

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 25.04.2023

Pronounced on: 28.04.2023

CRAA No.25/2011

State of J&K

... Appellant(s)

Through:- Mr. Amit Gupta, AAG

V/s

Narinder Singh

...Respondent(s)

Through:- Mr. A.P.Singh, Advocate

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

SANJEEV KUMAR-J

1. This criminal acquittal appeal is directed against judgment dated 29th October, 2010 passed by the learned 1st Additional Sessions Judge, Jammu [“the trial Court”] in file No.90/Challan titled *State of J&K v. Narinder Singh and others*, whereby and whereunder respondent has been acquitted of the charges of Section 302/34 RPC and 4/25 Arms Act.

2. Before we proceed to appreciate the grounds of challenge urged by the appellant to assail the impugned judgment, we deem it appropriate to notice few material facts.

3. On 06.07.2007, Police Post, Sidhra received an information through reliable source that at Daggar Morh, Sidhra, one Auto Rickshaw bearing Regd. No.JK02M-3766 was lying abandoned on the

side of road and in front whereof a dead body was lying in a pool of blood. It was also reported that the person whose dead body was lying on the spot had been allegedly murdered by some persons on the basis of past rivalry. The information was entered in the Daily Diary (Roznamcha) of the concerned Police Post and a copy thereof was forwarded to Police Station, Nagrota.

4. On receipt of this information, FIR No.171/2007 was registered in the Police Station, Nagrota. Investigation was set in motion. During the course of investigation the dead body was taken in custody and sent for post-mortem and other evidence including bloodstained earth, simple earth and weapon of offence i.e. Toka were also seized from the place of occurrence. The auto rickshaw bearing Registration No.JK02M-3766 allegedly driven by the deceased at the time of occurrence and the motorcycle bearing Regd. No.JK02J-6563 allegedly used by the accused persons for chasing the deceased were also seized along with the documents. The motorcycle in question was seized on the basis of disclosure statement made by the respondent. The other two accused, namely Ram Pal and Garu Ram were absconding after committing the alleged crime and, therefore, they were proceeded under Section 512 Cr.P.C.

5. The Investigating Officer after recording statements of the witnesses connected with the case and after completing the investigation and other required legal formalities presented Final

Report in terms of Section 173 Cr. P.C. before the learned Chief Judicial Magistrate, Jammu, which came to be transferred to the Court of Sub-Registrar (JMIC), Jammu for proceeding further in the matter. Learned Magistrate after completing all the requisite formalities committed the case to the learned Sessions Judge, Jammu, which was subsequently transferred to the trial Court.

6. Before the trial Court, prosecution examined PW-1 Sanjeev Kumar, PW-Ravi Kumar, PW-Rinku Kumar, PW-Parshotam Sharma, PW- Raki Gupta, PW- Rishi Kumar, PW- Devi Dass, PW-Subash Chander H.C. No.551, PW-Ghulam Ali Patwari, PW-Angrez Singh and PW-Inspector Arjun Singh, Investigating Officer. The statements of PW-4 Hardeep Singh, PW-16 Anil Mangotra, PW-17 Mool Raj, Scientific Officer, PWQ-18 Sanjay Mengi and PW-19 Smt. Sangita Choudhary recorded under Section 161 Cr.P.C. were admitted and treated as substantive piece of evidence on the written request of the learned defence counsel during the trial vide order dated 09.09.2009.

7. On the conclusion of the prosecution evidence, the incriminating circumstances appearing against the respondent were put to him and his statement under Section 342 Cr.P.C recorded. The respondent denied all the charges and the incriminating circumstances put to him but chose not to lead any defence evidence. The matter was considered by the trial Court in the light of evidence brought on record by the

prosecution and the arguments addressed on both the sides. The trial Court after analyzing the evidence on record in the light of the arguments made by the learned counsel appearing for the prosecution and defence, came to the conclusion that the prosecution had not been able to prove its case against the respondent beyond any reasonable doubt and, thus, ordered acquittal of the respondent charged with the offences under Section 302/34 RPC and 4/25 Arms Act vide judgment of acquittal dated 29.10.2010, impugned in this appeal.

8. The judgment impugned, as would be seen from the memorandum of appeal, is assailed primarily on the ground that the trial Court has failed to appreciate the prosecution evidence in correct perspective and that the conclusions drawn by the trial Court are against the weight of evidence. It is submitted that the prosecution had brought on record sufficient material to connect the respondent with the murder of the deceased- Anil Kumar but due to hyper-technical approach adopted by the trial Court, the perpetrator of heinous crime of murder has been let off.

9. Having heard learned counsel for the parties and perused the material on record, we are of the considered view that the trial Court has very carefully and in proper perspective considered the entire evidence led by the prosecution and has come to a correct conclusion that the prosecution has miserably failed to prove its case against the

respondent. The poor investigation by the police and equally inefficient prosecution has led to the acquittal of the respondent.

10. The case set up by prosecution in the charge-sheet is that the respondent was having illicit relations with one Sanjana wife of Sanjay Kumar, brother of the deceased. The respondent used to make telephone calls to her, which was objected to by the deceased. The deceased had even reprimanded the respondent for his indecent conduct. It is because of this reason, the respondent had started nursing grudge against the deceased. With a view to doing away with the life of the deceased, the respondent made a plan with the absconding co-accused and as per the plan, came to Kachi Chawani Auto Stand on 06.07.2007. At the Kachi Chawni Auto Stand, the deceased was waiting for passengers along with his Auto Rickshaw. Absconding accused-Ram Pal posed himself as a passenger and asked the deceased to take him to Majalta. The deceased left for Majallta in his Auto along with co-accused Ram Pal. The respondent alongwith another absconding accused Garu Ram followed the deceased on a motorcycle bearing registration No.6563-JK02J. It is the further story of the prosecution that when the deceased along with Ram Pal reached at Daggar Morh on Majalta road, absconding accused Ram Pal asked the deceased to stop the Auto Rickshaw and in the meanwhile, the respondent along with absconding accused-Garu Ram reached at the place of occurrence. Absconding accused Ram Pal and Garu Ram caught hold of deceased whereas the respondent launched a murderous

attack on the deceased. He was hit with a Toka on his head and other parts of the body, as a result of which, deceased died on the spot. The accused after commission of the crime fled from the scene of occurrence.

11. As would be seen from the prosecution story, there was no eyewitness to the occurrence and the entire case of the prosecution was built on circumstantial evidence. With a view to bring home the charge, prosecution relied upon the circumstances of '**motive**' and '**last seen theory**'.

12. So far as motive of crime is concerned, the trial Court on the basis of the statements of the prosecution witnesses, in particular statements of PW-Rinku and PW- Harjit Singh, has rightly come to the conclusion that there was enmity between the respondent and deceased on account of some past rivalry and possibly there could have been motive for the respondent to harm the deceased, but as is well settled, the motive of crime, if proved, supplies link in the chain but absence thereof is not a ground to reject the prosecution case. Motive alone cannot be the conclusive proof of commission of crime by the person, who possibly had a motive, unless something more is proved to complete the chain of links. In this matter based on circumstantial evidence the only other circumstantial evidence relied upon by the prosecution is last seen theory. The theory of last seen is propounded by the prosecution on the basis of statement of witnesses, who have

deposed that it was absconding accused Ram Pal, who had disguised as a passenger, according to a pre-plan, and left for Majalta in the company of the deceased in his Auto Rickshaw. This happened at about 5 p.m on 06.07.2007 at Kachi Chawni, Auto Stand. The Respondent and absconding accused-Garu Ram were seen riding on a motorcycle near Kachi Chawni auto stand after a few minutes and from there they left from Majalta in a chase after the deceased.

13. With a view to find out as to whether this circumstance has been conclusively proved by the prosecution, it is necessary to allude to the statement of PW-Rinku made under Section 161 Cr.P.C and the one made by him before the Court. PW-Rinku has deposed that on the date of occurrence he was with his brother deceased-Anil Kumar at auto stand, Kachi Chawni at 5 p.m when Ram Pal, an absconding accused came there and told the deceased-Anil Kumar to take him to Majalta in his auto rickshaw. The deceased Anil Kumar took him in his auto to Majalta. He further deposed that after 2-3 minutes he saw the respondent on his motorcycle with Garu Ram, an absconding accused, as a pillion rider going towards Panjtirthi. He further deposed that in between 6.30 p.m. to 7 p.m. PW-Parshotam Sharma came to his shop at Kachi Chawni and disclosed that he had received information from matador drivers that at Daggar Morh, Sidhra dead body of a young man had been seen along with Auto Rickshaw abandoned on the side of road. The witness further stated that he along with PWs-Parshotam Sharma and Hardeep Singh left for Daggar and found the dead body of

the deceased on spot. In his statement under Section 161 Cr.P.C., PW-Rinku deposed that the respondent was having old enmity with deceased Anil Kumar and, therefore, he along with absconding accused made a plan to commit murder of the deceased. PW-Rinku has, however, changed his version when he deposed in the Court. From a witness to the circumstance of last seen, he became an eye witness. Statement of PW-Rinku that on noticing suspicious movement of the accused he had also chased them to the spot of occurrence and found that they had murdered his brother is not supported or corroborated by the other prosecution witnesses.

14. That apart, if we were to believe that PW-Rinku was present at the place of occurrence and had seen the accused murdering his brother, he would have been the first person to rush to the Police Post/Police Station for registration of FIR. He would have atleast raised alarm to gather people on spot. There is no evidence on record to indicate that PW-Rinku even gave any telephone call to his friend or relatives requesting them to rush to the spot where his brother had been murdered and lying in the pool of blood. Rather, there is testimony to the contrary by the other prosecution witnesses. PW-Ravi Kumar has been categoric in his deposition that upon hearing the news of murder of deceased Anil Kumar, he along with other auto drivers rushed to the spot of occurrence and saw an auto abandoned there. He has further deposed that they saw the dead body lying on the road near the auto,

which they brought to the hospital. He has further stated that PW-Rinku was not with them.

15. The Investigating Officer, PW-Arjun Chib has, in his deposition, clarified that PW-Rinku had never claimed to be an eye witness to the occurrence nor did he make any statement to the extent that he was present at the scene of occurrence and had seen the accused- respondent assaulting the deceased. He has stated that PW-Rinku was only a witness of circumstance.

16. In the face of available prosecution evidence on record, the trial Court had no option but to reject the last seen theory propounded by the prosecution. It may be pointed out that for predicated conviction on the basis of circumstantial evidence following conditions must be fulfilled:-

- i) The circumstances from which the conclusion of the guilt is to be drawn must be fully established.
- ii) The facts so established should be consistent not only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable of any other hypothesis except that the accused is guilty.
- iii) The circumstances must be of conclusive nature and tendency.

17. There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion inconsistent

with the innocence of the accused, and it must be such as to show that within all human probabilities, the act must have been done by the accused.

18. As we have noticed, in the instant case the prosecution relied upon two circumstances i.e. motive for commission of crime and that the deceased was last seen with the accused. So far as motive is concerned, the trial Court has, on the face of evidence on record, rightly concluded that there was past enmity between the respondent and the deceased and that could have been motive to harm the deceased. The trial Court has rightly appreciated the circumstance of the accused last seen with the deceased. Last seen together theory is the one in which two people are seen together and immediately thereafter one is found alive and the other dead. True it is, last seen theory is by itself a poor kind of evidence but if the circumstance like the accused having been seen in the company of deceased immediately before his death is firmly established and corroborated with some other cogent evidence, the conviction can be based solely on the establishment of this circumstance, unless the accused is in a position to explain as to how he having been with the deceased parted way from him before happening of the occurrence.

19. What is more emphasized in the last seen theory is reasonably proximity between the time of seeing the person and recovery of the body to point the needle towards the person last seen with the deceased.

It is true that even if there is some time gap between the occurrence of the event and the time when the accused and the deceased were last seen together, the prosecution can well establish the fact that no other person could have interfered or intervened.

20. In the instant case, if we were to believe the testimonies of the prosecution witnesses PW-Rinku, PW-Ravi Kumar and PW-Parshotam Sharma, though they are replete with serious contradictions, the accused were last seen with the deceased at Kachi Chawani auto stand around 5 p.m. and the dead body of the deceased, as per the prosecution, was found at Daggar Morh, Sidhra somewhere between 5.30 to 6 p.m., we find that there is no convincing evidence on record to show that there was no intervention by any third person from Kachi Chawni to the place of occurrence. Even the circumstance that the accused including the respondent were seen with the deceased at Kachi Chawni is not firmly established. There are serious contradictions in the statements of prosecution witnesses even with regard to the person or persons, who were taken by the deceased in his auto from Kachi Chawni auto stand towards Sidhra. As per the prosecution, PW-Rinku who is none other than the brother of the deceased was a witness to the last seen theory but PW-Rinku while making his deposition in the Court became an eye witness, which testimony of the PW, for good and valid reasons, has been rejected by the trial Court.

21. Viewed from any angle, it is not a case where it could be said with certainty that the prosecution has proved its case by leading circumstantial evidence. The major link in chain of circumstances i.e. the accused having been last seen with the deceased has not been firmly established. We are, therefore, left with no option but to concur with the view taken by the trial Court. Otherwise also, the jurisdiction of the Appellate court hearing an appeal against an order of acquittal is well circumscribed. As is correctly said, acquittal of an accused in a trial doubles the presumption of innocence of the accused charged with commission of a crime and the Appellate Court should be slow in interfering with the findings of fact recorded by the trial Court on the basis of evidence led before it, where it has the advantage of noticing the demeanor of the witnesses.

22. In the acquittal appeal, if the Appellate Court, after going through the judgment of acquittal and evidence on record, is of the opinion that two views are possible, it would take the view that would favour the accused.

23. For all these reasons, we find no merit in this appeal and the same is, accordingly dismissed.

**(Rajesh Sekhri)
Judge**

JAMMU
28.04.2023
Vinod, PS

**(Sanjeev Kumar)
Judge**

Whether the order is reportable: Yes/No