*⁵, 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 pm on 27.12.1992. The inference drawn by the High Court that the accused have 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.

17. The prosecution relied upon nine circumstances to prove the charges against all the accused. PW-11 who conducted the Autopsy opined that the death of the victim was due to the ante mortem incised wound found on the skull which could have been caused by Material Exhibit 3 (khukri). We are in agreement with the Trial Court that the recovery of the khukri was not supported by any independent witnesses. The prosecution has also failed to prove that there were blood stains on the said khukri. The blood stains found in the bathroom of bungalow No. 17 were sent for examination which resulted in a negative report. The above circumstances not being proved would leave only two circumstances against the Accused which are that the Accused were last seen together with the deceased and the absence of any explanation forthcoming by the Accused.

18. The circumstance of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In *Kanhaiya Lai v. State of Rajasthan*⁶, this court held that:

"12. 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. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

15. The theory of last seen—the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*⁷."

In *Arjun Marik v. State of Bihar*⁸, this court held that:

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

19. This Court in *Bharat v. State of M.P.*⁹, held that the failure of the accused to offer any explanation in his statement under Section 313, Cr.P.C. alone was not sufficient to establish the charge against the accused. In the facts of the present case, the High Court committed an error in holding that in the absence of any satisfactory explanation by the accused the presumption of guilt of the Accused stood un-rebutted and thus the Appellants were liable to be convicted.

20. Mr. *R. Venkataramani* relied upon *Deonandan Mishra v. State of Bihar*¹⁰, at p.582 to buttress his submission that the circumstance of last seen together coupled with lack of any satisfactory explanation by the accused is a very strong circumstance on the basis of which the accused can be convicted. It was held by this Court in the above judgment as follows:-

"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a

reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence."

21. 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*¹¹, 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:-

"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."

As we have held that the other circumstances relied upon by the prosecution are not proved and that the circumstances of last seen together along with the absence of satisfactory explanation are not sufficient for convicting the accused. Therefore the findings recorded in the above judgment are not applicable to the facts of this case.

22. Due to the lack of chain of circumstances which lead to the only hypothesis of guilt against the accused, we set aside the judgment of the High Court and acquit the Appellants of the charges of Section 302, 201 read with 34 IPC. The Appellants are directed to be set at liberty forthwith, if not required in any other case.

23. The Appeal is accordingly allowed.

Judgment Referred.

¹(2011) 6 SCC 0288

²(1984) 4 SCC 0116

³AIR 1963 SC 0200

⁴(1991) 3 SCC 0027

⁵(2013) 12 SCC 0406

⁶(2014) 4 SCC 0715

⁷(2010) 15 SCC 0588

⁸(1994) Supp. 2 SCC 0372

⁹(2003) 3 SCC 0106

¹⁰(1955) 2 SCR 0570

¹¹(2007) 3 SCC 0755