

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.444 of 2011**

- Rasid Barva S/o Lali Barva, aged about 34 years, Occupation-Agriculturist, R/o. Village- Badadamali (Pakjam), Thana-Darima, Distt.-Surguja (C.G.)

**---- Appellant**

**Versus**

- State Of Chhattisgarh, through the District Magistrate, Ambikapur Distt.Surguja (C.G.)

**---- Respondent**

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| For Appellant        | : | Mr.Sunil Sahu, Advocate          |
| For Respondent/State | : | Mr.Ramakant Pandey, Panel Lawyer |

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**Hon'ble Shri Justice T. P. Sharma**  
**Hon'ble Shri Justice Inder Singh Uboweja**

**Judgment on Board by T.P.Sharma, J.**

**28/04/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24.3.2011 passed by the Sessions Judge, Surguja (Ambikapur), in S.T.No.275/09, whereby & whereunder the trial Court after holding the appellant guilty for causing homicidal death amounting to murder of Ashok Pal and screening the evidence of criminal case convicted him under Sections 302 and 201 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.2000/-, in default of payment of fine to further undergo R.I. for six months and R.I. for three years and fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one month.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 15.5.2009 at about 6 p.m. the appellant demanded money from the deceased for drinking liquor, which was denied by the deceased, thereafter the appellant caught hold his neck by towel and dragged him towards the field and on second day morning, dead body of

Ashok Pal, one chappal and towel were noticed in the field of Pancham Yadav. Villagers also noted the dragging mark from the field of Pancham Yadav up to the field of Bhukhal, they followed the dragging mark where they saw dead body of the deceased. Surendra Pal (PW-10) went to the Police Station Darima and lodged the merge vide Ex.P/8. Investigating officer left for scene of occurrence and after summoning the witnesses vide Ex.P/3 prepared inquest over the body of the deceased vide Ex.P/4. Pair of chappal was seized from the field of Ramkumar Yadav vide Ex.P/5. Towel and one chappal were seized from the field of Pancham Yadav vide Ex.P/6. Dragging mark was noted and bloodstained & plain soil were recovered from the spot vide Ex.P/7. Spot map was prepared by investigating officer vide Ex.P/9. Dead body of the deceased was sent for autopsy to Primary Health Centre, Darima. Dr.B.L.Koushal (PW-3) conducted autopsy vide Ex.P/1 and found following injuries/symptoms:-

- Both the eyes orbit are holed down all sides with bleeding from wounds.
- 3cmx1/2cmx4cm hole with blood on right side of upper part of neck just below right mandible
- Multiple bite marks (30-40) on right forearm
- Laceration and medially with oozing of blood from some wounds.
- On right foot two marks with blood of 2cmx1/2cmx1/2cm medially.
- Multiple contusions small size on face and scalp, forehead and nose.
- Abrasion on left forearm and claw posture & left arm
- Abrasion on right and left foot all toes & foot surface all over caused by rubbing from rub surface after death.
- Fracture of 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> ribs on right side at nipple level liver.
- Fracture of ribs of 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> on left side of chest on nipple level liver.
- Haemetoma on both side of chest above the ribs is present.

Cause of death was hemorrhagic shock and death was homicidal in nature. Finally F.I.R. was registered vide Ex.P/10. Seized articles were sent for chemical examination to F.S.L.vide Ex.P/12 and presence of blood has been affirmed upon the bloodstained soil.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn, committed the case to the Court of Sessions, Surguja (Ambikapur) for trial.
5. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as twelve witnesses. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and claimed innocence and false implication in crime in question.
6. After providing opportunity of hearing to the parties, the trial Court has convicted and sentenced the appellant as aforementioned.
7. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
8. Learned counsel for the appellant vehemently argued that although conviction of the appellant is substantially based on the evidence of Silbina Toppo (PW-1), Tirka Ram (PW-2), Amrita Bai (PW-5) and Khulur Lakda (PW-7), but their evidence do not inspire confidence and trustworthy. As per their evidence, the deceased was seen last time alive in the company of the appellant at about 6 p.m. and thereafter on second day morning his dead body was found. Injury found over the body was not as a result of assault, but it was bitten by insect. There was long time gap between last seen theory and recovery of dead body, therefore, only on the ground of last seen, conviction of the appellant for causing murder would not be appropriate.
9. On the other hand, learned Panel Lawyer for the respondent/State opposed the appeal and argued that evidence of Silbina Toppo (PW-1), Tirka Ram (PW-2), Amrita Bai (PW-5) and Khulur Lakda (PW-7) is sufficient for proving the fact that the deceased was in active control, custody and confinement of the appellant before his death. The appellant has not offered any explanation that when he has set-free the deceased. In absence of such explanation, the only inference would be possible that the appellant was author of the crime and none else.
10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.

11. In the present case, homicidal death of deceased Ashok Pal as a result of fatal injury found over his body has not been substantially disputed on behalf of the appellant, on the other hand, same is also established by the evidence of Silbina Toppo (PW-1), Tirka Ram (PW-2), Amrita Bai (PW-5), Khulur Lakda (PW-7), merg Ex.P/8, F.I.R. Ex.P/10, evidence of Dr.B.L.Koushal (PW-3) and autopsy report Ex.P/1.
12. As regards the complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of Silbina Toppo (PW-1), Tirka Ram (PW-2), Amrita Bai (PW-5) and Khulur Lakda (PW-7). As per evidence of Silbina Toppo (PW-1), the appellant was dragging the deceased by holding towel surrounding upon the neck of the deceased and has dragged the deceased towards the field and on second day morning dead body of the deceased was found in the field. Tirka Ram (PW-2), Amrita Bai (PW-5) and Khulur Lakda (PW-7) have substantially corroborated the evidence of Silbina Toppo (PW-1).
13. Defence has cross-examined these witnesses at length, but has not been able to elicit anything in their cross-examinations to discredit their testimonies to the extent that between 6 to 6.30 p.m. at evening the deceased was not dragged by the appellant and he was not holding the cloth and circled the neck of the deceased. These circumstances alone are sufficient to prove that the deceased was in active control, clutches and confinement of the appellant, therefore, heavy burden to explain that when he set-free the deceased was upon the appellant, but he has failed to offer explanation.
14. In absence of such explanation, the only inference would be possible that the appellant had caused homicidal death of the deceased and has screened the evidence of criminal case.
15. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned.
16. On close scrutiny of the evidence, we do not find any illegality in the judgment of conviction and order of sentence.
17. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

**JUDGE**

**JUDGE**

