

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 70 of 2009**

1. Krishna S/o Ramdas Panariya, aged about 24 years, R/o village Sadhwani, P.S. Gaurela, District Bilaspur
2. Ravi @ Pappu S/o Banshilal Panika, aged about 22 year, R/o village Semra, P.S. Gaurela, District Bilaspur

---- Appellants**Versus**

- State Of Chhattisgarh Through : The Police Station Marvahi, District Bilaspur (C.G.)

---- Respondent

For Appellant	:	Shri Utkal Pradhan, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Arvind Singh Chandel**

Judgment On Board**By Pritinker Diwaker, J****06/11/2017**

01. This appeal arises out of the judgment of conviction and order of sentence dated 07.01.2009 passed by Additional Sessions Judge (FTC), Pendra Road, District Bilaspur, in Sessions Trial No.04/2008 convicting the accused/appellants under Sections 302, 404, 201 of IPC and sentencing them to undergo imprisonment for life with fine of Rs.500/-, R.I. for one year with fine of Rs.500/- and R.I. for one year with fine of Rs.1000/-, plus default stipulations respectively.

02. In the present case, name of the deceased is Sukhraniya Bai resident of village Sadhwani where accused/appellant Krishna (A-1)

also used to reside. It is said that deceased was residing at village Sadhwani along with her husband Bhaiyya Lal and grand daughter Ku. Pooja Dhimar. Deceased's son was residing in a different village at Bijuri. Deceased wanted to go to village of her son and appellant Krishna (A-1) agreed to drop her on 13.03.2006. It was further agreed between A-1 and deceased that deceased would meet him near Pendra Bus Stand at about 8.30 am and then he would pick her from there. It is said that deceased was dropped near bus stand by Raj Kumar Bhaina (PW/1) and Kamal Kumar (PW/4) and as by that time accused/appellant Krishna (A-1) had not reached there, deceased asked them to go back and she decided to wait for accused/appellant Krishna (A-1). Further case of the prosecution is that while Raj Kumar (PW/1) and Kamal Kumar (PW/4) were returning after dropping the deceased, on the way, they met accused/appellant Krishna (A-1) and Ravi @ Pappu (A-2) who were coming on the motorcycle and informed them that the deceased is waiting for them (Appellants). Further case of the prosecution is that the deceased did not reach to her son and on 15.03.2007 one charred body was found in Khairatola Chinchgohana forest. Merg intimation (Ex.P/9) was recorded on 15.03.2007 at 06.00 pm at the instance of Purushottam (PW/9)- village Kotwar. Inquest on the body of deceased was conducted on same day vide Ex.P/10 and body was sent for postmortem examination to Community Health Center, Marwahi where Dr. (Smt) Sheela Saha (PW/12) conducted postmortem examination on the body of deceased and gave her report Ex.P/15 noticing following injuries:-

- (i) Face was black in colour and swollen. Eye closed with

charred eyelash, tongue swollen and protruded at left side. Lips swollen. Maggots present over mouth and ear. Fine fluid with froth coming from nostril. Rigor mortis absent.

- (ii) Burst abdomen present, intestine and other internal organs can be seen, which were partially burst.
- (ii) Left lower limb was absent from socket, right lower limb upper thigh was burnt deep to muscle and lower 1/2 of right leg was remaining from burn.
- (iii) Grayish colour and charred hair present on biparietal region and occipital region. Black colour hair, chest, left and right breast region and medial side of arm area 3% were remained from burn.
- (iv) Right hand, forearm and left arm were not burnt.
- (v) Whole back portion was burnt and charred skin was present.
- (vi) Lacerated wound on right side of neck angle of mandible in the size of 5 x 10 cm and muscle can be seen.
- (vii) Lacerated wound on left side below angle of mandible region present in the size of 5 x 3".
- (viii) Muscles of buttock and right side of thigh were not present.

The Autopsy Surgeon opined the cause of death to be asphyxia due to strangulation/throttling. It was further opined by the Autopsy Surgeon that the burn injuries sustained by the deceased were postmortem in nature.

03. On 19.03.2007, husband of the deceased inquired about her from his son over phone and then it was revealed that the deceased was missing. Inquiry was also made from accused/appellant Krishna (A-1) but instead of informing, he ran away from the village and soon thereafter information was also received that one charred body has

been found in the forest. Villagers and relatives of the deceased had gone to police station Marwahi and on the basis of articles seized from the body of deceased, the same was identified to be that of the deceased. The body was exhumed which was not identified by Pooja (PW/2), however, seized articles were identified by her vide Ex.P/3. In the meanwhile, after merg inquiry, FIR (Ex.P/25) was registered on 27.03.2007 under Sections 302 and 201 of IPC against unknown person. After about eight months, accused/appellant Krishna (A-1) was arrested and his memorandum statement (Ex.P/20) was recorded on 21.11.2007 wherein he has stated that the ornaments of the deceased have been sold by him to Chakradhar Soni (PW/8) and accordingly melted gold, silver and one certificate were seized from his possession. After filing of charge sheet, the trial Court framed charge under Section 302 alternatively Sections 302/34, 404 and 201 of IPC against the accused/appellants.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 15 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellants submit :-

➤ That there is no eye-witness to the occurrence and the

conviction of the accused/appellants is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellants can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellants who committed the murder.

- That so called witnesses to last seen i.e. Raj Kumar Bhaina (PW/1), Pooja (PW/2) and Kamal Kumar (PW/4) are not reliable. None of these witnesses has seen the accused/appellants and deceased together. Identification of dead body is doubtful.
- That the melted gold and silver have been seized from goldsmith Chakradhar Soni (PW/8) vide Ex.P/8 and, therefore, question of identification of the same does not arise and it cannot be said that the said seized articles were belonging to the deceased.

07. On the other hand, supporting the impugned judgment it has been argued that conviction of the accused/appellants is in accordance with law and there is no infirmity in the same.

08. We have heard counsel for the parties and perused the material available on record.

09. Raj Kumar Bhaina (PW/1) has stated that deceased Sukharniya Bai was residing opposite to his house and on the request of Kamal Kumar (PW/4) they dropped her near Bhujwa Hotel situated at Pendra Road. While they (this witness and PW/4) were returning, they saw the accused/appellants coming on motorcycle and they informed them that the deceased is waiting for appellant Krishna (A-1). This witness was later declared hostile.

10. Ku. Pooja (PW/2) is grand daughter of the deceased. She has

stated that day prior to 13.03.2007 when appellant Krishna (A-1) discussed with the deceased that he will go to Bijuri, deceased also showed her desire to go there and on 13.03.2007 PW/1 and PW/4 dropped the deceased upto Pendra Road. She has further stated that the deceased was wearing wheatish colour saree, green colour blouse and certain gold & silver ornaments. However, she has not mentioned about any mangalsutra. After about 5-6 days, when accused/appellant-Krishna (A-1) came to her house, her grand father inquired from his son Ram Prasad (PW/3) about the deceased and then he (father of this witness) came to know that deceased had not reached to Bijuri. Accused/appellant - Krishna (A-1) informed her grand father and father before Sarpanch and Kotwar that deceased had not come along with him and he is not aware as to where deceased has gone and thereafter, A-1 was reported to be absconded. This witness has further stated that in the police station, certain clothes were shown to her which she identified to be that of her grand mother (deceased) and dead body was also shown to her but she could not identify the same and likewise her father and grand father also could not identify the same being charred. She has further clarified that she identified clothes, ornaments and other articles which were shown to her by the police. There are some contradictions in the Court statement of this witness from that of her diary statement.

11. Ram Prasad (PW/3), son of the deceased who was residing at Bijuri has stated that when deceased did not reach to her house at Bijuri, inquiry was made from accused/appellant Krishna (A-1) and even panchayat meeting was also convened but A-1 showed his ignorance.

He has further stated that he could not identify the burnt body of deceased whereas his daughter PW/2 identified the clothes and ornaments to be that of her grand mother.

12. Kamal Kumar (PW/4) has made almost similar statement as has been made by PW/1.

13. Punni Lal (PW/5) is formal witness. Prakash Jatashankar (PW/6) is Patwari who prepared spot map vide Ex.P/6. D.K. Wahane (PW/7) - Executive Magistrate conducted identification of dead body vide Ex.P/2 and articles of deceased vide Ex.P/3. He states that articles were identified by relatives of deceased.

14. Chakradhar Soni (PW/8) is goldsmith from whom melted gold and silver were seized. According to him, these articles were sold to him by Santosh Kumar Dhuri (PW/15). He has further stated that wedding necklace (mangalsutra) and one anklet were sold to him by PW/15.

15. Purushottam (PW/9) is village Kotwar at whose instance merg intimation (Ex.P/9) was recorded. He is also witness to inquest (Ex.P/10), seizure of burnt articles (Ex.P/12), spot map (Ex.P/13) and melted ornaments of deceased (Ex.P/14). He states that face of deceased was completely burnt and from the body golden ear ring and toe ring were taken by the sweeper.

16. Dr. (Smt.) Sheela Saha (PW/12) conducted postmortem examination on the body of decease and gave her report (Ex.P/15) opining the cause of death to be asphyxia due to strangulation/throttling.

17. S.S. Raj (PW/13) - Investigating Officer has duly supported the prosecution case. N.K. Goutam (PW/14) - Inspector assisted in the investigation.

18. Santosh Kumar Dhuri (PW/15) is Court witness from whom PW/8 had purchased one mangalsutra and anklet.

19. Close scrutiny of the evidence makes it clear that there is no conclusive piece of evidence on record showing the involvement of the accused/appellants in commission of offence and their conviction is based on statements of PW/1, PW/2 and PW/4, witnesses to last seen. It is well settled position of law that the conviction cannot be recorded against the accused merely on the ground that accused was last seen with the deceased. In other words, conviction cannot be based on the only circumstance of last seen together and normally the Court is required to look for some other corroborative piece of evidence. Most importantly, the theory of last seen comes into play where the time gap, between the point of time when accused and deceased were seen last alive and when the deceased found dead, is so small that possibility of any person other than accused being the perpetrator of crime, becomes impossible. The Supreme Court in the matters of **State of Goa V. Sanjay Thakran**¹, **Yusuf V. State of West Bengal**², **Anjan Kumar Sharma V. State of Assam**³, **Nijam V. State of Rajasthan**⁴, **Kanhaiyalal V. State of Rajasthan**⁵ and this Court in the matter of **Smt. Jiteshwari Bai V. State of CG**⁶ has held that while basing the conviction on the last seen theory, it is safer to look for corroboration from other circumstance and evidence adduced by the prosecution.

20. In the present case, according to evidence of PW/1 and PW/4, they dropped the deceased near Pendra Bus Stand and while returning

1 2007 (3) SCC 755

2 AIR 2011 SC 2283

3 2017 SCC 622

4 AIR 2015 SC 3430

5 2014 (4) SCC 715

6 2015 (S) SCC 393

they saw appellant Krishna (A-1) and Ravi @ Pappu (A-2) on motorcycle near Safiq Medical Store. They told A-1 that the deceased is waiting for him, thereafter, A-1 replied that he would look after the deceased and then these witnesses returned to their home. According to PW/2, day prior to 13.03.2007 when appellant Krishna (A-1) discussed with the deceased that he will go to Bijuri, deceased also showed her desire to go there and on 13.03.2007 PW/1 and PW/4 dropped the deceased upto Pendra Road. The evidence of aforesaid witnesses makes it crystal clear that no one has seen the accused persons and the deceased together last time and thus they cannot be treated as witnesses to last seen. Furthermore, though the golden and silver ornaments were identified by PW/2 but body of deceased could not be identified by anyone and merely on the basis of her clothes it is stated that the body was of the deceased. According to PW/8, mangalsutra and silver anklet were sold to him by the Court witness PW/15, however, there is no evidence on record to show that these two articles were given to him (PW/15) by the appellants. Further, PW/2 has nowhere stated that the deceased used to wear mangalsutra but the sold article was mangalsutra.

21. So far involvement of appellant Ravi @ Pappu (A-2) is concerned, witnesses, in particular PW/2, in their entire evidence have not uttered even a single word about him and nothing specific has been brought by the prosecution to show his complicity in the commission of offence. The evidence of seeing appellants near Safiq Medical Store is not very conclusive in nature and merely on the basis of evidence of PW/1, PW/2, and PW/4, it cannot be said with certainty that it is the

appellants who have committed murder of the deceased. Further, there is no evidence on record to suggest that both the accused persons after hatching criminal conspiracy has committed murder of the deceased. We are not very much impressed by the evidence of these witnesses for the reason that they (PW/1 and PW/4) have simply stated that they saw appellant Krishna (A-1) with Ravi @ Pappu (A-2) near Safiq Medical Store on motorcycle and PW/2 stated that a day prior to 13.03.2007 appellant Krishan (A-1) had come to her house and expressed his desire that he too would go to Bijuri and would take deceased along with him. Thus, these witnesses cannot be treated as a witness of last seen because nothing has been said by them with regard to last seen of accused/appellants with the deceased. Therefore, the finding of the trial Court accepting testimony of these witnesses for the purpose of last seen is not justified. Furthermore, though the facts involved in the case and the evidence on record give rise to the suspicion about the involvement of the accused/appellants in the crime in question, but in a series of cases it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of the evidence. One such judgment of the Apex Court dealing with this fact is **Commissioner of Police, Delhi & Others V. Jai Bhagwan** reported in **2011 (6) SCC 376**.

22. The Supreme Court in the matters of **Sattatiya @ Satish Rajanna Kartalla V. State of Maharashtra, (2008) 3SCC 210** and **Sharad Birdhichand Sarda V. State of Maharashtra [(1984) 4 SCC 116]** has held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully

established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

23. Thus, considering the quality of evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Sections 302, 404 and 201 IPC is not based on due appreciation of the evidence available on record and that being so they are entitled for benefit of doubt. Consequently, the judgment impugned convicting the accused/appellants under Sections 302, 404 and 201 IPC is set aside and they are hereby acquitted of the charges levelled against them. Appellants are reported to be on bail, their bail bonds stand discharged.

24. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Arvind Singh Chandel)
JUDGE