

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQUITTAL APPEAL NO. 33 OF 2015

Geeta Gupta, Wd/o Late Rajesh Gupta, aged about 35 years, R/o Panchmandir Ward, Surajpur, Police Station Surajpur, District Surajpur (C.G.), Civil and Revenue District Surajpur (C.G.)

... Appellant

Versus

1. Deepak Kumar Gupta, S/o Late Natthu Prasad Gupta, aged about 26 years, occupation – Businessman, R/o Main Road Surajpur, Police Station Surajpur, District Surajpur (C.G.)
2. Dhanraso @ Poonam Paikra, D/o Buthlu Paikra, aged about 22 years, occupation – Agriculture, R/o Village Sudama Nagar, Vishrampur, Police Station Vishrampur, District Surajpur (C.G.)
3. Shyama Bai, W/o Late Pawan Paikra, aged about 41 years, occupation – Labour, R/o Village Sudama Nagar, Vishrampur, Police Station Vishrampur, District Surajpur (C.G.)
4. The State of Chhattisgarh, through S.H.O. Surajpur, District Surajpur (C.G.)

... Respondents

For Appellant	: Mr. A.K. Prasad, Advocate.
For Respondent-State	: Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

10/02/2016

1. The Appellant, wife of the deceased Rajesh Gupta, questions acquittal of Respondents No. 1 to 3 under Sections 302/34, 120-B, 201 IPC, dated 3.9.2014 by the Sessions Judge, Surajpur in Sessions Trial No. 10 of 2014.
2. Learned Counsel for the Appellant submits that the call details between the mobile phones of the deceased and the Respondents sufficiently indicate that they were talking to each other between 18:17 - 12:28 - 13:14. The Respondents had consumed liquor with the deceased near the bushes where the dead body was found. On the

confession of Respondent No.1, the towel used for strangulation and the liquor bottles were recovered. Motive clearly existed because the deceased had a liking for Respondent No.2 much to the dislike of Respondent No.1. The aforesaid were sufficient in a case of circumstantial evidence for conviction.

3. We have heard the Learned Counsel for the State.

4. According to the prosecution case, the deceased left his shop at 6:00 pm on 22.9.2013 telling his staff that he will return in half an hour but did not do so till 9:00 pm when his dead body was found at 1:00 am by the roadside near the bushes. There is no evidence that the deceased was last seen in the company of the Respondents by any person. If the deceased was with the Respondents after 6:00 pm, it is difficult to understand what call details the police seeks to rely upon. If they were together surely the conversation would have been verbal and not over a mobile phone. Furthermore, the evidence sought to be produced by the prosecution with regard to the call details is not supported by the appropriate certificate from the service provider as compulsorily required under Section 65-B of the Evidence Act. There is no evidence that the tower location of the mobile phones of the deceased and the Respondents during the relevant hours were the same.

5. There is no evidence with regard to any finger prints on the liquor bottles. The prosecution has not led any evidence why if liquor bottles were a corroborative factor finger prints on the same were not obtained.

6. Motive in a case of circumstantial evidence may assume importance but as a corroborative factor and not a piece of substantive evidence merely on suspicion. The deceased was alleged to be pestering Respondent No.2 much to the dislike of Respondent No.1 for

one month. No immediate precipitating factors were pointed out by the prosecution in support of motive even.

7. We therefore find no reason to interfere with the order of acquittal in a case of circumstantial evidence where the prosecution cannot be said to have established all the links in the chain of circumstances pointing exclusively to the guilt of the accused only incompatible with their innocence.

8. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge