

**(2012) 04 DEL CK 0262**

**In the Delhi High Court**

**Case No : Criminal A. No. 449 of 2011**

Janardan Sada @ Matua

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

**Date of Decision : 23-04-2012**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation :** (2012) 3 Crimes 540 : (2012) 2 JCC 1435

**Hon'ble Judges :** S.P. Garg, J;S. Ravindra Bhat, J

**Bench :** Division Bench

**Advocate :** S.B. Dandapani, for the Appellant; Richa Kapoor, APP for the State, for the Respondent

**Final Decision :** Allowed

## **Judgement**

S.P. Garg, J.—Janardan Sada @ Matua impugns the judgment dated 26.10.2010 of Additional Sessions Judge in SC No. 178/2009 by which he was convicted for committing the offences punishable u/s 302/34 IPC and sentenced to undergo imprisonment for life with a fine of Rs. 2,000/-. The prosecution alleged that on 08.03.2009 at about 09.30 A.M. Daily Diary (DD) No. 15-B (Ex.PW-6/A) was recorded at police station Vikas Puri upon information received from lady Constable Deepa of PCR that a dead body was lying near the "nala" behind Arunodaya Apartments, Vikas Puri, Delhi. The investigation was assigned to ASI Dharambir Singh who with Constable Raju Lal reached the spot. Inspector Ghanshyam (IO) also reached there, summoned the crime team and got the scene of incident photographed. He prepared the site plan; seized blood stained earth, earth" control and blood stained knife and prepared seizure memos. Despite effort, the police could not ascertain the identity of the dead body. Finally, on 16.03.2009, Dr. Komal Singh conducted the post-mortem, on the body. The police was clueless and had no inkling who was the perpetrator of the crime. On 17.03.2009, Ghanshyam Yadav (PW-3) informed the IO that the body was of Ashok Yadav and the deceased was a "palledar" on his tempo. He

suspected complicity of the accused Janardan in the crime as there was some money dispute between the two of them. The deceased had gone to collect 4,000/- from the accused that day and did not return later. Since PW-3 suspected the accused, the police set out to apprehend him and succeed in arresting him on 19.03.2009. It also recovered his blood stained shirt and nabbed the co-accused Lal Mohan. After completion of investigation, the police filed a charge-sheet accusing Janardan Sada and Lal Mohan for committing offences punishable u/s 302/34 IPC. They were charge-sheeted and brought to trial.

2. At the trial, the prosecution examined as many as 24 witnesses to prove its case. In their statements u/s 313 Cr.P.C., both pleaded false implication. After appreciating the evidence and considering the rival contentions of parties, the Trial Court convicted the Appellant u/s 302 IPC and acquitted Lal Mohan of the charges. Aggrieved by the impugned judgment, the Appellant has preferred the present appeal.

3. We have heard the counsel for the parties and have scrutinised the Trial Court records. The homicidal death of the deceased Ashok Yadav is not under challenge. PW-16 (Dr. Komal) proved the post-mortem report (Ex.PW-16/A) and the cause of death was opined as haemorrhagic shock consequent to the cut throat. The neck injury inflicted with the knife was in the doctor's opinion sufficient to cause death in the ordinary course of nature. The testimony of expert witness remained unchallenged in the cross-examination.

4. The prosecution's case hinges upon circumstantial evidence and the Trial Court heavily relied upon the circumstance of last seen, motive and recovery of shirt to base its conviction.

5. The police was unaware at what time the incident occurred. As per postmortem report (Ex.PW-16/A), death occurred about seven and half days prior to the commencement of the procedure on 16.03.2009 at about 11.45 A.M. The time frame fixed the probable time of death at 11.45 P.M. on 08.03.2009. Apparently, the time opined in the post-mortem report is not in consonance with the time recorded in the DD No. 15-B (Ex.PW-6/A).

6. The prosecution examined PW-3 (Ghanshyam) to prove the circumstance of last seen and motive. He merely deposed of having a conversation with the deceased on 07.03.2009 at 08.00 A.M. at Libaspur, when he expressed the intention to visit the accused to collect payment. He suspected the accused's complicity and attributed that he had a motive to murder him to avoid returning money, borrowed from the deceased. The witness however, did not divulge the detail, or particulars of any such transaction, or that he was a witness to it. He further did not offer any plausible reason for not reporting the incident to the police for ten days. The witness's conduct for keeping silent seems unnatural. It is not believable that he would not come to know about the incident for ten days. He did not testify if after 07.03.2009, he had any meeting with the accused or

that he showed any abnormal behaviour. Failure of the witness to reveal these vital facts at the earliest makes his deposition doubtful. Besides, his deposition on the circumstance of last seen is inconsequential as he had never seen the accused in the company of the deceased and only had a chance to converse with him. There was a long gap when the deceased was seen alive on 07.03.2009 at 08.00 A.M. and when his body was recovered the next day at 09.30 A.M.

7. The prosecution also placed reliance on the testimony of PW-4 Umesh Choudhary, who claimed to have seen the deceased in the company of both the accused on 07.03.2009 at about 03.00 P.M. He deposed that the deceased Ashok Yadav came to him at 12 o'clock and demanded payment from the accused. Thereafter, they all loaded the goods in the tempo and left to unload those, in different places. At 09.00 or 09.15 P.M., he dropped all of them at Uttam Nagar. The testimony is devoid of details of the alleged money dispute. It nowhere reveals that refusal to pay money annoyed the deceased. It is doubtful if the accused was employed by him that day as there is no record of payment of any wage. The witness is silent about when the accused stopped coming on work and whether he searched him before 17.03.2009. He did not also explain the inordinate delay in furnishing vital clues to the police. In the cross-examination, he testified to a new version about his arrest in his presence without clarifying from where he was apprehended and when the police contacted him. PW-3 (Ghanshyam) did not depose about presence with them at the time of apprehension of the accused. PW-4 did not depose if after being nabbed, the accused assisted in recovery of his blood stained clothes. The seizure memos prepared by the police do not contain his signature, which rules out his presence at the time of apprehension and recovery of the clothes. The investigating officer also did not collect any evidence to corroborate PW-4 Umesh Choudhary's version that on 07.03.2009, he had loaded and unloaded the goods from Peeli Kothi to Rani Bagh etc. The IO did not record the statements of any shopkeeper in whose shop the goods were unloaded that day. Again, there was huge time gap between the time when the deceased was last seen alive in the company of the accused and the time of his death. It is unbelievable that this witness would make no enquiry regarding whereabouts of the deceased for 15-20 days and would come to know about his death only from the information given by the police. The testimony of this witness inspires no confidence.

8. Regarding law on the circumstance of last seen, the observation of Supreme Court in *Mohibur Rahman and Another Vs. State of Assam*, are relevant:

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. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances

the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place.

9. In the case of " State of Goa Vs. Sanjay Thakran and Another, the Supreme Court noted general principles with reference to the principles of last seen together in Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir, as under:

The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

32. In Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, this Court further opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.

34.....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.

10. In cases based upon circumstantial evidence, motive assumes greater importance. In the present case, the prosecution alleged that the accused did not intend to return the money borrowed from the deceased and when he insisted for payment, the accused conspired to murder him. The prosecution however, failed to produce any credible evidence to prove when any specific amount was borrowed by the accused from the deceased. In the cross-examination, PW-4 admitted that deceased had come only on one occasion to demand money before 07.03.2009 and at that time, he had paid him Rs. 500/-. PW-3 did not elaborate how much money the accused was to pay to the deceased. No detailed particulars of any money transaction have been proved. Apparently, no amount was exchanged between them in the presence of PW-3 and PW-4. On 07.03.2009, according to the testimony of PW-4, both the accused and the

deceased had performed their jobs as "palledars" on his tempo and there was no serious quarrel between the two, forcing the accused to eliminate him. The accused Lal Mohan was brought to work as "palledar" only on 07.03.2009 by the accused Janardan. They did not anticipate the deceased's visit to demand any money. There was no occasion for the accused to hatch any conspiracy in advance to eliminate him. The body of the deceased could not be identified for number of days and nothing substantial was found on his person or in his house to infer that he was a man of means, to lend substantial amount to the accused. In the absence of any criminal back-ground, it is unbelievable that the accused would murder to misappropriate a paltry amount payable to the deceased. The prosecution did not attribute any motive to co-accused Lal Mohan. There was least possibility of his joining hands in the crime.

11. The prosecution failed to prove recovery of any incriminating article. The recovery of the "Kurta", pursuant to accused's disclosure statement is highly doubtful. The dead body of the deceased was found at Vikas Puri and the alleged recovery of "Kurta" took place near Peeli Kothi, Naya Bazar. The "shirt" was allegedly lying in an open place on a footpath accessible to the public at large. It is highly unbelievable that the accused would throw his blood stained shirt near his place of work and it would remain undisturbed for a number of days. Moreover, the blood group of the deceased was not found on the "Kurta", recovered in the case. PW-3 and PW-4 did not assert in their deposition that it was the same "Kurta" which the accused was wearing on the day of incident. There are material discrepancies in the statements of the witnesses about the time, place and the circumstance in which the recovery took place. No independent public witness was joined at the time of alleged recovery and even the local police was not informed about the visit to the area.

12. The prosecution levelled allegations of conspiracy against Lal Mohan and also charge-sheeted him. However, on the same set of evidence, the Trial Court acquitted him. The investigation is lacking in other aspects. The IO did not investigate the movements of the accused after 07.03.2009. Before 17.03.2009, the police had no clue who was the perpetrator of the crime. It failed to find out from where the accused had procured the knife. No witness from the liquor shop was examined to prove at what time liquor was purchased and who had gone to buy it. It is not clear where the deceased used to reside or whether he resided alone or with someone else. None of his close associates or family members lodged any missing report for more than ten days of his disappearance.

The investigation officer also failed to explain why no proceedings were conducted on 17.03.2009 and 18.03.2009 when allegedly PW-3 (Ghanshyam) had suspected the accused for the deceased's murder.

13. It is well settled that when a case rests purely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be proved, must be cogently and firmly established. Secondly, the circumstances should be of a definite tendency

unerringly pointing towards the guilt, of the accused. Thirdly, the circumstances taken cumulatively, must form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

14. In the light of the above discussion, we are of the considered view that the prosecution has failed to satisfy the above tests and thus, the impugned judgment cannot be sustained and is set aside. The appeal is allowed. The appellant shall be set at liberty forthwith, unless required in any other case. Trial court record be sent back forthwith.