

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRIMINAL APPEAL NO. 1210 OF 2002**

Krishna Kumar alias Choti, S/o Shri Shyamlal Yadav, aged about 22 years, R/o Village Hardivishal, Chowki Balauda, P.S. Akaltara, District Janjgir-Champa (C.G.)

**... Appellant**

**Versus**

State of Chhattisgarh, through : Police Station- Akaltara, District Janjgir-Champa (C.G.)

**... Respondent**

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|----------------------|---|------------------------------------------|
| For Appellant        | : | Mr. N.K. Chatterjee, Advocate.           |
| For Respondent-State | : | Mr. B. Gopa Kumar, Dy. Advocate General. |

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**Hon'ble Shri Deepak Gupta, Chief Justice**  
**Hon'ble Shri Justice P. Sam Koshy**

**Judgment on Board**

**Per Deepak Gupta, C.J.**

**14/07/2016**

1. This appeal by the Appellant-accused, Krishna Kumar *alias* Choti, is directed against the judgment dated 28.10.2002 passed by the IVth Additional Sessions Judge (F.T.C.), Janjgir, in Sessions Trial No.527/2001, whereby the Appellant has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.100/- and in default thereof to suffer further rigorous imprisonment of one month. By the same judgment, the Appellant has also been convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.100/- and in default to pay the fine amount to further undergo rigorous imprisonment for one month.

2. The prosecution story briefly stated is that on 26.9.2001 at about 8:00 pm, the Appellant-accused murdered his sister-in-law (brother's wife), Siya Bai, by strangulating her using the end of *sari* which Siya Bai was wearing at the time of occurrence. On 29.09.2001, Lakhanlal (PW-18) lodged a report in the police station that Siya Bai was missing from her house from the evening of 27.9.2001. Thereafter, a search was made and near the boundary of the field (*medh*) belonging to one Daniram the dead-body of Siya Bai was found in Village Chanhakhar. Thereafter, FIR (Exhibit P-22) was lodged. Inquest proceedings were conducted. The body of the deceased was sent to post-mortem. According to the evidence of Dr. U.K. Tiwari (PW-7), the deceased died due to asphyxia caused by strangulation.

3. The undisputed facts are that the deceased Siya Bai was married to Radhelal, the real brother of the Appellant-accused. They were living together in one house along with their father, Shyamlal. The case of the prosecution is that on 26.9.2001 late in the evening the Appellant-accused left the house stating that he was going to market. Soon thereafter, Siya Bai, the deceased, also left the house but did not come back. The story of the prosecution is that in the same evening at about 8:00 to 9:00 pm, the Appellant-accused visited the house of his paternal uncle, Bhujbal (PW-1) and at that time the accused was only clad in a underwear and vest. He was in a state of panic and was sweating and therefore showed that he was guilty of some offence.

4. The learned Court below after trial convicted the Appellant-accused vide impugned judgment dated 28.10.2002 of having committed the murder of his sister-in-law (*bhabhi*) and also convicted him for destroying the evidence related to the offence. This judgment is under challenge before us.

5. We have heard Shri N.K. Chatterjee, learned Counsel for the Appellant-accused and Shri B. Gopa Kumar, learned Dy. Advocate General, for the State, and perused the records of the case including the impugned judgment.

6. It is not in dispute that the deceased was murdered. It is also not in dispute that the body was found more than 36hours after the murder. It is also undisputed that her body was found at about less than 700meters from the house of the deceased. The only issue is who murdered the deceased?

7. It is urged by the learned Counsel for the Appellant-accused that this is a case of no evidence whatsoever. He further submits that there are no eye-witnesses and the case is based on circumstantial evidence. According to the Counsel for the Appellant-accused, none of the circumstances can even remotely connect the accused with the alleged commission of offence.

8. The law with regard to circumstantial evidence is well established. When the prosecution relies on circumstantial evidence, it is the duty of the prosecution to prove every circumstances and then link the circumstances to form an unbroken chain leading to one conclusion only, i.e., the guilt of the accused. If there is any chance of the offence being committed by any other person then the accused has to be given the benefit of doubt. As far as the present case is concerned, we are in agreement with the learned Counsel for the Appellant-accused that in fact there is no circumstance to even remotely connect the accused much less connect him with the offence.

9. The first circumstance relied on by the prosecution is that the accused and the deceased were last seen together. This circumstance

has not even been proved. Even otherwise when two brothers live in the same house merely because the sister-in-law and one of the brothers are last seen together in the house cannot by itself become a circumstance to be used against the accused unless something else is also proved. Furthermore, in this case, to prove this circumstance, it was necessary for the prosecution to have examined Santra Bai who allegedly had seen the accused and the deceased together for the last time. She was not examined by the prosecution and was given up.

**10.** Even if we are to look into the allegation of the prosecution, what is alleged is that the Appellant-accused left the house first and thereafter the deceased also left the house. This would not amount to “being last seen together”. Two persons were living in the same house. One left for market and the another person also left for any another unknown destination. That cannot lead to any inference that the person who went first had left with the intention of killing the second person. There is not even a whisper that the accused told the deceased to meet him at a certain place.

**11.** PW-1, Bhujbal, who is the paternal uncle (*Taya*) of the accused was declared hostile. When cross examined by the prosecution, he virtually admitted every suggestion put to him by the prosecution. He states that his house is situated at a distance of about 1 kilometer from the house of his brother, Shyamlal. He also states that Siya Bai was missing from the house from the previous night. According to him between 8:00 to 9:00, the Appellant-accused came to his house clad only in underwear and vest. A suggestion has been put to him by the prosecution that the accused informed the witness (Bhujbal) that Bharat Yadav and Santosh Kenwat had come to beat him up therefore he ran

away and came to his house. It is important to note that this suggestion has been put on behalf of the prosecution to the witness who has turned hostile. The said witness admits that at that time the accused was very scared and in a state of panic. Therefore, he brought the accused to the house of his brother, Shyamlal. When he reached the house, Santra Bai was there. However, neither the prosecution nor the Court tried to find out as to who the said Santra Bai is and how she is related to the accused or the deceased. The witness denied a suggestion put to him that Santra Bai had told him that the accused had told Santra Bai that he was going towards *basti*. According to him, he was told by the said Santra Bai that the deceased, Siya Bai, had left for the *bari* (kitchen garden) at about 8:00 pm but did not return. He further states that his brother, Shyamlal, was not in the house and had gone to protect the crops in the fields. He also admits that a large number of persons had collected in the house of Shyamlal. According to him, he did not ask the accused where Siya Bai had gone and he does not know whether any other person had asked this question.

**12.** The prosecution for undisclosed reasons has neither examined Santra Bai nor it has examined Shyamlal. No reasons have been given why these two important witnesses were not examined. Even if we are to accept the statement of Bhujbal to be totally correct it only proves that the accused went to the house of his paternal uncle (Bhujbal) in a state of disarray and at that time he was scared and in a state of panic. This witness also states, that too at the instance of the prosecution, that the accused told him that he was being threatened by two persons, Santosh Yadav and Bharat Kenwat. This is the entire relevant evidence.

**13.** The learned Court below has convicted the accused only on the ground that since he was scared and had panicked and was wearing only an underwear and vest, this clearly shows that he must have killed his sister-in-law (*bhabhi*). We fail to comprehend and understand the reasoning of the learned Court below.

**14.** In a criminal case, the prosecution has to prove its case beyond all reasonable doubts. This, in our opinion, is a glaring case of virtually no evidence what to talk about even suspicion. It would be important to note that the body of the deceased has been found only at a distance of less than 700meters from the house. This lady was missing from 8:00 pm on 27.9.2001 and the report was lodged on 29.9.2001 and soon after the report was lodged, dead-body was found. What the family members and other witnesses were doing during this period of more than 36hours. The body has been found at a short distance from *abadi* area and the body was lying in the open. It had not been hidden in a grave or under some bushes. From the records it appears that there is no attempt of concealing the body from the public glare. The body was lying not in a jungle or some secluded place but on the edge of the boundary of an open cultivated area. Once the deceased left her house anybody else could have committed her murder. There is no evidence to link the accused with the murder of the deceased, Siya Bai and the circumstances relied on by the learned Court below are no circumstances in the facts of the present case. Therefore, we have no hesitation in setting aside the judgment dated 28.10.2002 passed by the IVth Additional Sessions Judge (FTC), Janjgir, in Sessions Trial No.527/2001.

**15.** Resultantly, the appeal is allowed. Conviction of the Appellant for offence under Sections 302 and 201 IPC is set aside and the Appellant is acquitted of the said charges. The Appellant is stated to be on bail. His bail-bonds shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A CrPC.

Sd/-  
**(Deepak Gupta)**  
Chief Justice

Sd/-  
**(P. Sam Koshy)**  
Judge

/sharad/