

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 21.11.2016
Pronounced on 23.12.2016

Cr.A. No. 43 of 2011

Uttara Kumar Kurre, s/o Jeevanlal Kurre, aged about 26 years, R/o Village Kanharpuri, Police Station : Tumgaon, District: Mahasamund (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Pithora, District Mahasamund, C.G.

---- Respondents

For Appellant	:	Smt. Fouzia Mirza, Advocate
For Respondent/State	:	Ms. Madhunisha Singh, P.L.

Hon'ble The Chief Justice &
Hon'ble Shri Justice Sanjay Agrawal

CAV Judgment

Per Sanjay Agrawal, J.

1. This is an appeal filed by the appellant – Uttara Kumar Kurre against the judgment dated 31/12/2010 passed by the learned 1st Additional Sessions Judge, Mahasamund in Sessions Trial No. 24/2010 whereby he convicted the appellant/accused for having committed an offence punishable under Sections 302 and 392 of the I.P.C. and sentenced him to rigorous imprisonment for life under both the Sections and to pay fine amount of Rs.5,000/- each. In default of payment of fine, the appellant was required to undergo further rigorous imprisonment for six months each.

2. The prosecution story, in short, is that one Bedram, the complainant, has heard on 12.10.2008 that an unknown dead body is lying in Bhithdih jungle. Having heard so, he and Ashok Dadsena went to the said jungle where 200 meters inside the jungle, a dead body of unknown person was found, which appears to be

2 – 3 days old. Based upon that, a merg intimation (Ex.P.1) and Dehati-Nalishi (Ex.P.26) were lodged by him and subsequently F.I.R (Ex.P.27) was registered under Section 302 of the I.P.C. After the conclusion of the investigation, charge-sheet was filed against the appellant and three other accused persons, namely, Sohan Ratre, Neel Kanth Ratre and Hariram Prabhakar for commission of the offence punishable under Section 302, 201, 419, 411 read with Section 34 of the I.P.C.

3. It is pertinent to note here that one of the accused, namely, Sohan Ratre was a juvenile at the time of occurrence of the crime, therefore, his case was referred by trial Court vide its order dated 21.07.2010 to the Juvenile Justice Board constituted under Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The trial Court, vide its order dated 22.07.2010, has framed the charges against the appellant – Uttara Kumar under Section 302 of the I.P.C. or in alternative, Section 302/34 and 392/34 of the I.P.C., while charge under Section 201 of the I.P.C. has been framed against Hariram and Neel Kanth.

4. All the aforesaid accused persons denied the charges, therefore, criminal trial commenced. The prosecution has examined 16 witnesses in support of its case while none were examined by the appellant and other accused persons. After conclusion of the trial, all the accused persons except appellant – Uttara Kumar have been acquitted of the charge by the trial Court vide its impugned judgment and the Uttara Kumar alone has been found guilty for commission of offence punishable under Section 302 and 392 of the I.P.C. and sentenced him as aforesaid.

5. Being aggrieved with the aforesaid judgment, the appellant has filed this appeal under Section 374 (2) of the Code of Criminal Procedure, 1973.

6. Smt. Fouzia Mirza, learned counsel for the appellant has argued that though the appellant was not seen from the date of the said crime, but, merely on the

basis of his absconding, it cannot be formed a firm conclusion of his guilty mind. In support of her submission, she has placed her reliance in the matter of **Raj Kumar Singh Alias Raju Alias Batya v. State of Rajasthan¹**, **Sujit Biswas v. State of Assam²**, **Matru Alias Girish Chandra v. The State of Uttara Pradesh³** and **State of Karnataka v. Venkatesh and others⁴**.

7. Smt. Madhunisha Singh, learned counsel appearing on behalf of the State has opposed the appeal, contending that the prosecution had fully met the standard of proof required to convict a person in the present case. According to her, the appellant – Uttara Kumar was not only seen with the deceased Narsing Chandrakar on the fateful day, but, was absconding since then and was working as a labourer in Jagannath Enterprises impersonating himself as Rajesh Kurre. She argued further that the cases relied upon by learned counsel for the appellant are distinguishable from the facts involved in the present matter.

8. We have heard learned counsel for the respective parties and perused the entire record carefully.

9. The complainant – Bedram, who lodged merg intimation (Ex.P.1) and Dehati-Nalishi (Ex.P.26) had rushed the spot on 12.10.2008 immediately upon hearing that an unknow dead body is lying there in Bhithidih Jungle. It was stated in the said reports (Ex.P.1 & Ex.P.26) that the said dead body was lying 200 meters inside the jungle, which appears to be 2 – 3 days old. The post-mortem examination of the dead body of an unknown person was conducted by Smt. Tara Agrawal (P.W.14), who had found various internal and external injuries on the dead body, has submitted her post-mortem report vide Ex.24 on 13.10.2008. In the said report, it was opined by her that the alleged death occurred during the period of 36 – 72 hours from the date of the examination of the dead body. Based upon the

1 (2013) 5 SCC 722

2 (2013) 12 SCC 406

3 (1971) 2 SCC 75

4 1992 Supp (1) SCC 539

said report coupled with the statement of complainant – Bedram, it is clear that the alleged incident had taken place on 10.10.2008.

10. Satish Chandrakar (P.W.5), who had identified the said unknown body as his uncle Narsingh Chandrakar, stated that on 10.10.2008 he had seen his uncle (deceased – Narsing) with the appellant – Uttara Kumar when he was going from Pali to Mahasamund for the purposes of servicing of his motor-cycle. He deposed further that since then his uncle Narsing had not returned. He also deposed that the appellant – Uttara Kumar had brought him the place where the alleged crime was committed. He stated further that the clothes worn by him was recovered, as per seizure memo (Ex.P.17) from the place of Mandir Hasaud where the accused was residing as a tenant. It was stated further by him that the appellant – Uttara Kumar was working in Monnet company by impersonating himself as Rajesh Kurre. Likewise, Neeraj Kumar Chandrakar (P.W.6), son of the deceased – Narsingh, stated that on 10.10.2008 he had seen his father with the appellant – Uttara Kumar when he had gone with him. Similar is the statement of Mohanlal (P.W.7), who has also stated that he had seen the appellant with the deceased – Narsing two years ago from the date (24.09.2010) when his evidence was recorded and since then he has not seen both of them.

11. Ashok Kumar (P.W.3), who was performing his duty as Supervisor in the said Jagannath Enterprises at Mandir Hasaud, stated very specifically that the present appellant/accused – Uttara Kumar was working as labourer in the said company by changing his name as Rajesh Kurre and his name was entered as such in the Register (Ex.P.21) at Sl.No.134. A bare perusal of the said register would show that the appellant – Uttara Kumar had started working in the said company from 1st November, 2009 by impersonating himself as Rajesh Kurre, son of Jeevanlal Kurre. From perusal of the entire record, it is clear that no such explanation whatsoever was given by the appellant in this regard that as to why he had absconded since the date of incident and why was he working in the said

company by impersonating himself as Rajesh Kurre. Instead, he has admitted the fact while replying to query No.2 under Section 313 of the Cr.P.C. that neither he nor the deceased Narsing had returned to home.

12. In view of the aforesaid discussion, it is clear that the appellant – Uttara Kumar was not only seen in the company of the deceased – Narsing on 10.10.2008, but, had absconded since then and was working as a labourer in Jagannath Enterprises at Mandir Hasaud by impersonating himself as Rajesh Kurre. Therefore, the trial Court has rightly come to the conclusion that the alleged crime has been committed by the appellant – Uttara Kumar.

13. As far as reliance in the matter of **Sujit Biswas v. State of Assam** (supra), relied upon by the learned counsel for the appellant, is concerned, it is totally distinguishable as in that case neither the case of absconding was involved nor the appellant – Sujit Biswas was last seen with the deceased. Further, in the matter of **Matru Alias Girish Chandra v. The State of Uttara Pradesh** (supra), in which, the conduct of the appellant's absconding was taken into consideration and in that fact scenario, it was held at para 29 of the judgment that mere absconding by itself would not lead to form a conclusion of guilty mind of the appellant.

14. Another decision rendered in the matter of **Raj Kumar Singh Alias Raju Alias Batya v. State of Rajasthan** (supra) is also entirely on different footing. Similarly, in the matter of **State of Karnataka v. Venkatesh and others** (supra), in which, it was held that a mere absconding of the accused persons from the occurrence of the crime would not be sufficient to hold the guilty.

15. However, in the instant case, the appellant – Uttara Kumar was not only seen with the deceased on 10.10.2008 but was absconding from the date of the alleged incident and also was found to be working as a labourer by impersonating himself as Rajesh Kurre without furnishing any explanation in this regard. Therefore, the principles laid down in the above mentioned judgments are entirely

distinguishable and would not be applicable in the present matter.

16. In view of the foregoing discussions and after perusal of the entire record, it is clear that the appellant – Uttar Kumar was not only seen with the deceased – Narsing on 10.10.2008 but it was also found that since then he was absconding and performing his duty as labourer in Jagannath Enterprises by changing his name and that too without furnishing any explanation in this regard. Consequently, the reasonings of the learned Sessions Judge while passing the order of conviction of the appellant – Uttara Kumar do not require to be interfered.

17. We, therefore, dismiss the appeal.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge