

**HIGH COURT OF MADHYA PRADESH: JABALPUR**

(Division Bench)

**Criminal Appeal No. 1345/2012**

Hem Singh .....Appellant

Versus

State of Madhya Pradesh .....Respondent

**CORAM:**

Hon'ble Shri Justice Huluvadi G. Ramesh,  
 Hon'ble Shri Justice C.V. Sirpurkar

**APPEARANCE:**

Shri R.N. Dwivedi, Advocate for the appellant.

Shri Shashank Upadhyay, Govt. Advocate for the Respondent/State.

**Whether Approved for Reporting: Yes****Law Laid Down:**

# Theory of "last seen together" is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. In a case where there is no eyewitness and which rests on circumstantial evidence, the prosecution is obliged to prove all those circumstances which leave no manner of doubt to establish the guilt of the accused person i.e. chain of circumstance must be complete and must clearly point to the guilt of the accused. In the absence of any other links in the chain of circumstantial evidence, the benefit of doubt must go to accused person. Relied - (1996) 11 SCC 264 [Godabarish Mishra v. Kuntala Mishra and Another]; (2001) 9 SCC 736 [Nesar Ahmed and another v. State of Bihar; (2005) 12 SCC 438 [Jaswant Gir v. State of Punjab]; and (2017) 8 SCC 497 (Satish Nirankari v. State of Rajasthan).

**Significant Paragraphs: 20 to 29**

**JUDGMENT (Oral)****(15.02.2019)****Per: Huluvadi G. Ramesh, J.:**

Although the case is listed for consideration of I.A. No.21802/2018, an application for suspension of sentence, but the learned counsel for the appellant submits that the appeal itself may be heard finally. Learned counsel for the respondent-State has no objection to the said proposition. Accordingly, we have heard learned counsel for the parties on merits.

2. The present appeal under Section 374(2) of Cr.P.C. has been filed by the appellant against the impugned judgment of conviction and order of sentence dated 13.06.2012 passed by the learned Additional Sessions Judge, Dindori, District Dindori in Sessions Trial No.61/2011 whereby he has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for life and fine of Rs.500/-; in lieu of fine amount, to further undergo R.I. for one year.

3. According to the prosecution story, it transpires that appellant-accused Hemsingh and deceased Urmila were having love affair for about four years and they wanted to marry each other. At the time of incident, they were in live-in relationship residing together as tenant in the house of Gautam Patwari situate at Jhurkitola, Old Dindori within the jurisdiction of Police Station Dindori, District Dindori. Sometimes, deceased Urmila would go to her house without informing Hemsingh, which led appellant Hemsingh doubt her character. A quarrel is said to have taken place between them over this issue on 05.05.2011, which got intensified on 06.05.2011 whereupon, at

about 12.00 noon, appellant poured Kerosene over the deceased and set her ablaze. As a result, she died. A *marg* intimation was made to Police Station Dindori by the father of the deceased – Yugal Kumar Maravi and on the basis of which an offence under Section 302 of IPC was registered against the appellant and investigation was set in motion.

4. During the course of investigation, the dead body of the deceased was sent for postmortem examination; memorandum statement of the accused was recorded and the seized articles were sent for examination. After completion of investigation, charge-sheet was filed in the competent Court, which on its turn committed the case to the Sessions Court and from where it was received by the Trial Court for trial.

5. The learned Trial Judge on the basis of the allegations made in the charge-sheet, framed the charge punishable under Section 302 of IPC against the appellant, which the appellant denied and requested for trial. In order to prove the charges, prosecution examined as many as 16 witnesses and placed the documents Exhibits P-1 to Exhibit P-20 on record. The defence of the appellant is of false implication but he has not examined any witness in defence.

6. The learned Trial Court, on the basis of the evidence placed on record, found the appellant guilty and came to hold that the charges are proved against the appellant and resultantly, convicted him and passed the sentence, as mentioned hereinabove. In this manner, this appeal has been filed by the appellant challenging the impugned judgment of conviction and order of sentence passed by the learned Trial Court.

7. The argument of the learned counsel for the appellant is that the accused has been falsely implicated in this case. Since the father of the deceased was objecting to the marriage of the deceased with the appellant and scolded the deceased, therefore, due to instigation by her father, the deceased committed suicide; there is no prima facie case made out against the appellant for the alleged offence; there is no cogent evidence on record to sustain the conviction; the evidence of the prosecution witnesses Ajay Kumar Jharia (PW-1) and Devesh Bisen (PW-2), who are important witnesses, who have last seen the appellant, has not been properly appreciated. It is further contended that despite the examination of 16 witnesses, the learned Trial Court overlooking the important aspects convicted and sentenced the accused. The learned counsel for the appellant, inviting our attention to the statement of Devesh Bisen (PW-2), has contended that he has only deposed that he has seen the appellant coming out of the room and except this nothing has been said by this witness. It is further contended that there is no evidence as to the appellant having been last seen together with the deceased immediately prior to the incident. The case depends upon the circumstantial evidence and chain of the circumstances is not cogent and complete and also nothing has been stated as to what was the intention and motive of the appellant to commit murder of the deceased while she was in live-in and friendly relationship with the appellant. It is further contended that because the deceased committed suicide due to threat given by her father Yugal Kumar (PW-9), therefore, her father is liable for conviction and not the appellant. The evidence of the prosecution witnesses is not corroborated with the medical evidence. The

defence version has not been accepted by the prosecution much less by the Court. The appellant has been falsely implicated in the case and on that basis it has been prayed that the present appeal be allowed and the impugned judgment be set aside.

8. On the other hand, learned Public Prosecutor, argued in support of the impugned judgment and submitted that the learned Trial Court after marshalling through the evidence has passed the judgment and there is no perversity or illegality in the findings and hence, the appeal be dismissed.

9. Having heard the learned counsel for the parties, we find that the following questions emerge for consideration:-

- (i) Whether the death of the deceased is homicide?
- (ii) Whether the accused committed the offence of murder or any other witness has committed the said crime?
- (iii) Whether the order of the learned Sessions Judge suffers from any illegality or error in sentencing and convicting the accused for the offence under Section 302 of IPC?

10. Dr. R.S. Thakur, who conducted the postmortem examination on the dead body of the deceased has been examined as PW-16. According to him, on 06.05.2011 he was posted at District Hospital, Dindori. The dead body of the deceased was brought by Constable No.217 - Ashok Mankar. On examining the dead body, he found that the dead body had 90 to 95% burns but the rigor mortis was not developed. The dead body smelled Kerosene. In the opinion of the doctor, the cause of death is Neurogenic shock and carbon monoxide poisoning due to extensive burn all over the body. Time passed since death is approximately within 12 hours.

11. Ajay Kumar Jhariya has been examined as PW-1. According to him, he has been living in the house of Raju Gautam as tenant since the month of April. Anurag Yadav (not examined) and Devesh Bisen (PW-2) were his roommates. In their adjacent room, the accused used to live along with a woman who was Patwari. He has deposed that on the date of incident, he was in his college. At about 1.00 p.m., Devesh informed him over phone that smoke was coming out from the adjacent room but he was unable to ascertain its source. On reaching the room, this witness found that smoke was emanating from the room of the accused, which was closed. They tried and then informed the Fire-brigade but in the meantime, appellant himself reached the spot with the police. In his cross-examination, he has admitted that at about 1.00 p.m. when he returned from college there was nobody at the spot. The police reached later.

12. Devesh Bisen (PW-2) in his statement has also deposed that appellant lived in his neighbour in the adjacent room. On the date of incident at about 11.45 a.m., he was washing the clothes in the house. At that time, he saw the accused leaving his room. At the same time, he also saw smoke was emanating. Initially, he was unable to guess the source of smoke but later on, saw that it was coming out from the window of the room of the accused. He called the people of the colony as well as Ajay Jharia (PW-1) and others. His friends reached the spot followed by police after some time. The police came with the accused. This witness has proved his signatures on *Panchnama* of dead body (Ex.P-1), Safina Form (Ex.P-2) and Seizure Memo (Ex.P-3) but he pretended ignorance as to what was seized by the police. In his cross-examination, he has stated that he was washing the clothes since before

11.30 a.m. He has admitted that he saw the smoke only after 10-15 minutes of the departure of the accused from the room and nobody else was there at that time. He did not hear any type of sound. He has further admitted that despite his objection the police took his signatures on a blank paper and that no *panchnama* or seizure was made in his presence.

13. Vedsingh (PW-3) in his statement has stated that there is a house in the name of his wife at old Dindori which has been let out on rent to 3-4 tenants. A Patwari, named Urmila also used to live there as tenant in the month of March-April, 2011. On asking, he had handed over the documents of the house to the police. In his cross-examination on behalf of the accused, he has stated he does not know accused Hemsingh. He further admitted that as per his knowledge accused Hemsingh was not the tenant in his house. Nobody has told him how deceased Urmila Bai died.

14. Rampratap Marko has been examined as PW-4. On 7.5.2011, he was posted as Medical Officer in District Hospital, Dindori. On the said date, Constable No.34, Ratiram had brought accused Hemsingh for medical examination. He has opined that there were no marks of external injury on the person of accused. The clothes worn by accused smelled Kerosene. He has proved his report Ex.P-4. In cross-examination by the accused, he has admitted that he did not seize the clothes worn by accused nor did he do any separate investigation with regard to smell of Kerosene coming from his clothes. He has further admitted that he did not notice any marks of burn injury on the body of the accused.

15. Vimal Vasuki (PW-6) is the Investigating Officer. On 6.5.2011, he was posted as Sub-Inspector at Police Kotwali, Dindori. He has deposed that

Yugal Kumar Maravi (PW-9) made an oral report at Police Station that his daughter has been burnt and killed by accused Hemsingh, who was supposed to marry her, by pouring Kerosene at about 12.00 p.m. at the house of Gautam Patwari on the doubt of her character. The report is Ex.P-8, on the basis whereof, Marg Intimation (Ex.P-9) was recorded. Thereafter, he along with Constable No.217, Ashok Kankar proceeded for investigation; prepared the spot map (Ex.P-1); seized the burnt matchbox with matchstick through seizure memo Ex.P-3 and recorded the case diary statements of complainant Yugal (PW-9) and Devesh Kumar (PW-2). In cross-examination, he has stated that complainant Yugal Kumar is resident of village Migadi, which is 15 kilometers away from Dindori. He has stated that Yugal Kumar (PW-9) in his report and statement has stated that he reached the spot after death of his daughter. In further cross-examination, he has admitted that dead body of the deceased was found on the cot in burnt condition and entire bed was burnt. He has admitted that accused was not arrested on the date of incident during investigation by him. He has admitted that when he had gone for investigation, the accused was not present at the spot. In para-14, he has admitted that Devesh Kumar admitted before him that he did not see the fire burning at the time of incident as he was washing the clothes. In para-18 of his cross-examination, he has further admitted that when he reached the spot, the room of the deceased was closed and the staff accompanied him and people of the colony had pushed open the door.

16. Yugal Kumar (PW-9) is the father of the deceased. In his chief-examination, this witness has deposed that her daughter was posted as Patwari in village Dhanvasi of District Dindori. She was living as tenant in



the house of a Patwari at Ward No.14 Old Dindori. He has stated that on the date of incident, he was not with the deceased but had gone to his house situate at village Migadi, which is 10 kilometers away from Dindori. He has further stated that on the date of incident, at about 7.00 a.m., accused Hemsingh called him over phone and said that he should make his daughter understand. On asking as to who was calling, the caller told his name as Hemsingh. Thereupon, he told Hemsingh that they have already been made to understand that their wish to perform inter-caste marriage can never be fulfilled. He has further stated that immediately he called his daughter and had a talk with her, whereupon, the deceased told that she is going to college and that she will come to Migadi after 2 O'clock. At about 2.00 p.m, he received a phone call from a Constable, who asked him to reach the house of his daughter. In cross-examination, he has admitted that the deceased herself had taken the house on rent. He further stated that the fact of Hemsingh calling him on mobile at 7.00 a.m. was informed to the police at the time of lodging of report but he cannot explain as to why it is missing in the case diary statement as well as report Ex.P-8. He, however, has admitted that he had not disclosed the mobile number to the police from which, the call from person named Hemsingh was received nor did the police ask his mobile number. He has denied the suggestion that he had not disclosed to the police that he received a phone call in the morning. In para-11, he could not deny that in the report and his police statement he had not mentioned the mobile number of the person who called him in the morning at 7 O'clock. In cross-examination, in para-12 he has admitted that when he reached the spot, the police had already reached there. He has made material improvement that

when he reached the room of the deceased, the door was locked from outside whereas in para-13 he pleaded ignorance that police had not told him that the door of the room of deceased was hinged from inside. He further admitted that after 15 days of the incident he had taken all the belongings of the deceased and at that time he did not find anybody's else things there. He has further admitted that when he first time reached the spot, there was none else there except three police personnel and a journalist.

17. Rituraj Daheriya (PW-12) is another tenant who lived in the neighbour of the room of the deceased. In chief-examination, he has stated that accused is the same person who used to live with the deceased. On the date of incident, he left his room at 10.45 a.m. and at that time accused was in that room. However, in cross-examination, he admitted that he had not gone to their room to see.

18. Rajkumar (PW-15) is the son of the landlord where deceased used to live as tenant. He has deposed that earlier mother of the deceased also lived with her for some time and thereafter, the deceased lived alone. He has stated that Devesh also lived in the house as tenant.

19. Patwari - Omkar Dhurve (PW-7), Constable - Ashok Mankar (PW-8), Constable – Dashrath Pande (PW-20), Head Constable – Paras Yadav (PW-11), Suresh (PW-13) and Ramanand Sharma (PW-14) are the formal witnesses with regard to proceedings of investigation. Suresh (PW-13) has proved the seizure memo (Ex.P-19).

20. The prosecution has attempted to drive home its case against the accused through circumstantial evidence and the accused having been last

seen in the company of the deceased immediately prior to the incident. In this context, the prosecution has relied upon the testimony of Ajay Kumar Jharia (PW-1) and Devesh Bisen (PW-2). Ajay Kumar Jharia (PW-1) has not stated anything with regard to the presence of the appellant at the place of occurrence. His evidence is only to the effect that appellant used to live in the adjacent room with the deceased and that on receiving the phone call from Devesh (PW-2) he reached the spot. At that time, there was none else there. In para-3 of his statement, he has stated that later on, the accused reached the spot along with police party. Although this version of Ajay Kumar (PW-1) is corroborated by Devesh Bisen (PW-2) but PW-2 in his cross-examination has admitted that he saw the accused going away from the place of occurrence before 15 minutes when he saw the smoke emanating from the room of the deceased. There is nothing on record to suggest that when Devesh (PW-2) left the spot, immediately there was any sign of fire burn or smoke emanating from the said room but the evidence of PW-2 is to the effect that he saw the smoke coming out from that room only after 10-15 minutes when the accused left the room. The time gap between the accused last seen at the spot and smoke emanating from the spot as per Devesh (PW-2) is more than 15 minutes when the accused left the said room. Had it been a case of the prosecution that the accused remained there in the room or any iota of evidence to establish that immediately after the accused left the place after setting the deceased to fire, the smoke was seen coming out from the room, then it would have been a clear case of homicidal death and the chain of circumstances would have been complete.

21. Vimal Vasuki (PW-6), the Investigating Officer, has stated in para 18 of his cross-examination that when he reached the spot, the room was closed. He has not stated that it was locked or hinged from outside. He has also admitted that people of colony and the staff who had accompanied him they had pushed the door open. Thus, it might be a case that the deceased made an attempt to commit suicide in her room.

22. In **Godabarish Mishra v. Kuntala Mishra and Another, (1996) 11 SCC 264**, the Apex Court has held that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. In a three Judge Bench decision in **Nesar Ahmed and another v. State of Bihar (2001) 9 SCC 736**, the Apex held that though the dead body of deceased was found from the house occupied by accused but the vital link of the appellant being present in the house at the crucial time could not be established by the prosecution and hence, since a very vital link to complete the chain of circumstances became extremely doubtful it was held that prosecution failed to establish the guilt of the appellant beyond all reasonable doubts. In **Jaswant Gir v. State of Punjab (2005) 12 SCC 438**, it was held that it is not possible to convict the accused solely on the basis of 'last seen' evidence. In the absence of any other links in the chain of circumstantial evidence, the Court gave benefit of doubt to accused persons. In **Satish Nirankari v. State of Rajasthan (2017) 8 SCC 497**, the Apex Court held that criminal cases cannot be decided on the basis of hypothesis. Another aspect which is to be kept in mind is that it is for the prosecution to prove the guilt of the accused charged for such an offence and that too, beyond reasonable doubt. In a case

where there is no eyewitness and, which rests on circumstantial evidence, the prosecution is obligated to prove all those circumstances which leave no manner of doubt to establish the guilt of the accused person i.e. chain of circumstance must be complete and must clearly point to the guilt of the accused. Chain of continuous circumstances means that all the circumstances are linked up with one another and the chain does not get broken in between. In the present case, in our opinion, the chain of the circumstances is not complete so as to sustain the conviction of the appellant.

23. In a case of circumstantial evidence, motive may be a very relevant factor. The allegation contained in the FIR (Ex.P-8) is that complainant Yugal Kumar (PW-9) informed that when he reached the house of her daughter, appellant met him outside and told that he had a suspicion over the character of the deceased and for this reason he set her ablaze. However, there is no evidence on record that appellant suspected the character of the deceased. There is no evidence that any altercation or hot-talk took place between the deceased and the accused. There is no evidence on record to hold that the accused suspected the fidelity of the deceased. From the testimony of Yugal Kumar (PW-9), father of the deceased, there is nothing to infer as to what was the reason for the appellant to raise doubt about the character of the deceased. It is merely said that every now and then the deceased would go to her paternal house and therefore, the appellant used to doubt her character and for this reason he committed the offence. Going to one's paternal house cannot be any ground to doubt the character of the woman unless any specific instance of such loose moral character is

assigned. Thus, merely on that lame excuse no motive can be associated with the appellant to kill the deceased. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of the defence. There must be proper legal evidence and material on record to uphold the conviction of the accused.

24. It may be further seen that as per the prosecution story, the accused was in live-in relation with the deceased in the same room and apart from that, Yugal Kumar (PW-9), father of the deceased in his cross-examination has admitted that he clearly told the accused over phone that their wish to perform inter-caste marriage can never be fulfilled and also called his daughter in that regard. He has further stated that deceased informed that she was going to college and that she will to Migadi after 2 O'clock. What the witness Yugal Kumar (PW-9) has stated is that since it was a case of inter-caste marriage, therefore, he did not approve of it. He clearly objected to the marriage of the deceased with the appellant. It appears that particularly for this reason of objecting to the marriage with the appellant, the deceased was living separately from her parents. It has come on record that Yugal Kumar (PW-9) rang up the deceased in the morning of the date of incident and had a talk over the issue of her marriage and at that time again Yugal Kumar (PW-9) is said to have made it clear to her that in their caste, the marriages are not solemnized in the caste of the accused. In this context, it is highly probable that due to frustration on being denied to marry the accused and strong objection of father, the deceased would have committed suicide but the motive of the accused to kill the deceased is lacking.

25. The version of Yugal Kumar (PW-9) with regard to the accused having made a phone call to him in the morning of the date of incident also appears to be a cooked up story. In cross-examination, he could not give any explanation as to why said fact is missing from his earlier statement and report Ex.P-8. In this regard, he has made material improvement upon his earlier statement given to the police. In cross-examination, he has admitted that when he reached the spot, the door was locked from outside. He has further admitted that after 15 days of the incident, he collected the entire goods of the deceased from that room and did not find any material of the accused lying in the room. Thus, his testimony cannot be relied upon to hold that the accused had any motive to kill the deceased but on the contrary there is a reason to believe that since the father was objecting to the marriage of the deceased with the appellant and on the date of incident also he had a talk with the deceased over the same very issue, therefore, out of frustration the deceased committed suicide.

26. It may be further noticed that though the prosecution story is that the accused smelled Kerosene but the prosecution has not made any attempt to seize the clothes of the accused for corroborating his involvement in the offence even though the accused was arrested on the next day. Ajay Kumar Jhariya (PW-1) and Devesh (PW-2) have stated that after the incident, the accused had come with the police. It may be because he would have gone to see the deceased inside the room after she was found burnt. Devesh Bisen (PW-2) has admitted that nothing was seized in his presence and his signatures were obtained on blank paper despite his objection.

27. As far as medical evidence is concerned, there are burn injuries on the entire body of the deceased. Looking to the medical evidence, we are of the view that the deceased died due to burn injuries. It is rather difficult to say whether it is homicidal or suicidal but there is nothing on record to hold that the injuries have been inflicted either by the accused or any other person. As per the prosecution story, the accused was in live-in relation with the deceased in the same house and apart from that, the father of the deceased is said to have objected for the marriage of the deceased with the accused and no other circumstance is shown to have been established by the prosecution regarding clear evidence to commit the murder of the deceased. The time gap between the accused last seen at the spot and smoke emanating from the spot as per Devesh (PW-2) is more than 15 minutes when the accused left the said house. However, whether death is due to infliction of fire burn by the accused on the person of the deceased or due to self-infliction by the deceased herself, there remains a doubtful situation. On one hand, at the time when the accused left the place of occurrence where he was in live-in relation with the deceased, except the fact that he suspected the character of the deceased, nothing has been demonstrated by the prosecution as to the intention and motive of the accused to commit the murder of the deceased.

28. Apart from the burn injuries, there is no such external injury to consider that it is a homicidal death nor is there any such injury which is said to have caused the death of the deceased to consider it a homicidal death. May be due to infliction of injury also by the fire and due to Neurogenic shock and inhaling the carbon monoxide poisoning the death would have



taken place. Thus, there is no clear and cogent evidence on record to infer that the appellant committed the offence so as to hold him guilty of the offence.

29. It might be that out of frustration in refusing to celebrate the marriage of the deceased with the accused or for having objected by the father for her marriage with the accused, such incident has taken place or whether having suspecting the fidelity of the deceased who was in live-in relation with the accused, she committed suicide is also not clear. There is no cogent evidence on record regarding suspecting fidelity of the deceased by the accused also to set her on fire. Moreover, the prosecution has not been able to prove the guilt of the appellant beyond reasonable doubt. In the circumstances, we are of the view that for short of evidence the accused would be entitled for benefit of doubt.

30. Accordingly, we order for acquittal of the appellant giving benefit of doubt. The impugned judgment of conviction and order of sentence is hereby set aside. The accused is in custody since 07.05.2011. He be set at liberty forthwith, if not required in any other case. Resultantly, the appeal stands **allowed**.

**(HULUVADI G. RAMESH)**  
Judge

**(C.V. SIRPURKAR)**  
Judge

S/