

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 322 of 2010**

1. Rajpal Singh, s/o Samay Lal Gond, aged about 55 years
 2. Jugiya Bai D/O Laxman Singh Nayak, aged about 40 years,
- Both R/O Vill. Andi Nayak Mohalla P.S. Pendra, Distt. Bilaspur (C.G.)

---- Appellants**Versus**

1. State Of Chhattisgarh, through Police Station Pendra, District Bilaspur, Chhattisgarh

---- Respondent

For Appellants	:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Preeti Yadav Advocate
For Respondent/State	:	Mr. Mahesh Mishra, Panel Lawyer.

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

Judgement on Board by T.P.Sharma, J.

13/03/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 19.03.2010 passed by the Additional Sessions Judge (F.T.C.), Pendra Road, District Bilaspur, in Sessions Trial No. 59/2009 whereby and whereunder while holding the appellant guilty for causing homicidal death amounting to murder of Lakshman Singh, husband of appellant No.2 – Jugiya Bai, in sharing common intention and in concealing evidence, the Court below convicted the appellants under Section 302, 302/34 and 201 of the I.P.C. and sentenced them to life imprisonment with fine of Rs.100/- each and to undergo RI for six months with fine of Rs.100/-each and in

default to payment of fine, to undergo additional RI for one month on each count.

2. Conviction is impugned on the ground that without there being any iota of evidence against the appellants, the Court below convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of the prosecution, appellant No.2 – Jugiya Bai is the wife of deceased – Lakshman Singh and is residing in his house. Appellant No.1 Rajpal was regularly visiting the house of Lakshman Singh. On 17.07.2009 between 11.00 -11.30 pm, both the appellants were present in the house of Lakshman Singh. They caused homicidal death to deceased by strangulation by using rope upon the neck and thereafter the appellant Rajpal fled from the house of Lakshman Singh. Appellant No.2 Jugiya Bai went to the house of P.W.1 Kanhayya Lal and P.W.2 Ghanshyam and made false statement of death of her husband. Relatives of the deceased and villagers woke up. One Subhan Singh lodged merg intimation vide Ex.P.14 which was recorded by P.W.9 Ashok Kumar Dhruw.

4. Investigation Officer left for scene of occurrence and after summoning the witnesses, inquest over the dead body was prepared vide Ex.P.5. Spot map was prepared vide Ex.P.8. Finally, F.I.R. was registered at Police Station Pendra vide Ex.P.10. Dead body was sent for autopsy to Community Health Center, Pendra vide Ex.P.9. P.W.7 Dr. H.K.Tanwar conducted autopsy vide Ex.P.7 and found following injuries and symptoms:

- i. Eyes and mouth partially opened.
- ii. Rigor mortis was present in all limbs.
- iii. Ligature groove in all around the neck and its size 32 cm. width is 1 cm.
- iv. Depth of right side neck's groove is 0.5 cm
- v. There was depth of 0.2 cm in both sides and lateral part of neck.

- vi. Abrasion on left knee of 1 x 1 cm.
- vii. There was superficial groove over back of neck.

Mode of death was Asphyxia as a result of strangulation and death was homicidal in nature.

5. One Nylon rope, T-Shirt and lungi were seized from the appellant – Jugiya Bai vide Ex.P.11. Written confession of appellant – Jugiya Bai was recorded vide Ex.P.1, which was seized from Subhan Singh vide Ex.P.2. Statements of witnesses – Madan Singh and Radheshyam were recorded under Section 164 of the Code, which were seized vide Ex.P.5 & 6.

6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. After completion of investigation, charge sheet was filed before the Court of J.M.F.C. Pendra, who in turn committed the case to the Court of Additional Sessions Judge, Pendra Road.

8. In order to prove the guilt of the appellant, prosecution has examined as many as 09 witnesses. Accused persons were examined under Section 313 of the Code, in which, they denied the circumstances appearing against them and innocence and false implication in crime in question was claimed.

9. After providing an opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.

10. We have heard learned counsel for the parties and perused the judgment impugned and record of trial Court.

11. Mr. H.B. Agrawal, learned Senior Advocate with Mrs. Preeti Yadav, counsel for the appellants vehemently argued that this is a case of no evidence, in which, prosecution has failed to lead credible and clinching evidence. Frequent visits of the appellant – Rajpal to the house of deceased Lakshman Singh and presence of the appellant – Jugiya Bai, who is the wife of deceased, in the house of deceased was not unnatural. Prosecution has neither adduced any direct evidence nor has adduced any substantial evidence against the appellants to establish their involvement in crime in question, therefore, they are entitled for acquittal.

12. On the other hand, Mr. Mahesh Mishra, learned counsel for the State submits that evidence of P.W.1 Kanhaiyya Lal, P.W.2 Ghanshyam, P.W.4 Laliya, P.W.5 Radheshyam and P.W.6 Anita is sufficient to prove the guilt of the appellants. As per their evidence, at the time of incident, appellant Rajpal was present in the house of deceased. Thereafter, after he came out of the house of deceased he was fleeing and fled from the house. Witnesses have seen him fleeing from the house of deceased. Appellant Jugiya Bai offered false explanation of hanging. This evidence is sufficient to prove the factum that both the appellants were present in the house of deceased and death of deceased was homicidal in nature. Heavy burden to offer explanation was upon the appellants in terms of Section 106 of the Evidence Act, but, they failed offer any such explanation which by itself is sufficient to establish the guilt of the appellants.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to minutely examine the evidence adduced on behalf of the prosecution. In the present case, homicidal death of deceased – Lakshman Singh as a result of Asphyxia due to strangulation has not been substantially disputed on behalf of the appellants, but, on the other hand also established by the evidence of P.W.1, Kanhaiyya Lal, P.W.2 Ghanshyam, P.W.4 Laliya, P.W.5 Radheshyam, merg Ex.P.14, F.I.R. Ex.P.10 P.W.7 Dr.H.K. Tanwar and autopsy report Ex.P.7.

14. As regards complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of P.W.1 Kanhaiyya Lal, P.W.2 Ghanshyam, P.W.4 Laliya and P.W.5 Radheshyam. As per evidence of P.W.5 Radheshyam, on the date of incident at about 11.00 pm at night, when he came out of his house for answering call of nature, he saw the appellant – Rajpal entering into the house of Lakshman Singh, at about 01.00 at night, he was informed by appellant No.2 – Jugiya Bai about the seriousness of deceased – Lakshman Singh and when he went to the house of Lakshman Singh, he saw that Lakshman was dead. P.W.4 Laliya has deposed that at about 11.30 pm when he came out of his house for answering the call of nature, he saw the appellant – Rajpal coming out of the house of Lakshman Singh and was running towards his house and after sometime he came to know about the death of Lakshman Singh by Kanhaiyya. P.W.1 Kanhaiyya Lal and P.W.2 Ghanshyam deposed that they were informed by the appellant – Jugiya Bai about the death of Lakshman Singh, thereupon they visited the house of Lakshman Singh where they saw the dead body of Lakshman Singh. Defence has cross-examined these witnesses, but, has failed to elicit anything in their cross-examination to discredit their testimony to the extent that both the appellants were not present in the house of Lakshman Singh, appellant Rajpal has not fled from the house of deceased Lakshman Singh and appellant Jugiya Bai has not offered false explanation that deceased has died by hanging, although it was mere case of strangulation.

15. The aforesaid evidence clearly reveals that at the time of incident both the appellants and deceased were present in the house of deceased Lakshman Singh between 11.00 – 11.30 pm at night and death of deceased was homicidal in nature. Heavy burden to explain that who has caused homicidal death of deceased was upon the appellants in terms of Section 106 of the Evidence Act but they failed to offer any such explanation. The aforementioned facts and the fact that the appellant – Jugiya Bai has offered false explanation and also the fact that the appellant Rajpal was seen

fleeing from the house of deceased are sufficient for drawing inference that only the appellants were authors of the crime and none else and the aforesaid evidence is sufficient to exclude the possibility of their innocence.

16. After appreciating the evidence available on record, the learned Additional Sessions Judge has rightly convicted and sentenced the appellants as aforementioned. On close and minute scrutiny of the evidence available on record, we also do not find any infirmity and illegality in the judgment of conviction and order of sentence warranting interference by this Court.

17. Consequently, the appeal, being devoid of merit and substance, is liable to be and is hereby dismissed.

JUDGE

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