

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2114 of 2000**

Mukesh Singh, son of Narbada Prasad Bargah, aged about 27 years, resident of Village Kotia, Police Station Bilha, District Bilaspur, Madhya Pradesh (now Chhattisgarh)

---- Appellant**versus**

State of Madhya Pradesh (now Chhattisgarh) through Police Station Bilha, District Bilaspur, Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellant	:	Shri Adil Minhaj, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per Navin Sinha, Chief Justice****26/8/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs.2,000/-, failing which he was required to undergo further one year rigorous imprisonment, as ordered on 4.8.2000 by the IVth Additional Sessions Judge, Bilaspur in Sessions Trial No.394 of 1999.
2. Deceased Kumari Shakuntala left home on 31.7.1999 at about 7:15 a.m. for going to college. Her dead body was recovered in the Patliha Nala on 2.8.1999 leading to lodgment of merg at 11:00 a.m., Exhibit P-6, by her father PW-5, Mathura Prasad. Formal First Information Report was also registered. The inquest report was marked Exhibit P-2. The post mortem done on 3.8.1999 opined that the cause of death could not be ascertained due to advance putrifaction of the body.
3. Learned Counsel for the Appellant submitted that there is no

eyewitness to the assault. The entire case of the prosecution is based on circumstantial evidence invoking the last seen theory. There is absolutely no evidence in support of the Appellant and the deceased having been last seen together by any prosecution witness. PW-3, Dayalu stated that at about 8:00 a.m., the deceased was going to the Bus-Stand. The Appellant was at a distance of approximately four fields from her on his own farm lands. The aforesaid material cannot lead to any presumption or conclusion of the Appellant having been last seen with the deceased. PW-5, Mathura Prasad, the father of the deceased deposed that he suspected the Appellant because he had teased the deceased about a year and half back and also approximately ten days earlier. Similar was the deposition of PW-6, Smt. Vimla Bai, the sister of the deceased. Merely because there may have been animosity between the two families and they may not have been on talking terms cannot be considered sufficient for conviction in a case of circumstantial evidence based on unfounded suspicion only. When the body of the deceased was taken out of the Nala on 2.8.1999, PW-1, Bisahu, who signed the seizure report, Exhibit P-3, deposed that Rs.207/- in cash was recovered along with scarf of the deceased, a bag and a purse meant for keeping money as also certain college papers. No other materials were found. There was no recovery of any clump of hair of the deceased much less any ring entangled in the hair allegedly belonging to the Appellant. PW-5, Mathura Prasad, the father of the deceased likewise deposed that the police had returned to him a ring which the deceased used to wear along with a nose ring and ear rings. Her watch was not recovered. The recovery of the clump of hair allegedly of the deceased in which the ring of the Appellant is stated to have been entangled two days later on 5.8.1999 on his confession is highly suspicious. There is no material to suggest that the clump of hair was in fact that of the deceased. The prosecution was required to explain why and how the clump of hair, hair clip and the ring

were not recovered along with other materials of the deceased recovered from the Nala on 2.8.1999. The alleged recovery was planted subsequently by abuse of Section 27 of the Evidence Act. The Nala was open and exposed because of which planting of evidence cannot be ruled out, the benefit of doubt must be given to the Appellant. There has been no proper identification by PW-6, Smt. Vimla Bai that the ring was in fact exclusively of the Appellant by pointing out any special feature by which she may have recognised the same specifically when it was mixed-up with other similar rings. TIP is a weak piece of corroborative evidence only and cannot be sufficient or basis for conviction. PW-18, O.S. Shukla, the Investigating Officer has stated that no witness had ever told him of the Appellant wearing a ring.

4. Learned Counsel for the State, opposing the appeal, submitted that the Appellant was seen in the morning going in the same direction as the deceased. There was animosity between the two families and they were not on talking terms. The Appellant had teased the deceased a year and half back and also ten days earlier. The clump of hair of the deceased recovered from the Nala had a ring entangled in it identified by PW-6, Smt. Vimla Bai, the sister of the deceased as belonging to the Appellant. It is a very strong incriminating circumstance against the Appellant. The conviction may not be interfered with.

5. We have considered the submissions on behalf of the parties and perused the evidence on record.

6. It is not necessary that in every offence there must be an eyewitness account. Circumstances may also lead to an inference of guilt, but for the same there must be a chain of incriminating circumstances with one fact linked to the other intertwined leading to the inescapable conclusion of the Appellant only being the assailant excluding

any possibility of innocence. The last seen theory is but a part of the principle of circumstantial evidence. For invoking the last seen theory, it is necessary that the assailant and the deceased must have been seen together in close proximity of time before recovery of the body when the principle under Section 106 of the Evidence Act gets attracted to explain how and when they parted company before the dead body of the deceased was found. The time factor between when the parties were last seen together and the recovery of the dead body is thus considered crucial to decide if there could have been any intervening factors or not so as to exclude the possibility of the accused being innocent. The deceased is stated to have left home on 31.7.1999 in the morning at about 7:15 a.m. True it is that PW-5, Mathura Prasad, the father of the deceased has deposed that she did not reach the college even that day. It cannot lead to an inescapable conclusion by itself that she was assaulted by the Appellant the very same day merely because the post mortem report may have suggested that death had occurred approximately more than 48 hours ago but less than four to five days.

7. PW-3, Dayalu did not state having seen the Appellant and the deceased together in the morning of 31.7.1999. The Appellant was in his own fields. The deceased was four fields away from him. Beyond that, there is no further evidence with regard to the Appellant and the deceased whatsoever.

8. Because there may have been animosity between the two families and they may not have been on talking terms coupled with the fact that the Appellant may have teased the deceased ten days back, any occurrence one and half years back being too stale, it may raise mere suspicion against the Appellant, but cannot be conclusive proof of guilt.

9. When the dead body was recovered on 2.8.1999 several items

were seized marked Exhibit P-3. On that date, no clump of hair of the deceased, hair clip or any ring entangled in the hair clump was found even though several other items such as college papers, cash, bag and purse of the deceased, scarf, nose and ear rings and finger ring were recovered. The prosecution has not been able to explain why the former items were not found near the body on 2.8.1999 and were suddenly recovered after the confession of the Appellant on 5.8.1999. There is no material to hold that the hair clump in which the ring of the Appellant was allegedly entangled was in fact of the deceased. The Nala was an open place accessible to all. The manner in which the recovery was effected after a confession, from the same place when earlier only some other items were recovered does not inspire confidence and the possibility of having been planted by misuse of Section 27 of the Evidence Act cannot be ruled out completely. The benefit of doubt has to go to the Appellant. Any recovery based on confession to the extent admissible in law is a weak piece of corroborative evidence and not substantive evidence by itself for conviction. Likewise, the TI Parade is also a corroborative evidence and not substantive evidence for conviction. According to the seizure, Exhibit P-11, a silver ring allegedly of the Appellant with a white pearl was placed in TI Parade with several rings of the same kind. The TIP report, Exhibit P-17 does not state on what distinguishing feature the ring in question was identified by PW-6, Smt. Vimla Bai as belonging to the Appellant alone. Even in her deposition in Court, she has not mentioned any specific feature on basis of which she may have identified the same. The Trial Court appears to have proceeded on assumptions and presumptions with regard to the identification of the ring by PW-6 while simultaneously acknowledging that there was animosity between the two families and there was no social interaction between them at all but still concluding that the family members and the deceased may have had the occasion to see the Appellant wearing the ring.

10. The Appellant took a specific defence under Section 313 Cr.P.C. that he had been assaulted by the police leading to abrasions and scratches. The Trial Court again on assumptions and presumptions, without dealing with the defence, arrived at a conclusion that the abrasions and scratches may have been the result of the resistance put-up by the deceased while the Appellant may have been assaulting her. There is absolutely no material on record to arrive at this conclusion which is based on surmises and conjectures conviction on basis of which is clearly impermissible.

11. In conclusion, we are unable to uphold the conviction of the Appellant. The appeal is allowed. The Appellant is acquitted subject to the conditions in Section 437-A Cr.P.C.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE