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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 456 of 2000**

1. Jagatram, S/o Lodhiram, Sagwanshi, aged 32 years, R/o Chiknipani, P.S. Bagbahar, District – Raigarh, M.P. (now C.G.)
2. Shankar @ Shakkar, S/o Nangru Nagwanshi, aged 35 years, R/o Chiknipani, P.S. Bagbahar, District – Raigarh, M.P. (now C.G.)

---- Appellants**Versus**

State of Madhya Pradesh (Now C.G) through P.S. Bagbahar, District Raigrah, M.P. (now C.G.)

---- Respondent

For Appellants	:	Mr. Ratan Pusty, Advocate
For State	:	Ms. Madhunisha Singh, Panel Lawyer

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C.A.V. Judgment**Per P. Sam Koshy, Justice****12.04.2016**

1. The Appellants through the present appeal have questioned the judgment for conviction dated 14.12.1999 passed in Sessions Trial No. 43/98 by the Second Additional Sessions Judge, Raigarh convicting the Appellants for the offence punishable under Section 302/34 of IPC sentencing them for life imprisonment with fine of Rs. 2000/- each and with default stipulation.

2. The prosecution story in brief is that as per the prosecution, on 19.08.97 the Appellants in the present appeal had gone along with the

deceased Panchram towards the jungle after having consumed liquor from the nearby hotel and in the jungle it is said that some dispute occurred between the Appellant No. 1 and the deceased. Both the Appellants assaulted the deceased causing his death and after the death has occurred the Appellants are said to have carried the body to a different place where they removed T-shirt which the deceased had worn and hid it underneath a tree. Subsequently, PW-1, Amar Sai, brother of the deceased and PW-2, Samarin Bai, wife of the deceased while in the course of searching for the deceased who had not returned home the previous night, found him lying dead under a tree. The intimation of which was immediately given vide Exhibit P/17 and the inquest Exhibit P/10 was prepared and body was sent for postmortem which was conducted by PW-12, Dr. J. Minj and after conducting the postmortem he gave the following reports so as to the state of body is concerned:

1. The face is puffy and cynosed. Marked with Petechiae.
2. Conjunctivas are congested, pupils are dilated, bloody foam clotted from the mouth and Nostrils, Tongue swollen bruised, protruding and dark colour,
3. Discharged faeces.
4. Neck swollen bruised, dark colour,
5. Face congested, livid and mark with petechiae,
6. Bruised forehead,
7. Right side abdomen distended, chest upper congested and bruised.
8. Skin peeling off, R.M. passing off, foul smell present, purification started.

He further opined that the cause of death was asphyxia due to

throttling and the duration of death from the time of postmortem was within 52 hours and had also held that nature of death appeared to be homicidal. Later on, the first information report Exhibit P/15 was lodged by PW-13, D.D. Vaishnav, Sub Inspector of Police.

3. Though, there was no direct evidence to the murder of the deceased Panchram but the circumstantial evidence which was acquired during the course of the investigation found the Appellants to be in the company of the deceased last, before the deceased went missing. Further, in the course of the interrogation it is said that the accused Appellant Jagatram made a confession Exhibit P/4 and also on the basis of the confession recovery of the shirt which was worn by the deceased and was hid by the assailants under the tree was recovered vide seizure memo, Exhibit P/5. Likewise, the accused Appellant Shankar also made a confession during the course of investigation. The Police also found some injury marks on the body of the Appellant Jagatram and accordingly the MLC report of Jagatram, Exhibit P/13 was also prepared. Subsequently, the case was charged against the Appellants for the offence under Section 302/34 of I.P.C. and matter was put to trial and after the trial the Court below found the two Appellants guilty of the offence under 302/34 of I.P.C. sentenced them to undergo life imprisonment and fine of Rs. 2000/- each to both Appellants.

4. Learned Counsel for the Appellants submits that the judgment of conviction passed against the Appellants is not sustainable for the

reason that the Court below has not properly appreciated the evidence which has come on record and has passed the judgment on assumption and presumption drawing an adverse inference against the Appellants which is not supported with by any cogent evidence and therefore, the order of conviction deserves to be set aside.

5. Counsel for the Appellants further submitted that the findings of the Court below is also bad in law for the reason that ocular evidence which has come on record is contrary to the medical evidence.

6. According to the Appellants there was no sign of strangulation or throttling found on the dead body of the deceased and therefore since the case of death of the deceased itself has not been properly established or proved by the prosecution, conviction of the Appellants on the basis of the alleged charge of throttling can not be said to be proper, legal and justified and the judgment of conviction deserves to be set aside on this ground also.

7. According to the Counsel for the Appellants since there is no direct eye witness available in respect of the commission of the crime by the Appellants, the circumstantial evidence has to be carefully and cautiously examined and that there has to be cogent and reliable circumstantial evidence available which would complete the chain of events from the time the Appellants were found in the company of the deceased till the time the body was recovered. Later on, on the memorandum and recovery made at the instance of the Appellants could force us to draw a conclusion of Appellants alone having committed the offence. This again has not been established by the

prosecution. It was lastly contended by the Appellants, even if circumstances which have been taken into consideration by the Trial Court are considered, they are only factors leading to suspicion which can never take place of proof howsoever strong the suspicion may be, therefore the benefits of doubt should go in favour of the accused Appellants.

8. Per contra, the State Government opposing the appeal negated all the arguments of the Appellants and submitted that the prosecution has in fact been able to sufficiently with reliable piece of the evidence proved its case establishing the offence committed by the Appellants.

9. Learned counsel for the State further contended that true it is there was no direct independent eyewitness to the incident, but if all the missing links are put together, the chain of circumstances leading to the sole inference of the Appellants alone who have committed the offence stands established and it proves the guilt beyond all reasonable doubts.

10. We have considered the submissions of the parties and perused the records.

11. PW-1, Amar Sai, the younger brother of the deceased, has clearly admitted and established the fact that he had last seen the present Appellants in company of the deceased and when he (PW-1) asked the Appellants where they were going, to which, he was replied that they were taking the deceased to the liquor shop. This statement of PW-1 establishes the last seen theory. This statement of PW-1, Amar Sai is consistent as can be seen from his police statement. The question of last seen is also established from the evidence of PW-2, Samarin Bai,

wife of the Appellant. Further, PW-8, Filmon, had proved the memorandum statement, marked Exhibit P/4 and the recovery made at the instance of the Appellant-Jagatram. The said witness had also further proved the spot map, marked Exhibit P/9, prepared by the Patwari. In his cross examination also, he supports the contention of the prosecution so far as the recovery of T-shirt of the deceased which was hidden by the Appellant-Jagatram. Thus, the recovery made on the memorandum statement of the Appellant-Jagatram, which is admissible under Section 27 of the Evidence Act, become an incriminating factor against the Appellants.

12. PW-12, Dr. J. Minj, in his evidence has given details of the injuries caused upon the Appellant-Jagatram and had opined that the injuries visible are simple in nature which were caused within about 8 days i.e. the time around which the death of the deceased occurred. Appellant-Jagatram, in his statement under Section 313 Cr.P.C. has not given any explanation in this regard, rather has given a misleading and incorrect statement of “doesn't know” which also becomes more and more incriminating against the Appellants.

13. PW-12, Dr. J. Minj, has further deposed that the cause of death was strangulation as the internal examination of the body showed hyoid Bone was fractured, trachea and wind pipe were congested, wind Pipe was also broken. Likewise, from the external examination, the Doctor had given a report that the face of the deceased was swollen and had gone Bluish. Blood was oozing from the mouth as well as from the nostril. Tongue was protruded and swollen also. The neck was also

swollen. Considering all these factors, the Doctor opined it to be a case of strangulation.

14. PW-13, D.D. Vaishnav, the Investigating Officer, has also in his deposition before the court proved the case of the prosecution by exhibiting the documents gathered in the course of the investigation. There was no sufficient cross examination by the Appellants by which certain element of doubts could have been created on the prosecution case. For want of sufficient cross examination, the averments made by the Investigating Officer, the case of the prosecution gets further strengthened.

15. Thus, from the above given factual matrix of the case, it is evidently clear that the prosecution has in-fact been able to firstly establish the theory of last seen so far as the Appellants as well as the deceased is concerned. Further, the Appellants, particularly Jagatram, has not been able to give any explanation to the injuries that were found on his body which itself becomes a strong circumstances against the Appellant. The fact that on basis of memorandum statement and at the instance of Appellant-Jagatram, T-shirt of the deceased, which they had hidden near the place of occurrence, was recovered and such recovery being proved by the witnesses before the court leads us to the only conclusion of the Appellants alone to have committed the offence.

16. So far as the motive for committing the said offence is concerned, the fact that the deceased had kept the sister of the Appellant-Jagatram namely Samarin Bai as his second wife and that she used to complain to her brother Appellant-Jagatram about the fights between Samarin Bai

and the deceased is not in dispute. All these circumstances complete the chain of events drawing the only conclusion of Appellants alone of having committed the offence particularly for the reason that the Appellants have not been able to give any proper explanation so far as the fact as to when they had parted company with the deceased, as there are more than one witnesses who have seen the Appellants going in company of the deceased immediately before the deceased had died.

17. Thus, for the forgoing reasons, the findings of the trial court cannot not be faulted with and that the Appellants have not been able to create any doubt in the minds of the court so as to suspect the case of prosecution leading for any interference. The appeal therefore, being devoid of merit is liable to be and is hereby dismissed affirming the judgment of conviction passed by the trial court.

18. The Appellants are on bail. Their bail bonds are cancelled. They are directed to surrender forthwith and/or be taken into custody for serving out remaining period of their sentence.

**Sd/-
(Navin Sinha)
Chief Justice**

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