

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 647 of 2004****Judgment reserved on 29-07-2016****Judgment delivered on 05-12-2016**

1. Prakash Yadav, S/o Shri Ramurat Yadav, aged about 22 years, R/o Nayad Changorabhata, Gitti Khadan Near, P.S. Purani Basti, Dist. Raipur (CG).

---- Appellant**Versus**

1. State of Chhattisgarh, through Police Station Purani Basti, Dist. Raipur (CG).

---- Respondent

For Appellant

Shri Sudhir Bajpai, Advocate

For Respondent/State

Shri Adhiraj Surana, Dy. Govt. Adv.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Chandra Bhushan Bajpai****CAV JUDGMENT**

The judgment of the Court was delivered by **Prashant Kumar Mishra, J.---**

1. The appellant has preferred this appeal against his conviction by the trial Court under Sections 302 and 201 of the Indian Penal Code ('the IPC' in short) and sentence of life imprisonment and two years R.I., respectively for committing the murder of Tara Bai (since deceased).
2. The case of the prosecution, as appearing from the record, is that when Ramkumar Ausar, Secretary of Gram

Panchayat, Raipura, was sitting in the panchayat building at about 9.35 am on 04.06.2002, one Shiv Nirmalkar informed him that dead body of a lady is lying in a well of a nearby field. Ramkumar went to the place; found the dead body; and thereafter he lodged the merg (Ex.P/1) at about 11.15 am on 04.06.2002. The concerned police registered the merg intimation and the dead body was brought out from the well in presence of Prabhu Ram Sahu, Sarpanch of Gram Panchayat Raipura, Ram Kumar (the informant), Lekhram, Chaitram and other villagers. After preparing the dead body inquest (Ex.P/2) it was sent for postmortem, which was performed by Dr. Sanjay Kumar Dadu (PW-3).

3. In course of investigation, the dead body was identified by Arjun Das (PW-2), Shankar Lal Krishnani (PW-6) & Ms. Sangita (PW-9). Based on their statements to the Police, the appellant was taken into custody.
4. During interrogation the appellant gave memorandum statement to the Police (Ex.P/13), pursuant to which knife was recovered from behind the bushes near dam on Kharun River at Village Raipura vide Ex.P/14.
5. The autopsy surgeon opined that the death was due to shock and hemorrhage as a result of stab injuries on abdomen; injuries caused by hard, sharp & penetrating object; the death was homicidal in nature; evidence of

strangulation & ligature is also present and the duration of death was within 24 hours since postmortem, which was performed at 3.45 pm on 04.06.2002.

6. On completion of investigation, charge sheet was filed against the appellant on the basis of evidence of last seen together, memorandum statement & recovery of weapon.
7. In course of trial, the prosecution examined 12 witnesses to bring home the charges. In his accused statement, the appellant denied to have committed the offence and stated that he is falsely implicated.
8. The trial Judge has convicted the appellant on the basis of evidence in the nature of last seen together and recovery of weapon at the instance of the appellant. The trial Judge has also concluded in para 23 of the judgment that the appellant had taken the deceased to Changorabhatha (Raipura) at about 9.00 pm on 03.06.2002 and tried to make physical relation, however, on being denied sexual favour, the appellant inflicted injuries by knife to commit her murder and after death the dead body was thrown in the dry well to conceal the evidence of offence.
9. Shri Sudhir Bajpai, learned counsel appearing for the appellant, would argue that the chain of circumstantial evidence is not complete; there is no incriminating evidence against the appellant; the trial Judge has formulated an

altogether new story without there being any material in charge sheet and that in the absence of motive the appellant is not liable to be convicted only on the basis of evidence of last seen together, it at all it is found proved.

10. Per contra, Shri Adhiraj Surana, learned Dy. Government Advocate, appearing for the State, would support the impugned judgment of conviction and order of sentence.
11. There being no ocular evidence against the appellant, the case of the prosecution is entirely based on circumstantial evidence of last seen together and recovery of weapon.
12. In **Sharad Birdhichand Sarda v. State of Maharashtra**¹ the Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under:

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in *Shivaji Sahebrao Bobade Vs. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973

1 AIR 1984 SC 1622

SC 2622) where the following observations were made:

‘certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and must be’ is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

13. In **Sujit Biswas v. State of Assam**², the Supreme Court has held that suspicion, however, strong cannot take place of proof. Para 6 is quoted below :

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between ‘may be’ and ‘must be’ is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ‘may be’ true and ‘must be’ true,

² AIR 2013 SC 3817

must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State through CBI v. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)".

14. Yet again in **Kanhaiya Lal v. State of Rajasthan**³ (supra),

the Supreme Court has held thus in para 15 :

15. The theory of last seen--the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in *Madho Singh v. State of Rajasthan*.

15. We shall now proceed to scrutinize the evidence available
against the appellant on the anvil of settled legal principles,

3 (2014) 4 SCC 715

as referred above, to appreciate as to whether the appellant's conviction is sustainable.

16. The available evidence would suggest that the appellant was a cook and the deceased used to work with the appellant as his team member. The important witness namely Ms. Sangita (PW-9), aged about 13 years, being the niece of the deceased, is the witness of last seen together. According to this witness, the accused came to their residence in the night of 03.06.2002 and called the deceased by saying that they have to proceed somewhere for cooking food. The deceased accompanied the appellant but did not return. In the daily newspaper published on 05/06.06.2002, she read the news that the dead body of a lady wearing maroon coloured salwar suit has been found in a well on Mahadevghat Road. She informed about the news to her maternal uncle Kishan on which they went to the mortuary and identified the dead body. She would further state that she knows the accused from the time when her aunt was residing at Ramsagarpara where she was also residing with her aunt at that place. She would also state that when her aunt went with the appellant she was wearing artificial ear rings, gold nose rings, silver anklets, artificial german bangles and one golden ring. In cross examination, she would state that the deceased had adopted her. Ms. Sangita (PW-9) would further state that after the deceased adopted her, the deceased gave birth to

4 children (2 boys & 2 girls). When the deceased used to work as a cook, she used to take care of the children.

17. The other important witness is Shankarlal Krishnani (PW-6), the informant, before whom the appellant had given memorandum statement to the police (Ex.P/13), pursuant to which knife has been recovered vide Ex.P/14. This witness has supported the case of prosecution, however, there is no corroborating evidence that the knife recovered from the appellant was having any blood stains.
18. The vaginal smear was also sent for FSL examination, however, the FSL report (Ex.P/23) would state that the packet in which the vaginal slide was sent for examination, was having some ornaments instead of vaginal slide. Since there is no iota of oral evidence that the appellant was having any illicit relation with the deceased or that he tried to commit sexual intercourse with the deceased nor there is any evidence in the nature of forensic evidence to suggest that the vaginal slides were having trashes of sexual intercourse, the findings of the Sessions Judge in para 23 of the judgment appears to be cock and bull story without any foundation.
19. In **Arjun Marik and Others v. State of Bihar**⁴, the Supreme Court has held that the only circumstance of last seen

4 (1994) Supp (2) SCC 372

together is not sufficient for conviction in absence of any corroborative evidence. In the said decision, the following has been held by the Supreme Court in para 31 :

31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.

20. In **Jaswant Gir v. State of Punjab**⁵ as also in **Rambraksh alias Jalim v. State of Chhattisgarh**⁶, the same principle has been reiterated that in absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of last seen together.
21. In the case at hand, the evidence of Ms. Sangita (PW-9), aged about 13 years, would prove that the appellant was last seen together with the deceased, however, since the knife recovered from the appellant was not found to be blood stained nor any other evidence in the nature of forensic evidence suggesting that the deceased was subjected to sexual intercourse being available on record, mere recovery of weapon would not complicit the appellant for committing

5 (2005) 12 SCC 438

6 AIR 2016 SC 2381

the crime. Therefore, the evidence of last seen together would not be sufficient to sustain the conviction in absence of any other corroborating evidence including the evidence of motive for committing the murder of the deceased.

22. As a matter of fact, in the entire evidence of prosecution, there is no whisper that the appellant was having any illicit relation with the deceased. Prior to this, it appears the deceased used to move around with the appellant for cooking food as both were in the same profession and the deceased accompanied the appellant at once when she was called by the appellant, therefore, it is not a case where the appellant being stranger to the deceased called her, asked for sexual favour and having been denied such favour, he committed murder of the deceased. The Sessions Judge has built up a case and recorded a finding of motive without there being any foundation in the prosecution evidence.

23. We are unable to sustain the judgment of conviction and order of sentence imposed by the trial Court upon the appellant.

24. As a sequel, the appeal is allowed. Conviction and sentence imposed on the appellant under Sections 302 & 201 of the IPC are hereby set aside and he is acquitted of the said charges. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of

sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Chandra Bhushan Bajpai

Gowri