

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 1154 of 2007**

- Rajendra @ Raju Jain, S/o Premchand Jain, aged about 28 years, Occupation- Shopkeeper, R/o Mainroad Kunkuri, P.S. Kunkunri, District Jashpur (CG)

**---- Appellant (In Jail)**

**Versus**

- The State Of Chhattisgarh, through PS Kunkunri, District Jashpur (CG)

**---- Respondent**

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| For Appellant  | : | Shri A.K. Prasad, Advocate    |
| For Respondent | : | Shri N.K. Mehta, Panel Lawyer |

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Judgement**

**P. Diwaker, J**

**22/12/2016**

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.11.2007 passed by the Additional Sessions Judge, Jashpur in S.T. No.92/2007 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code, 1860 (for short 'IPC') and sentencing him to undergo imprisonment for life and fine of Rs.5,000/- and imprisonment for 03 years & fine of Rs.2,000/- with usual default clause, respectively.
2. In the present case name of deceased is Pragya Gupta.
3. As per prosecution case, the accused/appellant and the deceased were having affair and on 29.5.2006 at about 5.00 p.m. the deceased left her house saying that she is going to live with the accused/appellant. The deceased after keeping the luggage in the shop of Rajesh (PW-4) went to Bus Stand and purchased the ticket for going to Raipur. Accused/appellant & Fabiyanus Ekka (PW-13) picked up the deceased from near the girls school situated at Tapkara Road and gave lift to her upto village Gadhakata. Next day early morning at about 6.00 a.m. when Falobai went

to the house of Heremon Tirkey to fetch water from the well, she noticed the deceased lying dead in the well. She immediately informed the said fact to Shivnath, who, in turn, informed the Up-Sarpanch of the village. At the instance of village Kotwar, Merg Intimation (Ex.P-6) was recorded on the same day at 7.30 a.m. Inquest (Ex.P-2) was prepared. Body was sent for post mortem examination which was conducted by Dr. S. Toppo (PW-9) vide Ex.P-8 and following injuries on the body of deceased were noticed by him;-

- Contusion (fingers like marks) over front of neck and both sides of neck.
- Four contusions on right side of neck parallel to each other & in the size of 2" x 1" each.
- Multiple abrasions, six in numbers, over chind & fron of neck in the size of 1x0.5x1cm
- Contusion with diffused swelling over both lips of 1/2 x 1/2".
- Multiple abrasions over left hand & forearm in the size of 1.5x1x0.1 cm each.
- Diffused swelling over mid parieto occipital region of 2"x2" below the haematoma of 3"x3" size and below this fracture of parieto occipital bone, haematoma of 1 1/2" x 1 1/2" size.

As per opinion of the doctor, the cause of death was asphyxia due to throttling and the death was homicidal in nature. The doctor has further opined that at the time death the deceased was 1½ months pregnant. On the basis of merg intimation, FIR (Ex.P-9) was registered against unknown person. On the same day, a written report (Ex.P-4) was lodged by Rajesh (PW-4), owner of shop where the deceased left her luggage, informing that one lady has left her belongings in his shop but she did not return to collect the same. After about six months of incident, on 16.11.2016 statement of Fabiyanus Ekka (PW-13) under Section 161 Cr.P.C. was recorded wherein he has stated that while returning from village Gadhakata the accused/appellant informed him that he has killed the deceased. Accused threatened him also that if he would disclose this fact to anyone then he will kill him and his family members also.

Statement under Section 164 Cr.P.C. of this witness was recorded on 12.11.2007 vide Ex.P-12.

4. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 302, 201 & 120B IPC, however, the trial Court has framed the charges under Sections 302 & 201 IPC against him. The prosecution in order to substantiate its stand, examined 13 witnesses and exhibited a number of documents. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.
5. After hearing counsel for the parties the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
6. Learned counsel for the accused/appellants submits that there is no direct evidence against the appellant and conviction is recorded on the basis of circumstantial evidence i.e. last seen, but the prosecution has failed to prove this circumstance beyond a reasonable doubt. In the absence of any positive evidence to conclude that the appellant was responsible for the homicidal death of the deceased, the appellant entitled to be acquitted of all the charges.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Heard counsel for the parties and perused the evidence available on record.

9. Kamla Yadav (PW-1) is the witness of inquest (Ex.P-2).
10. Laxman Prasad Gupta (PW-2), father of deceased, has stated that on 29.5.2006 at about 5.00 p.m. the deceased left the house saying that now onwards she will live with accused/appellant. However, next day he came to know that his daughter has died. While improving in the Court, he has deposed that two days prior to the incident the father and brother of accused/appellant came to his house and threatened him. He has further stated that he has suspicion that it is the appellant who had killed the deceased.
11. Rajesh (PW-4) is the owner of shop where the deceased has left her luggage. K.R. Dhruv (PW-5) is the Tahsildar who had carried out the inquest proceeding. Hira Nath Chouhan (PW-6) is the Patwari who prepared the spot map (Ex.P-5). Najariyus Khalkho (PW-7) is the Kotwar of village Gadakata at whose instance the merg intimation (Ex.P-6) was recorded. Harihar Ram (PW-8) is the witness of seizure effected vide Ex.P-7 but he has not supported the prosecution case and turned hostile.
12. Dr. S. Toppo (PW-9) is the person who conducted post-mortem on the body of deceased and noticed injuries as described above. This witness has opined that cause of death was asphyxia due to throttling and the death was homicidal in nature. He has further opined that at the time of incident, the deceased was 1½ month pregnant.
13. Mahalaxmi Kuldeep (PW-10) is the police person who did initial investigation in the matter. Nirmal Bada (PW-11) is the police person who took the body of deceased to the Government Hospital, Kunkuri for post-mortem examination. Pramod Pandey (PW-12) is the investigation officer who has duly proved the prosecution case.

14. Fabiyanus Ekka (PW-13) is though the star witness of the prosecution before whom alleged extra judicial confession was made by the accused/appellant, but he did not support the prosecution case and turned hostile. He has denied the case of the prosecution in toto.
15. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of accused as there is always a danger that the suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The Court has to be watchful and ensure that suspicions do not take the place of legal proof. Imaginary possibilities have no role to play. If any of the said circumstances are consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of doubt.
16. Close scrutiny of the evidence available on record makes it clear that the trial Judge had convicted the accused/appellant solely on the basis of circumstantial evidence i.e. last seen, but, in our considered opinion, the prosecution has failed to bring on record any cogent and convincing evidence establishing that the accused was lastly seen in the company of the deceased. Only thing which has come in the evidence is that the deceased left her house saying that she is going to live with the accused/appellant and that on the previous evening i.e. on 29.5.2006, the accused/appellant along with PW-13 gave lift to the deceased upto village Gadhakata and thereafter they returned to their shop. There is no other evidence on record showing that the accused/appellant was seen in the company of the deceased thereafter or soon before her death. When there is no evidence with regard to accused/appellant accompanying the deceased immediately before her death or that the accused was seen by

any witness near the place from where the body of deceased was recovered, this Court is of the considered opinion that the prosecution has failed to bring on record any cogent and convincing evidence to establish that accused was lastly seen in the company of deceased. Affair between the accused and the deceased could only raise suspicion in the mind but in no way establishes that it was the accused/appellant only and none else who had committed murder of the deceased. It is settled principle of law, that suspicion, how strong it may be, cannot take the shape of proof.

17. Since the prosecution miserably failed to prove beyond reasonable doubt that the accused was the author of the crime, on the basis of last seen theory, the trial Court, was required to disbelieve such a circumstance. The trial Court, in our considered opinion, was wrong, in relying upon such a circumstance, to hold that the accused were guilty.

18. Likewise, there is nothing on record to show that after the death of the deceased the accused/appellant had in any manner caused disappearance of evidence of the offence with intent to screen himself from legal punishment and being so his conviction under Section 201 IPC is also not sustainable in the eye of law and he is entitled for acquittal of this offence also. Order accordingly.

19. For the foregoing, the appeal succeeds. Conviction & sentence of the appellant under Sections 302 & 201 of the IPC are hereby set aside and he is acquitted of those charges by extending him benefit of doubt. Appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-  
(Pritinker Diwaker)  
Judge

Sd/-  
(RCS Samant)  
Judge