

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 200 of 2006**

- Jitendra Sharma, aged 36 years, son of Shri Sewak Ram Sharma, Occupation - Private Service, R/o village Nara, Mandir Hasaud, District Raipur (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through : The Police Station Gudhiyari, Raipur (C.G.)

---- Respondent**And****CRA No. 878 of 2012**

- Maria Guretti Toppo D/o Fardin Toppo alias Praveen Toppo, aged about 28 years, Occupation - working in photo Studio, R/o Madan Photo Centre, Ranchi, District Jabalpur (M.P.) At present residing at village Ratamati Police Station and District Jashpur (C.G.)

---- Appellant**Vs**

- State Of Chhattisgarh Through : Police Station Gudhiyari, District Raipur (C.G.)

---- Respondent

For Appellant in CRA No.200/2006	:	Shri Somnath Verma, Advocate.
For Appellant in CRA No.878/2012	:	Shri Ashish Surana, Advocate.
For Respondent/State	:	Shri Adil Minhaj and Shri Rahul Tamaskar, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgment On Board**By Pritinker Diwaker, J****09/10/2017**

As these two appeals arise out of the common judgment dated 28.02.2006 passed by the 4th Additional Sessions Judge (FTC), Raipur, in S.T. No.18382004 convicting the accused/appellants under Section 302 of IPC and sentencing them to undergo imprisonment for life with fine of Rs. 2000/- plus default stipulations, they are being disposed of by this common judgment.

02. In the present case, name of the deceased is Smt. Veena Sharma, wife of accused/appellant Jitendra Sharma (A-1) in Cr.A.No.200/2006.

03. The prosecution story in brief is that when accused/appellant Jitendra Sharma (A-1) and his wife Veena Sharma were residing as tenant in the house of Bhajanlal Verma (PW/2). Accused/appellant Maria (A-2), in Cr.A.No.878/2012, also came there and started residing as a tenant. It is said that A-1 had developed intimacy with A-2 which was not liked by deceased Veena Sharma. Further case of the prosecution is that as the relation between appellants (A-1 and A-2) were causing infamy, Bhajanlal (PW/2) - landlord got his house vacated from Jitendra (A-1) and his wife deceased Veena Sharma, however, after 3-4 months they again started living in the house of Bhajanlal (PW/2). It is said that on 02.03.2004 deceased Veena Sharma was killed by causing several injuries on vital parts of body by sickle. Bhajanlal Sharma (PW/2), Shila Devi (PW/3), Nandu @ Laxmi (PW14) and Chola Ram Nishad (PW/16) saw appellant Maria (A-2) coming out from the house of deceased. As soon as Shila Devi (PW/3) informed Bhajanlal Sharma (PW/2) about the incident, FIR (Ex.P/3) was lodged by him on 02.03.2004 against appellant Maria (A-2) under Section 307

IPC. During treatment, deceased Veena Sharma died of her injuries in the hospital on 03.03.2004 and based on the information received from the hospital, un-numbered merg (Ex.P/18) and numbered merg (Ex.P/30) were recorded on 03.03.2004. On the same day, inquest on the body of deceased was conducted vide Ex.P/1 and body was sent for postmortem examination to Dr. B.R. Ambedkar Memorial Hospital, Raipur where Dr. Ulhas Gonnade (PW/9) conducted postmortem on her body and gave his report Ex.P/10 noticing following injuries:-

- (i) An old irregular scar with stitched of 5 cm length present, 2 cm below tip of mastoid process.
- (ii) A transversely oblique stitched wound present near chin on left side in the size of 1.8 cm in length.
- (iii) On left side of neck, 4 scratch abrasions of 3 cm over anterior aspect below angle of mandible, in an area of 2.5 cm x 2 cm, present in the size of 0.5 cm to 2 cm width 01 cm each.
- (iv) A scratch abrasion in the size of 1.8 cm x 0.1 cm present below 2 cm mid point of right side of body of mandible, oblique in nature.
- (v) A view of minute injury present on right side of anterior aspect of neck below angle of mandible. View is superior in an area of 1.5 cm length and 2.5 cm width.
- (vi) A medial end of transversely oblique stitched wound of 3.9 cm present below 4.5 cm of chin and lateral end is 3.5 cm below mid part of body of mandible.
- (vii) A stitched wound whose medial end present 6.5 cm below chin. It goes transversely towards right side upto 3.4 cm then turned downward in oblique manner upto 7 cm, then it turned downward lateral to neck up to 3 cm, then end in an opening from where gauge piece comes.
- (viii) A transversely cut mark of 1.5 cm x 0.1 cm x epidermal

depth present 7 cm below chin.

- (ix) A transversely oblique stab wound present 3 cm above sternoclavicular notch in the size of 2 cm x 0.5 cm.
- (x) A cut mark present at mid 1/3rd of right clavicle directed downwards oblique in the size of 1 cm x 0.1 cm x epidermal depth. All epidermal depth wound identical in width, margin of these wound.

The Doctor has opined that the cause of death was cardiac respiratory failure as a result of injuries to neck organ and its complication.

04. From the spot, bloodstained soil, plain cotton, one wedding necklace (mangalsutra), pieces of broken bangles and sickle were seized vide Ex.P/17, whereas from the hospital clothes of deceased were seized. Seized articles were sent for its chemical examination to FSL, Raipur, and as per its report (Ex.P/29), except in the plain cotton blood has been found on all the seized articles. After filing of charge sheet, the trial Court framed charge under Sections 302 and/or 120-B of IPC against the accused/appellants.

05. So as to hold the accused/appellants guilty, the prosecution examined as many as 25 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. This apart, Devprakash Painkra (DW/1), Mahesh Kumar (DW/2) and Dr. S.V. Killedar (DW/3) have also been examined by the defence in support of its case.

06. 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.

07. Learned counsel for the appellants submit :-

- That there is absolutely no evidence against appellant Jitendra in Cr.A.No.200/2006.
- That the main piece of evidence against appellant Maria in Cr.A.No.878/2012 is statement of some witnesses like Bhajanlal Verma (PW/2) and Nandu @ Laxmi (PW/14) who allegedly saw her coming out from the house of the deceased but the said evidence is not conclusive in nature and creates doubt as to whether, in-fact, these witnesses have seen appellant Maria coming out from the house of deceased. It has been argued that no witness has given exact time as to on what point of time appellant Maria was seen coming out from the house of deceased and immediately thereafter deceased was found dead in her house.
- Even assuming that appellant Maria was seen by witnesses coming out from the house of the deceased, merely on the basis of said evidence she could not have been convicted under Section 302 IPC.
- That there is absolutely no evidence in relation to Section 120-B IPC.
- That appellant Maria is in jail since 12.04.2004 and thereby completed about 13 years and 6 months.

08. 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.

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

10. Chetan Prasad (PW/1) is brother of the deceased who reached the hospital after coming to know about the incident. He is witness to inquest (Ex.P/1).

11. Bhajanlal Verma (PW/2) is the landlord in whose house the deceased was residing along with her husband Jitendra Sharma (A-2) as tenant. He has stated that when he was in his house, at about 8 am, Sheela Devi (PW/3) came to him and informed that appellant Maria (A-1) fleeing from the house of deceased where the incident took place. He has further stated that he was not aware as to where appellant No.2-Maria was residing on the date of incident. He has also stated that when he reached the house of deceased, it was bolted with chain, door was opened and the deceased was found lying on the floor in the injured condition with full of blood and subsequently this witness has been declared hostile.

12. Shila Devi (PW/3) is a witness who was also residing as a tenant in the same compound where deceased was residing. She has stated that she informed the police that she saw appellant No.2-Maria coming through courtyard, however, she disclosed this fact to police only and no one else.

13. Poshan Kumar (PW/4) - brother of the deceased is witness to inquest (Ex.P/1). Geeta (PW/5) - mother of deceased, has not stated

anything specific against the appellants and turned hostile.

14. Rakesh Kumar (PW/7) - tenant living in the same premises, has turned hostile. Kiran Tirkey (PW/8) turned hostile.

15. Dr. Ulhas Gonnade (PW/9) is the witness who conducted postmortem examination on the body of deceased and gave his report Ex.P/10 opining the cause of death to be cardiac respiratory failure as a result of injuries to neck organ and its complication.

16. Odil Toppo (PW/10), aunt of appellant No.2, has not stated anything specific against the accused/appellants.

17. B.L. Nayak (PW/11) is a Patwari who prepared spot map vide Ex.P/5.

18. Dr. S. Bose (PW/12) treated the deceased at Dr. B.R. Ambedkar Memorial Hospital, Raipur and gave his report Ex.P/12 noticing lacerated wound of 10 x 5 cm x muscle deep. Right side of mastoid cut, trachea, jugular and carotid appears intact.

19. Ajay Singh (PW/13) - Constable assisted in the investigation.

20. Nandu @ Laxmi (PW/14) - child witness aged about 12 years, was also residing in the same premises along with her parents. She has stated that she saw appellant No.2-Maria coming out from the house of deceased, but at what time she saw her, she cannot tell the same.

21. Ramrati Bai (PW/15) is the landlord in whose house appellant No.2-Maria was residing at Jabalpur as tenant. This witness has not stated anything specific against the accused/appellant.

22. Cholaram Nishad (PW/16) is the person opposite to whose house appellant No.1-Jitendra was residing. This witness has not stated

anything specific against the appellants.

23. K. R. Patel (PW/18) - Assistant Sub Inspector, Ved Prakash Verma (PW/19) - constable and Virendra Kumar Sharma (PW/21)- Thana Incharge assisted in the investigation.

24. Smt. Kirti Awasthi (PW/20) is wife of PW/1, has not stated anything specific against the appellants. Ram Gopal (PW/22) turned hostile.

25. Dr. (Smt.) Hansha Banjara (PW/23) is the person who treated the deceased.

26. Mohan Singh Rajput (PW/24) is witness to seizure of saree, blouse and locket of the deceased made from the hospital vide Ex.P/8.

27. C.D. Lahre (PW/25) - Investigating Officer has duly supported the prosecution case.

28. Ved Prakash Painkra (DW/1) has stated that earlier the deceased had attempted to commit suicide. Mahesh Kumar (DW/2) - Manager of Mahesh Industry where appellant No.1-Jitendra was working, has stated that at the relevant time A-1 was at his work place.

29. Close scrutiny of the evidence makes it clear that though deceased Veena Sharma was found lying dead in her house on 02.03.2004 but there is no conclusive piece of evidence on record showing involvement of accused/appellants in commission of offence and their conviction is based on statements of PW/2, PW/3, PW/14 and PW/16, 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.

30. In the present case, according to evidence of landlord PW/2, Shila Devi (PW/3) came to him and informed that appellant Maria (A-2) was fleeing from the house of deceased where incident took place, but PW/3 in her statement has deposed that she saw A-2 going through courtyard and she disclosed this fact only to the police and none else. Careful reading of the evidence of PW/2 goes to show that he did not see A-2 coming from the house of deceased. According to evidence of PW/14, a child witness aged 12 years, she saw A-2 coming from the house of deceased and she informed this fact to her neighbour whose name she does not know, but PW/14 did not disclose as to at what point of time she saw A-2 coming from the house of deceased. The evidence of aforesaid witness further makes it crystal clear that no one has seen the

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

accused persons along with the deceased on the date of incident.

31. So far involvement of A-1 is concerned, these witnesses in their entire evidence have not uttered even a single word about appellant Jitendra (A-1). There is no evidence in relation to A-1 showing his presence in his house at the time of incident. It is not a case of the prosecution that the present is a case of house murder where the deceased was living all alone along with A-1. As per the prosecution itself, A-2 was seen somewhere near the house of deceased and according to prosecution, it is A-2 who has committed the offence, whereas there is no evidence against appellant No.1- Jitendra. The evidence of seeing A-2 near the place of occurrence is not very conclusive in nature and merely on the basis of evidence of PW/2, PW/3, PW/14 and PW/16, it cannot be said with certainty that it is A-2 who had committed murder of the deceased. Further, there is no evidence on record to suggest that both the accused persons were present at the place of occurrence and after hatching criminal conspiracy both have committed murder of the deceased. We are not very much impressed on the evidence of these witnesses for the reason that they have simply stated that they saw A-2 coming from the house of deceased. 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 erroneous. 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, 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**.

32. 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.

33. Another aspect of the case is the seizure of certain articles made from the spot and as per FSL report (Ex.P/29), blood has been found thereon, however, there is no serological report on record confirming the blood group of it. Seizure of certain articles made from the spot is not good enough to show involvement of the accused/appellants in commission of offence. Even, the prosecution has not seized clothes of the appellants to show that any bloodstains were found on it, which in

any manner, could help to them. In the facts and circumstances of the case, we find it difficult to support the impugned judgment recording conviction of the accused/appellants.

34. In **Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507**, while dealing with recovery of bloodstained articles the Supreme Court held as under:-

“11. As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.

35. Thus, considering the quality of evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Section 302/34 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 Section 302 IPC is set aside and they are hereby acquitted of the charge levelled against them.

Appellant Jitendra Sharma in Cr.A.No.200/2006 is on bail, his bail

bonds stand discharged. **Appellant Maria in Cr.A.No.878/2012** is in jail.

She be set at liberty forthwith, if not required in any other case.

36. Appeals are thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE

Vijay