

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 277 of 2007**

Narsingh Yadav S/o Mathru Yadav, aged about 45 years, R/o village Reevanghan, Police Station Lal Bagh, District Rajnandgaon, Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh, Through District Magistrate, Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant : Shri V.R.Tiwari, Advocate.

For Respondent/State : Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****09/08/2016**

1. This appeal by the Accused/Appellant is directed against the judgment dated 05.11.1999 delivered by the learned Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 62 of 1998 convicting and sentencing the Accused/Appellant as under:

Conviction**Sentence**

Under Section 302 IPC

Life Imprisonment and fine of Rs. 1000/-, in default, 4 months additional rigorous imprisonment.

Under Sections 394 and 397 IPC

Rigorous imprisonment for seven years and fine of Rs. 500/-, in default, 2 months additional rigorous imprisonment.

Under Section 449 IPC

Rigorous imprisonment for 10 years and fine of Rs. 500, in default, 2 months additional rigorous imprisonment.

2. The prosecution story, briefly stated is that Basanti Bai used to live all by herself in her residence. According to the prosecution, she had engaged the

Accused/Appellant - Narsingh Yadav as a part time employee who used to do some household work at her house. The case of the prosecution is that on 24.01.1998 at about 11:30 am, the Accused/Appellant trespassed into the house of the deceased-Basanti Bai and committed an offence of robbery of gold, silver ornaments and money, and during this offence, he murdered the deceased.

3. The Dehatinalishi (Exhibit P-23) was lodged at the instance of Sanjay Kumar Kothari (PW-18), son-in-law of the deceased at about 11 am on 26.01.1998 and on the basis of the same, FIR (Exhibit P-21) was lodged. In these documents, all that is stated is that the deceased has been killed by some unknown person. The police investigated the matter and during investigation, it transpired that the Accused/Appellant was working in the house of the deceased. He was last seen with her in her house and during course of investigation, certain gold and silver ornaments and some cash was recovered at the instance of the Accused and the said ornaments were identified by Sushila Bai (PW-14) to be belonging to her mother. The finger prints of the Accused/Appellant were also found in the tiffin box lying in the house of the deceased and on this basis, the Accused/Appellant was convicted as aforesaid.

4. At this stage, we may notice that the Accused/Appellant has already been released after undergoing the entire sentence. However, we are deciding the appeal on merits.

5. Admittedly, this is a case of no direct evidence. It is based on circumstantial evidence. The law with regard to circumstantial evidence is well settled that the prosecution has to prove the circumstances and link them in such a fashion so as to arrive at only one conclusion which is guilt of the Accused.

6. Before coming to the individual circumstances, it would be pertinent to mention certain facts which are not in dispute. From the evidence on record, it is apparent that from 24.01.1998 till morning of 26.01.1998, the deceased-Basanti

Bai was not seen outside the house. It appears that the neighbours even knocked at her house but received no answer. Thereafter, on 26.01.1998, PW-18, Sanjay Kumar Kothari received a message from Pradeep Agrahari to the effect that the door of his mother-in-law's house is shut from inside and despite knocking, she is not opening the door and he should come and find out what has happened.

7. According to PW-18, Sanjay Kumar Kothari, he alongwith his wife, PW-14, Sushila Bai came to the house. They broke open the two doors i.e. outer door to the house and one door to the room of the deceased and when they went inside, they found the deceased lying face down. She was lying in a pool of blood. Thereafter, PW-18, Sanjay Kumar Kothari informed his father-in-law, PW-1, Bhurmal Jain, who in turn reported the matter to the police. It is also not in dispute that PW-1, Bhurmal Jain and the deceased were living separately for the last more than 20 years. The case against the Accused is based on the following three circumstances, namely (i) last seen; (ii) recoveries made at the instance of the Accused on the basis of statement made under Section 27 of the Evidence Act; and (iii) finger prints of the accused being found on the tiffin box in the house of the deceased.

8. As far as last seen is concerned, there are only two witnesses, PW-9, Bhagat Ram, and PW-15, Teejbati. PW-9 has turned hostile but during cross-examination, has admitted that the Accused used to work in the house of the deceased. However, PW-15, Teejbati clearly states that she had gone to the house of the deceased to borrow her ration card since she wanted to buy kerosene by using the ration card. Though, she did not obtain ration card from the deceased, when she entered the house, she saw that the Accused was sitting in the house of the deceased. This occurrence is of the morning of 24.01.1998. She also states that she was asked to purchase Mahi (butter milk) for the deceased. She also states that after she purchased butter milk, she went back to the house of the deceased and at that time also, the Accused was sitting there. Therefore,

the prosecution has proved beyond reasonable doubt that the Accused was sitting in the house of the deceased, a short while before the alleged occurrence.

9. The second circumstance is the recovery of certain items from the Accused on the basis of memorandum (Exhibit P-24) which statement he made to the police. The witnesses to this recovery and memorandum are PW-17, Subhash Vaidya and PW-20, Girdhari. Subhash Vaidya (PW-17) did not fully support the prosecution version. In his examination-in-chief, he infact gave a round about version and if his examination is read as a whole, it appears that he is not supporting the prosecution version. He was therefore declared hostile and was cross-examined. In cross-examination, he admitted that the Accused had stated that he had hidden the ornaments in the *Pataw* (Pataw is a false wooden ceiling in a thatched roof house). He thus partially supported the prosecution. As far as PW-20, Teejbati is concerned, she turned hostile and did not support the prosecution. However, one fact remains that even as per the statement of PW-17, Subhash Vaidya, at the instance of the Accused/Appellant, some gold and silver ornaments were recovered. These gold and silver ornaments have been identified by PW-14, Sushila Bai as belonging to her mother.

10. The prosecution may have failed to prove the recovery of money and other articles but it has definitely proved that the gold and silver ornaments belonging to the deceased were recovered from the house of the Accused/Appellant at his instance. Therefore, this circumstance is proved against the Accused/Appellant to this extent.

11. The third circumstance is that the finger prints of the Accused/Appellant were found on the tiffin box lying in the house of the deceased. In this behalf, it would be pertinent to mention that the prosecution story is that the Accused used to work in the house of the deceased. In such an eventuality, finding his finger prints by itself would not be any incriminating circumstance. However, the stand of

the Accused is that he never worked in the house of the deceased and in fact he even did not know her. Apparently this version of the Accused/Appellant is false. This raises suspicion with regard to his entire conduct. The prosecution has proved beyond reasonable doubt that the finger prints on the tiffin box is of the deceased and therefore, this also leads to the conclusion that the Accused was inside the house at sometime.

12. We are of the considered opinion that these three circumstances by themselves are sufficient to convict the accused. We, therefore, find no merit in the appeal and it is accordingly dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
Judge