

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.A. No. 380 of 2008

Manhguram Nishad, S/o Dhan Sai & Nishad, Aged about 38 years, R/o Mandeli –
Bhatapara, Distt. : Dhamtari – (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: Incharge of Police Station Bhakhara, District
Dhamtari C.G.

---- Respondent

For Appellant	:	Shri Manoj Dubey, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

**Hon'ble The Chief Justice &
Hon'ble Shri Justice Sanjay Agrawal**

Judgment on Bord

24.01.2017

Per Deepak Gupta, Chief Justice

1. This appeal by the accused is directed against the judgment dated 25.09.2007 passed by the learned Additional Sessions Judge, Sessions Court Dhamtari whereby he convicted the accused/appellant of having committed an offence of murder punishable Section 302 of the IPC and sentenced him to under life imprisonment and to pay fine of Rs.200/-. He also convicted the appellant under Section 201 of the IPC. for having committed an offence of disappearance of evidence and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.100/-. In default of fine amount, he shall suffer additional rigorous imprisonment for three months.

2. The prosecution story, briefly stated, is that the accused is an agriculturist. It is alleged that the accused also sells eggs near the liquor shop in village Mandeli –

Bhatapara, Police Station – Bhakhara, District Dhamtari (C.G.). The prosecution version is that on 2nd June, 2006, the deceased Kirit Ram had gone to the stall of the accused, had purchased eggs from him and thereafter had gone to sleep near the stall. He was seen by the number of witnesses. Two days later on, on 04.06.2006, the body of Kirit Ram was found in the threshing ground of Shekhar Sahu (P.W.2). Shekhar Sahu, on seeing the body lying in his threshing ground, lodged a complaint to the Police Station, on the basis of which, F.I.R. was lodged. The police investigated the matter, recorded the statements of certain witnesses and thereafter the accused was charged of having committed the offence of murder and hidden the body. The accused was convicted and sentenced as above. Hence, this appeal.

3. We have gone through the entire record. We find that this is a case of no evidence whatsoever. Admittedly, there is no eye witness to the occurrence. This is a case based only on circumstantial evidence. The law in this regard is well settled, that in case of circumstantial evidence the prosecution must prove all the circumstances and link them together to form an unbroken chain which leads to only one conclusion, i.e., the guilt of the accused. If there is any chance of the accused being innocent or if there is any chance of the crime having been committed by the other persons, then the benefit of doubt has to be given to the accused.

4. In this case, no motive has been alleged. Even if the statements of the prosecution witnesses are accepted at their face value without even going into the cross-examination of the witnesses, all that is proved is that certain witnesses including Shatrughan (P.W.1), Munna @ Dularwa Sahu (P.W.11), Suresh Sahu (P.W.15) and Taman Sahu (P.W.19) saw the deceased near the stall of the accused. This happened on 02.06.2006 between 8.00 – 8.30 pm and 10.00 – 11.00 pm. Some of the witnesses have stated that in their presence, Kirit Ram had purchased eggs from the accused. The version of the last witness is that when

they reached there, Kirit Ram was sleeping and snoring near the stall of the accused. This has been used as the circumstance of last seen together. No other circumstance whatsoever has been proved. Assuming for the sake of argument that the deceased was last seen with the accused, that by itself is not a ground to convict the accused. The deceased was not seen in some private place with the accused, but he was seen in an open place where the accused was running a shop close to liquor shop and there is no allegation much less proved that any fight took place between the two of them. As already stated above that some of the witnesses have stated that when they reached the place at about 8.30 pm, one person was sleeping and on enquiry, the accused only informed them that the person who is sleeping is Kirit Ram.

5. As per the statements of Suresh Sahu (P.W.15) and Taman Sahu (P.W.19), Kirit Ram was also seen at about 10.00 – 11.00 pm. That only shows that Kirit Ram was there near the stall of the accused at about 10.00 – 11.00 pm. How does this lead to the conclusion that Kirit Ram was murdered only by the accused/appellant none else could have been murdered. We must remember that body of the deceased was found after two days. It was found at a fairly long distance from where the stall is being run. No evidence has been led to show that the accused dragged the body of the deceased to that place. Other than this circumstance of last seen, no other circumstance has been proved.

6. The post-mortem of the body was conducted by Dr. Umashankar Navratn (P.W.20) on 05.06.2006 at 7.00 am. According to him, the time of death was 36 – 48 hours before the post-mortem, therefore, the death occurred after 7.00 am of 3rd June 2006 and till 7.00 pm of the same date. The story of last seen is of 11.00 pm on 2nd June, 2006. Where was Kirit Ram from 11.00 pm till he died somewhere after 7.00 am in the next morning. The prosecution has not been able to lead any evidence whatsoever in this regard. Therefore, the possibility of Kirit Ram of having been killed by some other person cannot be ruled out. In fact, there is no

evidence to link the accused with the crime.

7. We, therefore, have no hesitation in allowing the appeal. The appeal is accordingly allowed. The judgment and order passed by the trial Court is set aside. The accused is acquitted of the charge. The accused be set at liberty forthwith.

8. The appellant is on bail. His bail bonds shall remain effective for a period of 6 months, in view of the provisions contained under Section 437-A of the Code of Criminal Procedure, 1973.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge

24.01.2017