[2025] 2 S.C.R. 1785 : 2025 INSC 256

The State of Chattisgarh
v.
Ashok Bhoi Etc.

(Criminal Appeal No(s). 1258-1259 of 2015)

27 February 2025

[Bela M. Trivedi and Prasanna B. Varale, JJ.]

Issue for Consideration

Whether the High Court was justified in allowing the criminal appeal preferred by accused-respondent and dismissing acquittal appeal preferred by the State, thereby acquitting both the accused persons.

Headnotes†

Code of Criminal Procedure, 1973 – Whether the prosecution established entire chain of circumstances to prove the guilt of the accused persons as the case is based on Circumstantial Evidence – Correctness:

Held: The entire case of the prosecution hinged on the circumstantial evidence, there was no eye-witness to the alleged incident – So far as accused-AB is concerned, prosecution relied on evidence of PW-18, who had seen the deceased alongwith the accused at the date of incident and reliance has also been placed on the recovery of the blade and nails & T-shirt with blood stains made at the instance of the accused-AB – The entire theory of "last seen together" is based on Section 106 of the Evidence Act – It is also true that if the prosecution proves by leading reliable evidence that the accused was last seen with the deceased, the burden would be shifted on the accused to explain the said incriminating evidence, said evidence alone would not be sufficient to hold him guilty of the alleged offence – The accused's failure to present evidence on his behalf may be treated by the court as confirming the presumptions that may arise therefrom, nonetheless, that presumption alone, taking recourse to Section 106, would not be sufficient to convict an accused – Moreover, the recovery of blade, nails and T-shirt with blood stains after two days of the incident also does not inspire any confidence, thus, the prosecution failed to establish entire chain of circumstances that would lead to the guilt of the accused – There was no evidence whatsoever produced by the prosecution to prove the guilt of the accused-V or to connect

him with the alleged crime therefore, the High Court has rightly confirmed the judgment of acquittal for V – Thus, the High Court having rightly appreciated the evidence as well as the legal position, we do not find any illegality or infirmity in the judgment passed by High Court. [Paras 6, 8, 9, 10, 11]

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Circumstantial Evidence; Last seen theory; Prove the guilt of the accused beyond reasonable doubt.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 1258-1259 of 2015

From the Judgment and Order dated 19.10.2012 of the High Court of Chhattisgarh at Bilaspur in CRA No. 601 of 2007 and AA No. 1 of 2009

Appearances for Parties

Advs. for the Appellant:
Ravi Sharma, D.A.G., Prashant Singh.

Advs. for the Respondents:
Rajeev Kumar Bansal, Arun Kumar Arunachal, Vikas Singh Jangra.

Judgment / Order of the Supreme Court

Judgment

1. The present set of two appeals have been filed by the State of Chhattisgarh challenging the impugned common judgment and order passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.601 of 2007 and Acquittal Appeal No.1 of 2009, whereby the High Court has allowed the Criminal Appeal No.601 of 2007 filed by the respondent – accused – Ashok Bhoi, and has acquitted him from the charges levelled against him, and dismissed the Acquittal Appeal No.1 of 2009 preferred by the State against the acquittal of the respondent – accused – Vikash Khubwani.

2. As per the case of the prosecution, the PW-1 – Uttamlal had two sons - Swapnil and Suhash (deceased). On 15.01.2006, Swapnil had gone somewhere out and had not returned, and therefore, the father-Uttamlal (PW-1) sent his second son - Suhash to find him out. After sometime, Swapnil came back home, however, Suhash did not return. At about 9.00 p.m., a telephone call was received on the mobile phone of Swapnil, demanding a ransom of Rs.2 lakhs for getting Suhash back. Since Suhash did not return home, an F.I.R. was lodged by the father – Uttamlal in the Police Station Bhilai at about 10.45 p.m.

3. It appears that there were two juvenile accused, i.e., Jivrakhan and Ukesh, who were taken into custody on the basis of suspicion and from their statements, further investigation was carried out. Thereafter at the instance of the juvenile offender – Jivrakhan, the dead body of the deceased was found in an abandoned house on 17.01.2006. On the further investigation carried out, the respondent – accused – Ashok Bhoi was taken into custody and recovery of blood-stained blade, nails & T-shirt were made at his instance from the room of the house from where the dead body was found. On the basis of disclosure statement made by the co-accused, other respondent – accused – Vikash Khubwani was also arrested.

4. It appears that the trial of the two juvenile accused was separated. So far as the present respondents-accused were concerned, the Sessions Court being the Fifth Additional Sessions Judge, Durg (C.G.), after appreciating the evidence on record adduced by the prosecution convicted the accused – Ashok Bhoi for the offences under Sections 364-A and 302 of IPC, and acquitted the accused – Vikash Khubwani, vide the judgment and order dated 29.06.2007. The two appeals as stated above were preferred by the accused – Ashok Bhoi and the State of Chhattisgarh, which came to be disposed of vide the impugned judgment and order.

5. Though, it is sought to be submitted by the learned counsel appearing for the appellant – State that the High Court had misappreciated the evidence on record and committed gross error in acquitting both the accused, it is difficult to accept his submission.

6. Admittedly, the entire case of the prosecution hinged on the circumstantial evidence, because there was no eye-witness to the alleged incident. Much reliance has been placed on the evidence of PW-18, who had seen the deceased alongwith the – Ashok

Bhoi at about 6-7 p.m. on the date of the incident, i.e., 15.06.2006. Reliance has also been placed on the recovery of the blade and nails & T-shirt with blood stains made at the instance of the accused – Ashok Bhoi.

7. At the outset, it may be noted that there was no evidence whatsoever produced by the prosecution to prove the guilt of the accused - Vikash or to connect him with the alleged crime and therefore, the High Court has rightly confirmed the judgment and order of acquittal passed by the Trial Court.

8. So far as the accused – Ashok Bhoi is concerned, it is significant to note that except the theory of "last seen together", there was hardly any reliable evidence adduced by the prosecution, to prove the charges levelled against the accused. Though, it is true that the PW-18 had stated that he had seen the accused Ashok Bhoi with the deceased in the evening on the day of incident, the said evidence alone would not be sufficient to hold him guilty of the alleged offence. As rightly held by the High Court, even the concerned person from the STD-PCO was not examined to substantiate the allegation that the phone call was made by the respondent – accused – Ashok Bhoi. The recovery of blade, nails and T-shirt with blood stains after two days of the incident also does not inspire any confidence.

9. Undoubtedly, as per Section 106 of the Evidence Act, the burden of proof lies on the person who has special knowledge of a specific fact. The entire theory of "last seen together" is based on Section 106 of the Evidence Act. It is also true that if the prosecution proves by leading reliable evidence that the accused was last seen with the deceased, the burden would be shifted on the accused to explain the said incriminating evidence either in his statement under Section 313 of Cr.P.C. or by leading evidence in his defence or even by bringing out the facts during the course of cross examination of the prosecution witnesses. The accused's failure to present evidence on his behalf may be treated by the court as confirming the presumptions that may arise therefrom, nonetheless, that presumption alone, taking recourse to Section 106, would not be sufficient to convict an accused. The prosecution has to discharge its burden to prove the other circumstances in the case based on circumstantial evidence, to prove the guilt of the accused beyond reasonable doubt by leading cogent and clinching evidence.

10. It is true that Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape on fanciful doubts is not doing justice according to law. However, it is also well settled that suspicion howsoever strong cannot take place of proof. In the case based on circumstantial evidence, the entire chain of circumstances must be clearly established by the prosecution by leading clinching and reliable evidence, and the circumstances so proved must form a chain of events from which only irresistible conclusion that could be drawn, should be the guilt of the accused and no other hypothesis against the guilt.

11. The High Court having rightly appreciated the evidence as well as the legal position, we do not find any illegality or infirmity in the judgment and order passed by the High Court.

12. In that view of the matter, both the appeals deserve to be dismissed and are accordingly dismissed.

13. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals Dismissed.

†*Headnotes prepared by:* Gaurav Upadhyay, Hony. Associate Editor
(*Verified by:* Shadan Farasat, Sr. Adv.)