

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 101 of 2010

- Raj Kumar @ Rajju Sahu, s/O Late Fudruram Sahu, aged 43 years, R/o village Devri, P.S. Dharsiva, Distt. Raipur (CG)

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh, through Police Station Dharsiva, Distt. Raipur (CG)

---- Respondent

For Appellant	:	Shri Ravish Verma, Advocate
For Respondent	:	Shri Ravindra Agrawal, Panel Lawyer

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

Judgement

28/08/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 31.12.2009 passed by the 4th Additional Sessions Judge (FTC), Raipur in S.T. No.193/08 whereby the accused/appellant has been convicted under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for life imprisonment & fine of Rs.2,000/- and R.I. for 1 years, with usual default clauses, respectively.
2. In the present case name of deceased is Kelabai, wife of accused/appellant.
3. As per case of the prosecution, on 6.9.2008 accused/appellant demanded silver anklet of the deceased from her as he was in need of money to repay some loan. On refusal by the deceased, some quarrel took place between them and in that process he gave two slaps to her. It is further

case of the prosecution that in the morning of 7.9.2008 the accused/appellant had gone to his workplace and the deceased had also gone to the field. In the evening when the appellant returned home, he did not find his wife at home and upon enquiry his daughter informed that the deceased had gone to the field. While the deceased was going to the field in search of deceased, he met her on the way and there some altercation took place between them and in that process, the accused/appellant committed her murder by tying her saree around her neck tightly. It is further case of the prosecution that the accused/appellant after committing murder of the deceased, threw her body in a nearby field after removing her silver anklet and other ornaments. Thereafter, the accused/appellant returned village and informed the villagers that the deceased is missing and they, therefore, proceeded in search of the deceased and found her dead body lying in the nearby field. Merg Intimation (Ex.P-15) was recorded at the instance of accused/appellant. Inquest on the body of deceased was made vide Ex.P-9. Dead body was sent for post-mortem which was conducted by Dr. N.K. Lakda (PW-13) vide Ex.P-1 and he opined that cause of death was asphyxia due to strangulation and the death was homicidal in nature. Dehati Nalishi (Ex.P-19) was recorded against unknown persons. Based on merg enquiry, FIR (Ex.P-1) under Sections 302 & 397 IPC was registered against unknown person. On the basis of suspicion, the accused/appellant was arrested and when interrogated by the police, he made disclosure statement (Ex.P-4) of having committed murder of the deceased and got recovered silver anklet of deceased vide Ex.P-4. Tilakram (PW-16) has identified the silver anklet to be that of his sister deceased Leela Bai. Statements of witnesses under Section 161 CrPC.

4. On completion of investigation, charge sheet for the offence punishable

under Sections 302 & 201 of the IPC was filed against the accused/appellant and accordingly the charges were framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the appellant had examined 22 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication. The accused examined two witnesses in defence namely Durga Kumari Sahu (DW-1) and Rakesh Kumar Sahu (DW-2).

5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;
 - in a case based on circumstantial evidence, the circumstances relied upon by the prosecution ought to be firmly established by evidence and the circumstances must be of such nature as to form a complete chain pointing to the guilt of the accused. But, in the present case the circumstances relied upon by the prosecution have not been proved beyond doubt by reliable and cogent evidence.
 - recovery of silver anklet belonging to the deceased at the instance of accused/appellant cannot be made a circumstance to convict him.
 - last seen evidence in this case was also not reliable as PW-17, who is witness of last seen, has not stated that he saw the deceased alive in the company of appellant. In any case, only on the basis of last seen evidence, the appellant could not be convicted in this case of circumstantial evidence.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same

warranting interference by this Court.

8. We have heard counsel for the parties and perused the evidence available on record.
9. Chandrakant Verma (PW-1) is the witness of inquest (Ex.P-2), memorandum (Ex.P-4) and seizure memo (Ex.P-3).
10. Roop Singh Chouhan (PW-2) is the village Kotwar who was present at the time when disclosure statement was made by the accused/appellant.
11. Manbodhi (PW-3) & Jaiprakash (PW-4) are the villagers with whom the accused/appellant had gone to search the deceased and found her body lying at the barren land of one Jainarayan Agrawal.
12. Samaylal Soni (PW-5) is the Goldsmith and witness of identification parade (Ex.P-8).
13. Baratu (PW-6) is another witness of Inquest (Ex.P-2).
14. Dikeshwar Sahu (PW-7) is the Patwari who prepared spot map Ex.P-6. Dr. N.K. Lakda (PW-13) is the person who conducted post-mortem on the body of the deceased and opined that cause of death was asphyxia due to strangulation and the death was homicidal in nature.
15. Sunderlal Sahu (PW-14) is the witness of memorandum (Ex.P-4) and seizure (Ex.P-3).
16. Jainarayan (PW-15) did not support the prosecution case and turned hostile.
17. Tilakram (PW-16) is the brother of deceased who had identified the silver anklet to be of his deceased sister.
18. Premlal (PW-17) is the witness of last seen. He has stated that in the fateful evening he met the accused in the vicinity, at that time he was coming from the side of village.
19. U.K. Chandrawanshi (PW-21) is the investigating officer who has duly supported the prosecution case.

20. In the present case there is no direct evidence on record connecting the accused/appellant with the crime in question and his conviction at the hands of the Additional Sessions Judge is based on circumstantial evidence i.e. recovery and last seen. Principally, the conviction was ordered as a consequence of recovery of ornaments i.e. silver anklet etc, belonging to the deceased, pursuant to the information furnished by the accused. Based on the aforesaid recovery, the trial Court inferred that the accused/appellant had committed murder of the deceased and thereafter created false evidence by removing the clothes and ornaments of the deceased with a view to escape from legal punishment in connection with murder of the deceased. However, on close and careful scrutiny of the evidence on record we are of the view that none of the evidence adduced against the accused/appellant before the trial Court can be accepted to connect him with the alleged crime of murder of his wife. Admittedly, the silver anklet was recovered at the instance of accused/appellant, but so-called recovery of ornament (silver anklet) of the deceased only cannot form the basis of conviction because the recovery of incriminating articles and its evidentiary value has to be considered in the light of other relevant circumstances as well and the chain of events suggesting the involvement of accused, which are lacking in the present case because there is no other positive evidence proving that the crime in question has been committed by the accused/appellant. Furthermore, the place wherefrom the alleged silver anklet was recovered was not only open and accessible to others but also ordinarily visible. Said silver anklet was not concealed nor hidden. Therefore, it cannot be said that the accused/appellant had the exclusive knowledge as to where the said silver anklet was hidden or kept. When the weapon of offence was ordinarily visible and had not been concealed rather lying on the

ground in an open place accessible to all, the recovery in such circumstance, to our mind, would be inadmissible under Section 27 of the Evidence Act.

21. Next piece of evidence is with reference to the last seen of accused/appellant. To prove this circumstance the prosecution has relied upon the testimony of PW-17. We are not very much impressed on the evidence of PW-17 for the reason that he has simply stated that he saw the accused/appellant near the boring in the vicinity, he was afoot, this witness was going towards his field and accused was coming towards the village. Thus, this witness cannot be treated as a witness of last seen because nothing has been said by him with regard to last seen of accused/appellant with the deceased. Therefore, the finding of the trial Court accepting testimony of this witness for the purpose of last seen is not justified.
22. That apart, the post-mortem report (Ex.P-12) of the deceased reveals that she suffered 3-4 linear abrasions over her right breasts, her both arms were semi-flexed at elbow joint and abrasions were present over her upper lip, cheek, mouth & posterior aspect of both ankles. Vaginal slides of the deceased prepared by the autopsy surgeon and her clothes were sent for chemical analysis and as per report of FSL (Ex.P-22), human spermatozoa was found on the peticoat of the deceased and her vaginal slides. Looking at the nature of injuries sustained by the deceased, the possibility that the deceased had been first raped by someone else and thereafter murdered with intent to cause disappearance of offence of rape, cannot be ruled out.
23. From the discussion made above it is apparent that none of the circumstances relied upon by the prosecution have been established in this case beyond reasonable doubt. In fact, the chain the circumstantial

evidence is so incomplete that it cannot justify the conviction of the appellant at all. On facts link in the chain of circumstances is missing and hence conviction of the accused cannot be sustained.

24. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is hereby set aside and accused/appellant is acquitted of the charges under Sections 302 & 201 of IPC by extending him benefit of doubt. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan