

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 162 of 2007

- Ravi Narayan S/o Ramdev Yadav, aged about 27 years, Occupation - Agriculture, R/o Village Podi, Khurd (Jarva Dodi), Police Station Shankargarh, Distt. Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant	:	Smt. Savita Tiwari, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

04/01/2017

This appeal arises out of the judgment of conviction and order of sentence dated 15.1.2007 passed by the First Additional Sessions Judge, Surguja, Ambikapur in ST No.34/2006 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.1000/- with default stipulation.

02. In the present case, name of the deceased is Rajmatiyabai, wife of the accused/appellant. As per prosecution case, the appellant and the deceased had gone to the house of PW-5 Shivnarayan, cousin of the appellant. The appellant having dropped the deceased in the house of PW-5 returned by saying that that his father would come to take her. However, the deceased did not go along with her father-in-law and

then it is said that on or around 11.10.2005 the appellant and the deceased returned together. On 14.10.2005 dead body of the deceased was found in an open field. Information was passed on to the relatives and on 14.10.2005 itself merger intimation Ex.P/3 was lodged at 1.10 pm by Ramprasad, father of the deceased. Inquest Ex.P/2 was conducted on the body of the deceased on 14.10.2005 and thereafter FIR (Ex.P/4) was registered on the same day at 1.15 pm under Section 302 of IPC against unknown person. Postmortem on the body of the deceased was conducted on 15.10.2005 by PW-12 Dr. Nandlal Buarya vide Ex.P/12 and according to him, cause of death was asphyxia due to fracture of C-3 & C-4 cervical vertebra and that the death was homicidal in nature. After investigation, charge sheet was filed against the appellant under Section 302 of IPC and accordingly, charge was framed by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined 12 witnesses in all. Statement of the accused was also 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellants submits as under:

(i) that the appellant has been convicted solely on the basis of circumstantial evidence but its nature is not as such which can be

made basis for his conviction.

(ii) that the only piece of evidence against the appellant is last seen by PWs-5, 6 & 11, however, PWs- 5 & 6 have been declared hostile and merely on the basis of statement of PW-11 the appellant could not have been convicted, especially when the evidence of last seen is considered to be a weak piece of evidence in absence of any other corroborative evidence. Further, considering the time gap between the appellant and the deceased being last seen and recovery of the dead body, the appellant cannot be convicted on the basis of such evidence.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Jugeshwar, herdsman, saw the dead body of the deceased in open field and then informed about the same to other persons. He is also a witness to inquest Ex.P/2. PW-2 Ramprasad, father of the deceased, lodged merg intimation. He is also a witness to memorandum of the appellant Ex.P/7 and seizure of sari Ex.P/6. PW-3 Chhotelal Yadav is a witness to memorandum of the appellant Ex.P/7. PW-4 Mohan Ram, Patwari, prepared the spot map Ex.P/9. PW-5 Shivnarayan, cousin of the appellant, has stated that on Sunday the appellant came to his house along with the deceased and said that she will stay there for some time and his father will come to take her. He

has stated that on the same day father of the appellant came to take the deceased but she refused to go with him, she stayed in his house on Monday also and on Monday she fell sick. The information about sickness of the deceased was given to the appellant, on which the appellant came to take her back. He has stated that the deceased left his house first and then the appellant followed her. On Tuesday after the deceased and the appellant left his house, mother of the appellant came to his house to enquire about the deceased and then he informed her that the deceased was not well and was therefore taken by the appellant. He has stated that on Thursday he came to know about the death of the deceased. Thereafter, this witness has been declared hostile.

09. PW-6 Basmatiya has also been declared hostile. PW-7 Ropna Ram, Village Kotwar, has been declared hostile. PW-8 Ganga Prasad Yadav is a witness to seizure Ex.P/6 by which one sari of the deceased was seized. PW-9 Kanhaiya Tiwari, investigating officer, has supported the prosecution case. PW-11 Siyaram has made almost similar statement as has been made by PW-5. PW-12 Dr. Nandlal Buarya conducted postmortem on the body of the deceased on 15.10.2005 vide Ex.P/12 and did not notice any external injury. In his opinion, the cause of death was asphyxia due to fracture of C-3 & C-4 cervical vertebra and the death was homicidal in nature.

10. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence, main being the evidence of last seen by PWs- 5, 6 & 11.

11. The Court below has convicted the appellant on the basis of evidence of last seen. Undoubtedly, the “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the Courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well settled that it is not prudent to base the conviction solely on “last seen theory”. It should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

12. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the

accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain.

13. In the light of the above, it is to be seen whether in the facts and circumstances of this case, the trial Court was right in invoking the "last seen theory." There are three witnesses of last seen i.e. PW-5, PW-6 & PW-11. PWs- 5 & 6 have not supported the prosecution case and have been declared hostile. As regards PW-11, from his evidence it appears that upon coming to know about the recovery of dead body of the deceased when he reached the place of occurrence he found the appellant there and on being asked, the appellant informed him that while he along with his wife/deceased and daughter was returning from the house of PW-5 Shivnarayan, the deceased was walking slowly and when the appellant asked her to move fast, she expressed her inability and told the appellant to go home with her daughter and she would come back after some time. Thereafter, the appellant along with his daughter moved away leaving the deceased there.

14. As per prosecution case itself, on 11.10.2005 the appellant along with the deceased left the house of PW-5 and on 14.10.2005 her dead body was found in the jungle. According to the autopsy surgeon, death of the deceased took place in between 10.10.2005 at about 9.30 am and 11.10.2005 at about 5.30 am. From the statement of PW-11 it appears that the appellant had left the deceased in the jungle and moved away with his daughter. According to this witness, at the

relevant time, daughter of the appellant and the deceased was also with them. The prosecution ought to have examined her as a witness to bring forth as to what had transpired between the appellant and the deceased at the spot. However, it has not been done. Furthermore, it has also come in evidence that the investigating officer (PW-9) did not visit the place of occurrence and the dead body was brought to police station where proceedings of inquest were conducted.

15. It is by now well settled 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.

16. Keeping in mind the aforesaid principles of law relating to circumstantial evidence, on close scrutiny of the entire evidence it emerges that the prosecution has not been able to prove guilt of the appellant beyond all reasonable doubt. Merely on the basis of evidence of last seen, it would not be safe to hold the appellant guilty of the offence under Section 302 of IPC, especially when there is no other

legally admissible evidence against him. Being so, the findings of guilt recorded by the trial Court are liable to be set aside and the appellant is entitled for acquittal of the charge by giving him benefit of doubt.

17. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of charge under Section 302 of IPC. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge