

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 01-09-2017

Judgment delivered on 21-09-2017

Criminal Appeal No. 28 of 2012

Amitlal @ Buchu S/o Anandram Aged about 19 years, Chakki Para
Purani Basti, Akaltara, District Janjgir Champa (CG)

---- Appellant

Versus

State of Chhattisgarh, Acting Through Officer in Charge, Akaltara,
District Janjgir Champa (CG)

---- Respondent

For Appellant	:	Mr. Devesh G. Kela, Advocate.
For Respondent/State	:	Mr. Vivek Sharma, Govt. Advocate.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 03.12.2011 passed by the Additional Sessions Judge, Janjgir, District Janjgir Champa (C.G.) in Sessions Trial No. 115 of 2011, convicting the accused/appellant under Sections 458 and 302 of the IPC and sentencing him to undergo R.I. for 10 years and to pay fine of Rs. 1000/-, in default of payment of fine to further undergo R.I. for 5 months;

and imprisonment for life and to pay fine of Rs.5000/-, in default of payment of fine to further undergo R.I. for 1 year.

2. Case of the prosecution, in brief, is that Priyanka (since deceased) was daughter of Ram Singh(PW11). Ram Singh(PW11) was working as a Mistri in Singhania Mill. On 19.3.2011, at about 9.00 pm he had gone to the Mill for his duty leaving at home his daughter, Priyanka and maternal grand-son, Manish Kant(PW12) at Chakkipara, Akaltara. In the midnight, his elder son-in-law, Gorelal Kant(PW13) came in the Mill and took him to house. Gorelal Kant(PW13) did not tell him anything on the way to house. When they reached house, they found that Priyanka, daughter of Ram Singh(PW11) was lying on a cot with foam coming out of her mouth in dead condition. On the information of Ram Singh(PW11), Akaltara Police recorded Merg intimation vide Ex. P/22 and thereafter, police reached to the spot and prepared Nazri Naksha Ex. P/1 and Panchanama Ex. P/3. On 20.3.2011, postmortem was conducted by Dr. Shrikesh Kumar Gupta (PW9) and he found that the death of Priyanka was caused due to asphyxia as a result of throttling, but he further advised that for more information viscera be preserved and sent for chemical analysis. On the basis of Merg Intimation, First Information Report (FIR) Ex. P/25 was registered at Police Station Akaltara and the appellant was arrested. On the discovery statement of the appellant one shirt was seized from him vide Ex. P/9.

3. After completion of the investigation, charge sheet was filed against the accused/ appellant in the Court of Judicial Magistrate First Class, Janjgir, who, in turn, committed the case to the Court of Sessions

and the Trial Judge framed charges under Sections 458, 376 & 302 IPC, to which the appellant did not plead guilt and thereafter trial was conducted. After completion of evidence of the prosecution witnesses, statement of the accused/appellant under Section 313 of the Cr.P.C. was recorded and after hearing both the parties, the trial court convicted and sentenced the appellant as mentioned above.

4. Learned counsel appearing for the accused/appellant submits as under:

- (i) That present is a case of no evidence but yet the appellant has been convicted by the trial Court.
- (ii) That the testimony of Manish Kant (PW12) is not based on the theory of 'last seen' because from his statement, it is clear that the appellant and the deceased were in different rooms and the deceased was taken from that room to some other room and at that time, she was in good of health.
- (iii) That from the testimony of Ram Singh (PW11) who is father of the deceased, it is clear that his son-in-law Gorelal Kant (PW13) had called him from the Singhania Mill and he did not tell him anything about Priyanka on the way to house and his conduct is suspicious.
- (iv) That version of Ram Singh (PW11), Gorelal Kant (PW13) and Jai Pratap (PW14) are inconsistent and the same is not of any help to the prosecution.
- (v) The trial Court has ignored the fact that some insecticide was seized leading to probable

conclusion that the death could have been occurred due to poisoning. The Trial Court failed to see that not a single chain of circumstances is established against the appellant and the judgment is not sustainable.

5. *Per contra*, learned State counsel supporting the impugned judgment has submitted that conviction of the appellant is strictly in accordance with law and there is no infirmity in it warranting any interference by this Court.
6. We have heard counsel for the parties and perused the material on record.
7. Shiv Kumar Rathore (PW1) is a witness of spot map. Laxmin Bai (PW2) is a witness of Panchanama and she has not stated anything regarding commission of offence by the appellant. Ishwari (PW3) is a hostile witness. Saroj Tirkey (PW4) is a lady Constable who brought the dead body of the deceased to the Hospital for postmortem. Shaym Dhirhi (PW5) is a witness of seizure of one mobile phone from the house of the acquitted accused- Kamlesh. Vimal Rai (PW7) is a Constable who has deposited the seized articles in the Forensic Science Laboratory (FSL).
8. Dr. Mahendra Soni (PW-8) has examined the seized undergarments and advised for chemical examination of those articles in FSL. Dr. Shrikesh Kumar Gupta (PW9) had conducted autopsy on the dead body of the deceased Priyanka @ Mini on 20.3.2011 at Community Health Centre, Akaltara. As per this witness, he found fracture of hyoid bone of the

deceased. He opined that the cause of death was asphyxia due to throttling and for more information he advised preservation of viscera and to sent it for chemical analysis.

9. AK Yadav (PW10) is a Constable who assisted in investigation. Ram Singh (PW11) is father of the deceased. He deposed that on 19.3.2011 he left his house to go for work in Singhania Mill. As per his version, at about 2.00 am in the midnight, his son-in-law Gorelal Kant (PW13) came there and brought him to his house. When they reached house they found that Priyanka was lying dead on a cot, thereafter, he reported the matter to the Police vide Ex. P/22.

10. Gorelal Kant (PW13) deposed that on 19.3.2011, his brother-in-law Jai Pratap (PW14) and sister-in-law Priti informed him on telephone that Priyanka @ Mini has informed them that she is in trouble and her life is in danger. Thereafter, he along with Jai Pratap (PW14) went to the village of the deceased and found that the door of the house was opened and no one answered their call and when they entered into the house, they found that Priyanka was lying dead on a cot. Thereafter, he called his father-in-law, Ram Singh (PW11) from the Mill. Jai Pratap (PW14) deposed on the same line that on the fateful day at about 10.35 pm, his sister-in-law, deceased Priyanka called him on telephone saying that 2 accused persons are catching her and she called him to her house. He informed the same thing to this brother-in-law, Gorelal Kant (PW13).

11. RC Paikara (PW15) is A.S.I. who registered the Merg intimation Ex. P/22. D.R.Gandharva (PW16) is Sub Inspector, who had conducted investigation.

12. Manish Kant (PW12) is alleged to be witness of 'last seen'. As per his version on the fateful day at about 8-9 pm he was watching television, at the same time, the deceased was in other room and appellant was also there and she asked him to call his maternal aunt Ishwari(PW3), but she did not come and his maternal grand mother Laxmin Bai(PW2) reached there. Thereafter, on the advice of the maternal grand mother they shifted Priyanka to the other room and the appellant left the place and at that time Priyanka was in good of health. He further deposed that after ½ an hour, the appellant again came there and one stone was thrown by him over the roof of their house and thereafter, her maternal grand mother came out of the house, but he is not aware as to what was the real conversation between the appellant and Laxmin Bai (PW2).

13. So far as the theory of 'last seen' put forth by Manish Kant (PW12) is concerned, even if it is accepted that the deceased was 'seen lastly' in the company of the appellant, it would, at best, amount to be the evidence of the appellant having been last seen together with the deceased. But from the evidence of this witness, it is clear that when the appellant had left their house, at that time, the deceased was well and good.

14. It is a settled position of law that in absence of any other link in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of 'last seen' theory. There is no other positive evidence to

connect that it is the only appellant who attacked the deceased. It is a settled law that the only circumstance of 'last seen' will not complete the chain of circumstances to record a finding that it is consistent only with the hypothesis of guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.

15. From the evidence of Gorelal Kant (PW13) and Jai Pratap (PW14), it is tried to establish that the deceased called them on telephone, but the same is hearsay evidence and it cannot be used against the appellant as legally admissible evidence. The appellant was there in the house of the deceased for some time, therefore, seizure of shirt as per Ex. P/9 is not an incriminating circumstance against him for commission of any criminal act. It is an admitted position that there is no eye witness to the incident and the prosecution case is completely based on the circumstantial evidence. It is well settled that where a case is based on circumstantial evidence, the chain of circumstances must be so complete as not leave any reasonable ground for the belief consistent with the innocence of the accused. Even if one link in the chain is broken, the accused must get benefit thereof.

16. In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should not only to be fully established but also that all the circumstances should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

17. In a case on hand but for hearsay evidence and so called 'last seen' theory there is nothing to connect the appellant with the crime. It is a settled position of law that suspicion, however, strong cannot take the place of proof and the same cannot be made the basis for conviction of the accused.

18. In the above circumstances, we find that the judgement of the trial Court holding the appellant guilty of the offence punishable under Sections 458 and 302 IPC on the above set of evidence is not sustainable.

19. In the result, the appeal succeeds and is accordingly allowed. The impugned judgment of conviction and order of sentence are hereby set aside and the appellant is acquitted of the charges under Sections 458 and 302 IPC by extending him benefit of doubt. The appellant is reported to be in jail, therefore, he is directed to be set at liberty forthwith, if not required in any other case. The fine amount, if any deposited, the same shall be refunded to the appellant.

Sd/

(Pritinker Diwaker)
JUDGE

Sd/

(Ram Prasanna Sharma)
JUDGE