

SUPREME COURT OF INDIA

Satpal

Vs.

State of Haryana

CrI.A.No.1892 of 2017

(Kurian Joseph,J., Mohan M.Shantanagoudar and Navin Sinha,JJ.,)

01.05.2018

JUDGMENT

Navin Sinha,J.,

1. The appellant assails his conviction under Section 302 read with Section 201 I.P.C., by the Additional Sessions Judge, Hissar in case No.54-SC (RBT) of 2008, affirmed by the High Court, based on the last seen theory.

2. PW-7, Krishan Kumar lodged an F.I.R. on 11.09.2007 with evening at about 6:00 PM to deliver milk to customers. The witness and his relative PW-9, Richhpal had seen the regard to his missing nephew, the deceased Kapil Kumar who was thirteen years old. The deceased had gone to the village the deceased with the appellant at about 9:00 PM on the Khairpur Road, Sarangpur, going on a bicycle together. The deceased did not return home at night. His dead body was found the next morning lying concealed in a heap of dry fodder in the fields of Subhash. The appellant was stated to have had an altercation with the deceased a few days ago with regard to payment of milk. The disclosure by the appellant under Section 27 of the Evidence Act after his arrest, led to recovery of the atlas bicycle belonging to PW-7, and the milk can with the name of the witness inscribed on it.

3. Learned Counsel for the appellant assailing the conviction, submitted that the dead body was found at a considerable distance from where he was last seen with the deceased and in the opposite direction. It is highly unlikely that the appellant would have carried the dead body for the long distance. The recovery is planted, as the second seizure witness Kheda had not been examined. The appellant would not have hidden the bicycle and the milk can near his own house to facilitate his implication. The story of the milk can and an altercation few days earlier in Court, were improvements as no such statement had been made by PW-7 in the FIR or statement under Section 161 Cr.P.C.

4. There was a contradiction between the evidence of PW-7 and PW-9 with regard to intimation given to the Sarpanch at night itself. There was also a contradiction between the statement of the two witnesses with regard to time when the dead body was discovered and

the police reached the spot. There was no evidence with regard to the bicycle as belonging to PW-7. The father of the deceased, PW-8, Subhash had come to the village in the morning itself looking for his son which is suggestive that the deceased was missing since earlier creating doubts about the last seen theory. Alternately, if the deceased was missing since the previous night, the conduct of PW-7 in not informing PW-8 at night itself was highly unnatural. PW-7 and PW-9 were thus not reliable witnesses. To sustain a conviction on basis of circumstantial evidence, it was necessary that all links in the chain of circumstances must be complete leading to the only hypothesis for guilt of the accused. If there were any missing link in the chain of circumstances and the possibility of innocence cannot be ruled out, the benefit of doubt must be given by acquittal. Any recovery on basis of confession, under Section 27 of the Evidence Act, cannot form the basis for conviction.

5. Learned counsel for the State submitted that the deceased was last seen with the appellant the previous night at about 9.00 PM going on a bicycle and did not return at night. The dead body was found next morning in the vicinity of the area they were last seen together. The post-mortem conducted on 12.09.2007 at 2:15 PM estimates the time elapsed since death as 24-36 hours and which coincides with when the deceased was last seen with the appellant. Motive for the crime existed. The conduct of the appellant in absconding after the occurrence is also an incriminating factor against him. PW-7 had identified the bicycle as belonging to him and the milk can had his name inscribed on it.

6. We have considered the respective submissions and the evidence on record. There is no eye witness 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 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.

7. Both PW-7 and PW-9 have consistently stated having seen the deceased going with the appellant on a bicycle at 9.00 PM the previous evening. The deceased did not return home at night. The appellant was also not to be found at home. The corpse of the deceased was recovered the next morning hidden in a heap of fodder in the fields. The FIR was lodged promptly on 11.09.2007 naming the appellant as a suspect. An FIR is not to be read as an encyclopedia requiring every minute detail of the occurrence to be mentioned therein. The absence of any mention in it with regard to the previous altercation, or the presence of the

milk can, cannot affect its veracity so as to doubt the entire case of the prosecution. The altercation suffices to establish motive. The appellant has not led any evidence regarding his not being in the company of the deceased or that they had subsequently parted ways. The appellant has not led any evidence, despite his statement under Section 313 Cr.P.C. that he would do so, why he did not return home at night or his whereabouts otherwise. PW-8, father of the deceased, was informed in the morning of 11.09.2007 by PW-7 after which he came to the village. The deceased was a thirteen year old hardly in a position to resist the appellant. We see no reason why the two witnesses being related to the deceased would depose falsely and shield the real offender, especially when the appellant has not given any reason or led any evidence for his false implication.

8. The post-mortem was done on 12.09.2007 at about 2:15 PM by PW-12, Dr. Sunil Gambhir opining that death was due to strangulation by manual throttling. The time elapsed since death has been estimated as 24 to 36 hours. The witness has deposed that death could be estimated to have occurred at about 10.00 PM on 10.09.2007. The body has been recovered in the vicinity of where the deceased was last seen with the appellant. The fact that it may be in the opposite direction is hardly relevant.

9. The recovery of the atlas cycle on the confession of the appellant, identified by PW-7 as belonging to him, as also the recovery of the milk can on the same basis with the name of PW-7 inscribed on it with nail polish and the fact that the appellant was absconding after the occurrence till his arrest on 16.09.2007 are additional incriminating factors which complete the links in the chain of circumstances. The recovery having been proved by PW-7, the failure to examine the other seizure witness, Kheda, is of no consequence.

10. In the entirety of the facts and circumstances of the case, we find no reason to interfere with the conviction of the appellant.

11. The appeal is dismissed.