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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR:CRIMINAL APPEAL NO. 2170 OF 2000

Division Bench (Criminal)

APPELLANT:

RAM SUNDER, S/o Fares Ram Lohar,

Aged about 25 years,

R/o Nawagaon, Thana Sihaba,

District DHAMTARI (M.P.):

VERSUSRESPONDENT:

STATE OF MADHYA PRADESH,

Through P.S. Sihaba, District

DHAMTARI (M.P.):CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OFCRIMINAL PROCEDURE :

9069

25/8/2000

N. K. Lohar

Advocate

M. A. S.

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HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench : Hon'ble the Acting Chief Justice Shri Navin Sinha &
Hon'ble Justice Shri Prashant Kumar Mishra.

Criminal Appeal No.2170 of 2000

APPELLANT

Ram Sunder

Versus

RESPONDENT

State of Madhya Pradesh (now State of
Chhattisgarh)

Judgment for consideration

Sd/-

Judge
22-12-2014

Hon'ble the Acting Chief Justice

Sd/-
Ag. Chief Justice

23-12-2014

Post for pronouncement of judgment on the 24 day of December, 2014

Sd/-
Prashant Kumar Mishra
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench : Hon'ble the Acting Chief Justice Shri Navin Sinha &
Hon'ble Justice Shri Prashant Kumar Mishra.

Criminal Appeal No.2170 of 2000

APPELLANT

Ram Sunder

Versus

RESPONDENT

State of Madhya Pradesh (now State of
Chhattisgarh)

Present :- Mrs. Kiran Jian, Advocate for the appellant.
Mr. R.K. Gupta, Dy. Adv. General for the State.

J U D G M E N T

(Delivered on this 24th day of December, 2014)

The judgment of the Court was delivered by

Prashant Kumar Mishra, J.---This appeal is directed against the judgment of conviction and sentence dated 30-5-2000 passed by the Special Judge, Raipur, in Spl. ST No.150/99, whereby the learned Special Judge has convicted the appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') for committing the murder of Gawalin Bai (since deceased) at about 12'O clock in the night of 4-11-1999 and sentenced him to undergo imprisonment for life and RI for 3 years, respectively.

2) Information about the death of the deceased was provided to the police in the form of merg intimation (Ex.P/11) at the instance of Lakhan Lal Pujari (PW-1). This witness found the dead body of an unknown woman floating in the well situated in the agricultural field Sohanlal.

3) First Information Report (Ex.P/12) was recorded on 14-11-1999 naming the appellant as the culprit, mentioning that on the issue concerning illicit relations the appellant committed the murder of the deceased by throttling. In the postmortem report (Ex.P/9) the cause of death was mentioned as asphyxia, which is due to strangulation; nature of death was homicidal.

4) Case of the prosecution is mainly based on the statement of Jageshwar Halba (PW-2) and the memorandum statement (Ex.P/2) of the appellant and the consequent recovery of melted silver from Gulab Chand Golcha (Jeweler), vide Ex.P/10.

5) In the statement of Jageshwar Halba (PW-2) he would state that at about 6.00 to 6.30 pm on 4-11-1999 he had gone to seeing a film on video in the house of Shatrughan. When he was coming back and was proceeding towards the village pond to attend nature's call he met Gwalin Bai, who asked him as to who is he, on which he said that I am your nephew (*banja*). When he was coming back after attending the nature's call the deceased again met and persuade him to have sexual intercourse, however, when they were about to proceed to perform sexual intercourse, the appellant threw the torchlight on which he went away at a distance of 20-25 steps, but the deceased remained lying on the ground. Appellant came near the deceased and they had some discussion, which the witness could not understand. At this point, the accused strangled the deceased and pressed her chest by pressing his knees. He became frightened and ran away from the place, but did not disclose the incident to anybody.

6) In cross-examination, this witness admitted that the incident occurred two days prior to the *Deepawali*. Thus, the day of occurrence was very near

to Amavasya and it was not moonlit night. However, he would state that he identified the appellant with the help of moon light. He admitted about the previous animosity with the appellant. He also admitted that when he was taken for examination under Section 164 of the Cr.P.C. the police personnel instructed him to make statement as per his statement before the police.

7) The other evidence adduced by the prosecution is the memorandum statement (Ex.P/2) and the consequent seizure of melted silver vide Ex.P/10. However, there is absolutely no evidence that some ornaments of the deceased were taken away by the culprit. Thus, recovery of melted silver without there being any evidence regarding identification of the ornaments, which were melted, may not connect the appellant with the ornaments or melted silver so as to treat the same as one of the missing link in the chain of evidence to nail him for committing murder of the deceased. This evidence could have been proved by examining the husband of the deceased, but the prosecution gave up the said witness namely; Paltan despite citing him as one of the prosecution witness in the charge sheet.

8) From the nature of evidence discussed above, it clearly appears that Jageshwar Halba (PW-2) admitted the previous animosity with the appellant; the date of occurrence was very near to *Deepawali* i.e. day of *Amavasya* and it is well known that on the day of *Amavasya* or 2-3 days prior to that moon light was not that much sufficient that one could recognize a person in the midnight; identification in the torchlight is also not possible because the appellant had thrown torchlight where this witness and the deceased were placed, however, when the torchlight is thrown, the place behind the torch becomes darker rather than being sufficient to see the person throwing the torchlight.

9) Lakhan Lal (PW-1), Jageshwar Halba (PW-2) & Ranjan Singh (PW-5), who are the residents of the same village, have admitted that the deceased was having physical relations with many persons in the village and a Panchayat meeting was also convened when the deceased was found with one or two persons.

10) Although statement of Jageshwar Halba (PW-2) raised strong suspicion on the appellant, but at the same time it falls short of legal requirement of proof beyond reasonable doubt. Thus, this Court does not find the evidence against the appellant to be of such credible nature warranting his conviction under Sections 302 & 201 of the IPC.

11) As a sequel, the appeal is allowed. Conviction and sentence imposed upon the appellant under Sections 302 & 201 of the IPC are hereby set aside. He is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-
Ag. Chief Justice

Sd/-
Prashant Kumar Mishra
Judge

Gowri