

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 448 of 2008**

- Manoj @ Bhakhanand Diwan S/o Shri Bhuwan Diwan, aged about 22 years, R/o village Phuljhar (Jamahi), P.S. Rajim, District Raipur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station Chhura, Tahsil Gariyaband, District Raipur (C.G.)

---- Respondent

For Appellant : Shri Alok Nigam, Advocate.

For Respondent/State : Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board by Pritinker Diwaker, J****31/07/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 10.04.2008 passed by the Additional Sessions Judge, Gariyaband, District Raipur, in Sessions Trial No. 01/2008 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, in default of payment of fine amount to further undergo R.I. for one month.

2. In the present case name of the deceased is Purnima Bai - wife of the accused/appellant. As per the prosecution case, on 09.10.2007, the accused/appellant and the deceased had gone to parental house of the deceased and at about 1.30 pm the accused/appellant and deceased left the house of Ramlal (PW/1)- father of the deceased saying that they are going to village

Tilaidadar and would return by evening. When the accused/appellant and deceased did not return, an extensive search was made by Ramlal (PW/1) and Sukaro Bai (PW/10), in-laws of the accused/appellant and during this they came to know that the accused/appellant alone had gone to village Tilaidadar and not the deceased. During search, on 11.10.2007 at night the body of deceased was found in the forest which was guarded by the villagers and on 12.10.2007 at 10.00 am merged intimation Ex.P/1 was lodged by Ramlal (PW/1). On same day, inquest on the body of deceased was prepared vide Ex.P/6 and body was sent for postmortem examination which was conducted by Dr. (Smt.) A.N. Toppo (PW/5) vide Ex.P/9 opining the cause of death of deceased to be asphyxia due to strangulation. After postmortem and merged inquiry, FIR Ex.P/13 was registered on 14.10.2007 under Section 302 IPC against an unknown person. On same day, memorandum of the accused/appellant Ex.P/16 was recorded wherein he has stated that as fidelity of his wife was doubtful, he took her along with him to village Tilaidadar, on the way he had physical relation with her and then strangled her neck by saree. Based on his memorandum, one wedding necklace (मंगलसुत्र), bichiya and one bicycle were seized vide Ex.P/10. The seized articles were put for identification parade which was conducted by M.R. Bhagat (PW/8)- Additional Tahsildar vide Ex.P/4 and the same has been duly identified by Ramlal (PW/1) and Sukaro Bai (PW/10). Further case of the prosecution is that the deceased was last seen in the company of the accused/appellant by Ramlal (PW/1), Sukaro Bai (PW/10), Rajjak Ali (PW/12) and Mayaram (PW/13). After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution examined 18 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence, this appeal

5. Counsel for the accused/appellant submits as under:

(i) That there is no eye-witness to the incident and the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction.

(ii) That on the memorandum (Ex.P/16) of the accused/appellant, seizure Ex.P/10 was affected by which one wedding necklace (मंगलसुत्र), bichiya and one bicycle were seized, however, the seizure is doubtful considering contrary statements of the witnesses.

(iii) That even the identification of the articles is doubtful as while conducting the same, due procedure have not been followed.

(iv) That theory of last seen by PW/1, PW/10, PW/12 and PW/13 is weak and merely on the basis of same the accused/appellant cannot be convicted. Lastly, it has been argued that the accused/appellant is in jail since 14.10.2007 i.e almost about 10 years and, therefore, he may be set at liberty forthwith.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:-

(i) That PW/1, PW/10, PW/12 and PW/13 have categorically

stated that they had seen the accused/appellant and the deceased together while he was leaving for village Tilaidadar and in the forest also the accused/appellant and the deceased were seen together on bicycle by these witnesses.

(ii) That apart from the evidence of last seen, on the memorandum (Ex.P/16) of the accused/appellant certain articles were seized vide Ex.P/10 and seized articles have been duly identified vide Ex.P/4.

(iii) That test identification parade was conducted by M.R. Bhagat (PW/4)-Additional Tahsildar and witnesses PW/1 and PW/10 to the identification have duly supported the prosecution case.

(iv) That in 313 Cr.P.C. statement, the accused/appellant has not offered any probable explanation as to when he left along with his wife on 09.10.2007 by saying that they are going to village Tilaidadar and where he dropped the deceased. It has been further argued that in absence of any such explanation, presumption goes against the accused/appellant.

7. Heard the counsel for the parties and perused the material available on record.

8. Ramlal (PW/1) is father of the deceased and father-in-law of the accused/appellant. He has stated that on the eve of Pitrapaksh the accused/appellant had come to his house along with his wife and after taking their meals in the evening they left for village Tilaidadar on bicycle. He has further stated that the accused/appellant and the deceased left their luggage in his (this witness) house saying that they would return by evening, however, on same day they did not return and he waited for them for about two days. He has also stated that when he inquired from

appellant's uncle at village Tilaidadar and aunt (मौसी) at village Chhura, he was informed by appellant's aunt that she saw only accused/appellant and not deceased. After two days, the accused/appellant came to his house and on being inquired, he replied that he had not taken deceased along with him. This witness has also stated that thereafter he begged for villager's help to search for her daughter and during search body of deceased was found in the Mongarghat forest. Number of villagers and his wife had gone to see the dead body, the ornaments which deceased had worn were not on her body and that green colour saree was tied around her neck. The villagers guarded body of deceased at night and on next day information was given to police and accordingly merger intimation Ex.P/1 was recorded, thereafter, investigation was carried out by the police. In cross-examination, this witness remained firm. Sukaro Bai (PW/10) - mother-in-law of the accused/appellant has made almost similar statement as has been made by PW/1.

9. Dr.(Smt.) A.N. Toppo (PW/5) is the witness who conducted postmortem examination on the body of the deceased and gave her report Ex. P-9 noticing following injuries:-

- (i) Ligature mark of saree was present around neck. Length of saree around the neck - two times about 93 cm, one knot of 6 x 4 cm present, 7 cm back and slight below from right ear on occipital region. Short end of saree was 07 cm.
- (ii) There was no external injury or mark seen due to body petrification and presence of maggots all over body but slight depression over occipital region due to knot (6 x 4 cm)

The cause of death has been opined to be asphyxia due to strangulation, duration was about 48 to 72 hours and death was homicidal in nature.

10. Rajjak Ali (PW/12) the witness who saw the accused/appellant and the deceased in the forest on bicycle has duly supported the prosecution case. Mayaram (PW/13) has stated that when he was returning after grazing the cattle, he saw the accused/appellant and the deceased on bicycle and that they greeted each other. M.R. Bhagat (PW/8) - Additional Tahsildar has proved the identification made under Ex.P/4. Abir Chand (PW/11) witness to identification panchanama made under Ex.P/4 has duly supported the prosecution case. Khorbahara (PW/6) and Dihuram Sahu (PW/7) who are the witnesses to seizure made under Ex.P/10 have duly supported the prosecution case. Smt Usha Sondhiya (PW/14) is the Investigating Officer who has duly supported the prosecution case. In 313 Cr.P.C. statement, the accused/appellant has failed to offer any probable explanation as to when he parted the company of deceased and how the body of deceased was found in the forest.

11. Close scrutiny of the evidence makes it clear that on 09.10.2007, the accused/appellant and the deceased had gone to the house of Ramlal (PW/1) - father of the deceased and after lunch they left the house of PW/1 saying that they are going to village Tilaidadar and would return by evening. When the accused/appellant and deceased did not return, a search was made by PW/1 and PW/10 and they came to know that the accused/appellant alone had gone to village Tilaidadar and not the deceased. During search, on 11.10.2007 at night the body of deceased was found in the forest. On the memorandum Ex.P/16 of the accused/appellant, one wedding necklace (मंगलसुत्र), bichiya and

one bicycle were seized vide Ex.P/10 and the seized articles were duly identified by PW/1 and PW/10 in test identification parade conducted by PW/8 vide Ex.P/4. PW/1, PW/10, PW/12 and PW/13 are the witnesses to last seen who have specifically stated that they had seen the accused/appellant and the deceased together while going to village Tilaidadar. The statements of these witnesses find corroboration from each other and they have duly supported the prosecution case. The defence has cross-examined these witnesses at length but nothing could be elicited from their cross-examination to discredit their testimonies especially to the fact that they have not seen the accused/appellant and the deceased together while going to village Tilaidadar on bicycle. Thus, we have no reason to disbelieve their statements. That apart, content of memorandum of the accused/appellant (Ex.P/16) that he had physical relation with deceased and then strangled her neck by saree finds corroboration from the statement of Dr. (Smt.) A.N. Toppo (PW/5) who conducted postmortem examination and found saree knot of 6 x 4cm around the neck of deceased and opined the cause of death to be asphyxia due to strangulation and death could have been caused 48 to 72 hours. All that apart, in 313 Cr.P.C. statement, no probable explanation has been offered by the accused/appellant as to when he parted the company of deceased on 09.10.2007 and where he dropped the deceased.

12. In the instant case, prosecution has been able to prove the complete chain of circumstantial evidence against the appellants and the trial Court was thus fully justified in convicting the appellant on the basis of such evidence.

13. Thus, considering the evidence collected by the prosecution and all the surrounding circumstances, this Court is of the opinion

that the trial Court while convicting and sentencing the appellant has not committed any error of law. Consequently, the appeal preferred by the appellant is bereft of any substance, the same is liable to be and is hereby dismissed. Appellant is in jail and therefore no further order regarding his arrest etc. is required.

14. Appeal is thus dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge