

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NOS. 333-334 OF 2017**

SHAILENDRA RAJDEV PASVAN AND  
OTHERS

..... APPELLANT(S)

VERSUS

STATE OF GUJARAT ETC.

..... RESPONDENT(S)

**J U D G M E N T**

**KRISHNA MURARI, J.**

These appeals arise from the judgment of the Division Bench of the High Court of Gujarat dated 28<sup>th</sup> September 2016 convicting the appellants under Section 302 read with Sections 363, 364, 364-A and 365 and Section 120-B of the Indian Penal Code, under Section 21 (1)(a) of the Arms Act and under Section 3 and 5 of the Indian Explosive Act. The Division Bench while reversing the order of acquittal passed by the trial court, has imposed following punishment upon the appellants:

| <b>Offence under Section</b> | <b>Sentence Imposed</b> | <b>Default Sentence</b> |
|------------------------------|-------------------------|-------------------------|
| 302 of IPC                   | Life Imprisonment +     | Two month's simple      |

|              |   |                                 |
|--------------|---|---------------------------------|
|              | Fine of Rs. 10,000/- each                                     | imprisonment.                   |
| 363 of IPC   | Seven years' rigorous imprisonment + Fine of Rs. 5,000/- each | One month's simple imprisonment |
| 364 of IPC   | Ten years' rigorous imprisonment + Fine of Rs. 5,000/- each   | One month's simple imprisonment |
| 364-A of IPC | Life imprisonment + Fine of Rs. 10,000/- each                 | One month's simple imprisonment |
| 365 of IPC   | Seven years' rigorous imprisonment + Fine of Rs. 5,000/- each | One month's simple imprisonment |

2. Briefly stated, the case of the prosecution is that on 5<sup>th</sup> February 2001, the complainant, Paramhansh Mangal Yadav (PW-1), had informed the police at Kapodra Police Station that his youngest son, Arjun, aged about 9 years who was studying in second standard, was missing from 4<sup>th</sup> February 2001. On the fateful day, the complainant, as per routine, had left for work at 8:00 am and had returned at 2:00 pm for lunch, when he noticed that Arjun was missing. The complainant had searched for Arjun in the streets and at the relatives' residing nearby but he could not be located. This information given by the complainant was recorded by an entry made in the police diary. Thereafter, formal complaint was registered on 14<sup>th</sup> February 2001. In this complaint, Paramhansh (PW-1) had pointed out that initially Shailendra Rajdev Pasvan, Appellant/Accused No.1, had joined the search but thereafter he had suddenly vanished. After about four days, the Appellant No.1

had made a call to the complainant and disclosed that he was in Vapi. The complainant got suspicious and thereupon had sent his brother-in-law Sadhusharan Harinandan Yadav (PW-9) and two other relatives Sudarshan and Premchand Yadav to Vapi to bring Appellant No. 1 back. Upon returning, Appellant No. 1 is alleged to have made an extra-judicial confession before about 50 people near Paramhansh's (PW-1) house. Appellant No. 1 had confessed that he had kidnapped Arjun at the behest of Ramkeval Mutur Yadav, Accused No. 5, who had animosity and grievance against the complainant. Appellant No. 1 had made Arjun sit on his bicycle and had taken him to the railway station, where he was handed over to Ram Ashish and Shivnath, Appellant/Accused Nos. 2 and 3.

3. Thereupon, Shailendra, Appellant No. 1, was arrested by the police on 14<sup>th</sup> February 2001.
4. After the alleged extra-judicial confession, the complainant had sent his brother-in-law, Sadhusharan (PW-9), again to Vapi along with one Jugeswar to search for Appellant Nos. 2 and 3. They had thereupon met Sanjay at Vapi who had informed that Appellant Nos. 2 and 3 were residing at his home. Thereupon Jugeswar informed the complainant who in turn conveyed this

information to police. Appellant Nos. 2 and 3 were thereafter arrested by the police from the house of Sanjay.

5. It is the case of the police that on 13<sup>th</sup> February 2001 a mutilated decomposed dead body without one leg was found by Naginbhai Kalyanji Patel (PW-15) and his son Sanjay Patel (PW-5) in their agricultural farm, who had then informed the police station at Pandesara. The said dead body was sent for post mortem to the New Civil Hospital in Surat and kept in the mortuary.
6. It is the case of the police that dead body was of Arjun and that the Appellant No. 1 after arrest on 14<sup>th</sup> February 2001 had disclosed and shown the place where Arjun was left with Appellant Nos. 2 and 3 and where the bicycle used had been left. The Appellant Nos. 2 and 3 had also agreed and shown the place where Arjun was murdered and his dead body was disposed.
7. After completing investigation charges were framed against the accused for offenses under Section 363, 364, 364-A, 365 and 302 read with Section 120-B of the IPC and under Section 21 (1) (a) of the Arms Act and under Section 3 and 5 of Indian Explosive Act and they were put to trial.
8. There is no eye witness of the incident and the entire case of the prosecution rests on circumstantial evidence. The trial court vide

judgment dated 17<sup>th</sup> January 2006 acquitted the accused from the charges. The circumstances which weighed with the trial court were:

- (I) The fact that the Appellant No.1 and the deceased were seen together prior to death was extremely doubtful, and was not proved.
- (II) No reliance could be placed on extra-judicial confession.
- (III) Medical evidence adduced in the case was contradictory.
- (IV) When the first Panchnama after recovery of the dead body was drawn no hair or bone was found at the site of the occurrence but subsequently bunch of hair and bones were discovered from the same site on the pointing out of the accused.
- (V) No evidence has been adduced in respect of ownership of bicycle on which the Appellant No.1 was alleged to have taken away the deceased, to establish that it belonged to him or it was borrowed by him from some person.
- (VI) Demand of ransom for kidnapping was not proved by evidence thus motive was not established.
- (VII) These circumstances proved did not link together so as to form complete chain leading to only one consequence i.e. guilt of the accused.

9. Relying broadly on the testimonies of Kamlesh Bhagvanbhai Thakur (PW-28) and Kashiben Chhitubhai Patel (PW-29) to establish the last seen theory and the extra-judicial confession, while cherry-picking the details of and papering the gaps in the medical evidence, the High Court set aside the acquittal and convicted the appellants. The challenge to the conviction, consequently, has been predicated on the tenability of the said evidence.
  
10. At the outset, there are material contradictions in the testimonies of Kamlesh (PW-28) and Kashiben (PW-29). Kamlesh (PW-28) has testified that he and Dhaval were playing in the society and Arjun was riding a bicycle, whereas Kashiben (PW-29) has deposed that Arjun was on the terrace of Paramhansh's (PW-1) house, around the same time. Further, Kashiben (PW-29) though seated near the door has not deposed as to the presence of Kamlesh (PW-28) in the vicinity. More importantly in the context of the Appellant No. 1 being last seen with Arjun, Kamlesh (PW-28) deposed that Appellant No.1 had spoken to Arjun, while they were heading towards the video game shop; Kashiben (PW-29), on the other hand, has deposed that the Appellant No.1 had gone to the terrace of Paramhansh's (PW-1) house where Arjun was also present and both of them came down. The story about the

abduction of Arjun projected by Kashiben (PW-29) is even more debatable, if not clearly unacceptable as house of the complainant – Paramhansh (PW-1) is located at some distance (five houses apart) from the residence of Kashiben (PW-29). The evidence of Kamlesh (PW-28) and Kashiben (PW-29) also becomes shaky as both of them knew that Arjun was missing since 4<sup>th</sup> February 2001 but did not inform Paramhansh (PW-1) or the police to the presence and conduct of the Appellant No. 1, despite residing near the residence of the complainant and being aware of the frantic search for Arjun post his disappearance. This renders their testimony unreliable. Thus, the theory of last seen fails and is rejected as a feeble and untrustworthy evidence.

- 11.** As noticed above, the dead body in a decomposed state with one leg missing was found on 13<sup>th</sup> February 2001 in the agricultural farm of Naginbhai Patel (PW-15) and Sanjay Patel (PW-5), which is a day before the Appellant No.1 was arrested. The case set up by the prosecution is that the dead body was that of Arjun. However, the complainant and father, Paramhansh (PW-1) has not testified that he had identified the dead body found in the agricultural farm was that of Arjun. Paramhansh's (PW-1) testimony is completely silent on the said aspect. Inspector Munavarkhan (PW-24) has testified that Paramhansh (PW-1) had

identified the dead body but this would be of no consequence as Paramhansh (PW-1) in his court testimony has not spoken about any such identification. Munavarkhan (PW-24) has not referred to any identification memo prepared by him. The testimony of witness to the panchnama on recovery of the dead body vide Ganeshbhai (PW-17) indicated that the body had decayed and had small maggots in it. Mansinghbhai Valvai (PW-20) who was working as Investigation Officer at Pandesara Police Station has testified that the naked body had blackened and was puffed up, the external skin had decayed and the bone was visible from knee to paw of the right leg. Further doubt is created by the post-mortem report prepared by Dr. Pravinbhai Kalidas Patel (PW-27) marked "Ex-88" which records that rigor mortis and PM lividity had passed off and the death had occurred 36-48 hours prior to the post-mortem. Minimum age of the deceased was recorded around 16 years. Arjun on the other hand was 9 years of age. As per the police version, bones of human body namely tibia and fibula were found at the agricultural farm and sent for medical examination which was conducted by Dr. Mohammad Kureshi (PW-25). Dr. Mohammad Kureshi (PW-25) has stated that bones were in the same stage of decomposition, however in his cross-examination, he could not state the exact age though he was of the opinion that the bones were of a person below 16 years. He also admitted that



no chromosome opinion of the bones from FSL report was received and thus it could not be said whether bones were of a male or female. Admittedly DNA test was also not conducted. In this background, the version of the prosecution cannot sustain, and recovery of the dead body of Arjun cannot be attributed to the disclosure statements made by the appellants.

- 12.** Thus the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates two fold requirements:-
- (i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.
  - (ii) All the circumstances must be consistent pointing only towards the guilt of the accused.
- 13.** This court in the case of Sharad Birdichand Sharda v/s State of Maharashtra<sup>1</sup> has enunciated the aforesaid principle as under:-

*“The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; that the circumstances taken cumulatively should 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the Accused and inconsistent with his innocence”.*

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<sup>1</sup>(1984) 4 SCC 116

**14.** Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In the case of Bodh Raj Alias Bodha v/s State of Jammu and Kashmir<sup>2</sup>, Rambraksh v/s State of Chhattisgarh<sup>3</sup>, Anjan Kumar Sharma v/s State of Assam<sup>4</sup> following principle of law, in this regard, has been enunciated:-

*“The last seen theory comes into play where the time gap between the point of time when the Accused and 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 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 Accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases”.*

**15.** In the case at hand, evidence of PW-28 and PW-29, who were crucial to the case of prosecution to establish that deceased was last seen with Appellant Accused no.-1, is riddled with

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<sup>2</sup> (2002) 8 SCC 45

<sup>3</sup> (2016) 12 SCC 251

<sup>4</sup> (2017) (6) SCALE 556

unexplained contradictions and thus were rightly dis-believed by the trial court. High Court committed an error of law in placing reliance upon the evidence of the aforesaid two witnesses. The High Court also failed to take into account the time gap between the point when the Accused Appellant No.-1 and deceased were seen together and when the death is alleged to have occurred. According to the prosecution evidence the two were seen together on 04.02.2001 at about 10:30 a.m. The dead body was recovered on 13.02.2001. Post-mortem was conducted on 14.02.2001. Although the possible time of death is not indicated in the post-mortem report but the Doctor who carried out the post-mortem opined in the statement that the time of death can be estimated to be 36 to 48 hours before the post mortem. This clearly goes to show that there was a huge time gap between the point when the accused and deceased were last seen together and the time of death. This crucial fact has been miserably over looked by the High Court. Apart from Extra-Judicial Confession by Appellant Accused No.-1 no direct evidence was adduced by the prosecution to establish involvement of the accused in the alleged crime. Entire case of the prosecution was based on circumstantial evidence and theory of last seen together. The extra-judicial confession of Appellant No.-1 before the complainant and other relatives and recovery of the dead body were linked together by the prosecution to form a chain.

- 16.** It is well settled by now that in a case based on circumstantial evidence the Courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.
- 17.** Having gone through the material on record we are of the considered view that evidence adduced against the appellants do not form the complete chain connecting them with the crime and the prosecution has failed to prove the guilt beyond doubt.
- 18.** Lastly, the extra-judicial confession is questionable. In the complaint filed by Paramhansh (PW-1) he had alleged that the appellants had acted upon the behest of Ramkeval but did not allude, as admitted in his cross-examination, to any confession being made by Appellant No. 1 about abducting Arjun and handing him over to Appellant Nos. 2 and 3. That such a confession was allegedly made emerged during the examination of the Paramhansh (PW-1), Sadhusharan (PW-9) and Hiralal Yadav (PW-22). Notwithstanding the fact that Sadhusharan (PW-9), as mentioned earlier, is the brother-in-law of the complainant – Paramhansh (PW-1) and Hiralal (PW-22) a neighbour, there are noticeable contradictions about the circumstances in which the confession was made, viz., the number of people in whose

presence it was made, degree of coercion/fear/intimidation that elicited the alleged confession, among others.

19. In **Sahadevan v. State of T.N.**<sup>5</sup> referring to the aspect of evidentiary value of extra-judicial confession, it was observed:

*“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”*

Elaborating on the jurisprudence that has evolved with regard to extra-judicial confessions, this Court in **Sahadevan** (supra) had stipulated the principles that are required to be kept in mind while relying on extra-judicial confession as evidence. These principles have been succinctly mentioned in **Jagroop Singh v. State of Punjab**<sup>6</sup> as:

*“30. Recently, in Sahadevan v. State of T.N., after referring to the rulings in Sk. Yusuf v. State of W.B. and Pancho v. State of Haryana, a two-Judge Bench has laid down that the extra-judicial confession is a weak evidence by itself and it has to be State of Haryana, a two-Judge Bench has*

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<sup>5</sup> (2012) 6 SCC 403

<sup>6</sup> (2012) 11 SCC 768

*laid down that the extra-judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution; that it should be made voluntarily and should be truthful; that it should inspire confidence; that an extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence; that for an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and that such statement essentially has to be proved like any other fact and in accordance with law."*

- 20.** In the present case, there are no eye witnesses to affirm and corroborate the fact that the Appellant No. 1, as allegedly confessed, had taken Arjun on a bicycle and handed over the child to Appellant Nos. 2 and 3. Further, the unfounded last seen theory, contradicting medical evidence, and facts of the case, particularly concerning the recovery of the body, belie the material details of the alleged extra-judicial confession. Ergo, in the absence of any credible corroboration of both: the actual occurrence of such a confession and the incriminating facts alleged to have been disclosed in the confession, this Court cannot accept that the conviction of the appellants can be sustained on the basis of such a confession.
- 21.** The trial court in our opinion had therefore rightly acquitted all the accused after recording cogent reasons and good grounds.

Ramkeval Mutur Yadav, Accused No. 5, was not convicted by the appellate court. Ajay @ Pradip Hiralal Gupta, Appellant No. 4 who has been convicted by the appellate court has not been assigned any role in the entire incident. Needless to state, the High Court should not have interfered with the acquittals given by the trial court, unless the acquittals were vitiated by manifest illegality or such a conclusion “could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse”.<sup>7</sup> This Court has time and again held that where an appellate court is reversing a trial court’s order of acquittal, it should give proper weight and consideration to the presumption of innocence in favour of the accused, and to the principle that such a presumption stands “reinforced, reaffirmed, and strengthened by the trial court”<sup>8</sup>. Given the inherent inconsistencies and incongruities in the evidence in the present case, the alleged actions of the appellants have not been proven beyond reasonable doubt.

- 22.** In light of the aforesaid discussion, we allow the appeals and set aside the conviction and sentences of the appellants in the

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<sup>7</sup> Tota Singh v. State of Punjab (1987) 2 SCC 529

<sup>8</sup> Chandrappa v. State of Karnataka (2007) 4 SCC 415

charge-sheet arising from FIR No. 55/2001. The appellants are accordingly directed to be released from custody, unless they are required to be detained in any other case in accordance with law.

.....J.  
(N.V. RAMANA)

.....J.  
(SANJIV KHANNA)

.....J.  
(KRISHNA MURARI)

**NEW DELHI;  
DECEMBER 13, 2019.**