

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 29 of 2011**

(Arising out of judgment/order dated 29.10.2010 in S.T. No.42/2007 of the learned 9th Additional Sessions Judge (FTC), Raipur)

- Ucchho @ Santosh Yadav S/o Pawan Yadav, aged about 35 years, R/o Bhimdongar, P.S. Bhawanipatnam District Kalahandi, Orissa, presently residing at Khalbada Gudiyari, P.S. Gudiyari, District Raipur (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station - Khamtarai, District Raipur.

---- Respondent

For Appellant	:	Shri P. K. Verma, Sr. counsel assisted by Shri Virendra Verma, counsel.
For Respondent/State	:	Shri Arun Sao, Dy. Advocate General with Shri Ravindra Agrawal, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant**

Judgment On Board**By Pritinker Diwaker, J****04/11/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 29.10.2010 passed by the 9th Additional Sessions Judge (FTC), Raipur, in S.T. No.42/07 convicting the appellant under Sections 302 (on two counts), 392 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/- and R.I. for seven years with fine of Rs.1000/- respectively, plus default stipulation.

02. In the present case, name of the deceased are Ram Bai

@ Devsundar Bai and Sukhbatu Bai. As per the prosecution case, the accused/appellant was a labour supply contractor. On 15.09.2006, he took Kirti (PW/4), Rajni (PW/7) and Rubi (PW/18) to WRS colony, Khamtarai, Raipur under the assurance that he would provide some work to them. It is alleged that he threatened tall girl and seeing that the small one fled away from the spot. Thereafter, he took out anklet, nose pin, mangalsutra of tall girl and after pressing her breast, he ran away from the spot and came to Gudiyari and sold looted ornaments for consideration of Rs.4500/-. Accused/appellant stated that some cash amount was with him. On 19.09.2006, the accused/appellant was taken into custody, however, his formal date of arrest is 20.09.2006. Further case of the prosecution is that on 19.09.2006, memorandum of the accused/appellant was recorded vide Ex.P/4 wherein he had disclosed that prior to 15.09.2006 he took Ram Bai @ Devsundar Bai and Sukhbatu Bai (both deceased) on the assurance of providing some work to them and near WRS colony, he made an attempt to ravish both girls but when he could not succeed due to erectile dysfunction, he committed their murder and threw their bodies near the brook of WRS colony. In the meanwhile, on 15.09.2006, two unknown decomposed dead bodies were recovered near the brook, unnumbered merger intimation Ex.P/30 and P/31 were recorded on the same day followed

by numbered merg Ex.P/32 and P/33. On the basis of merg intimation, on 16.09.2006, FIR (Ex.P/34) was registered against an unknown person under Sections 302 and 201 of IPC. Inquests on the bodies of deceased were conducted on 15.09.2006 vide Ex.P/14 & P/15 and dead bodies were sent for postmortem examination which was conducted by Dr. S.N. Manjhi (PW/5) and he gave his reports Ex.P/8 and P/9 noticing following injuries/symptoms.

Injuries/symptoms of unknown body vide Ex.P/8.

- (i) Body of female was in advance stage of decomposition. Scalp tissues devoid from skull, face and upper part of neck region.
- (ii) Tissues of right lower leg, upper part of thigh, left lower leg 1/3rd part of foot upto ankle region was peeled off.
- (iii) Epidermis had peeled off and muscles structure were defused.
- (iv) 3-4 mm size maggots crawling all over body. Few dead maggots of 4-5 mm size slightly brownish colour were present on right lower leg. Internal organs were not identifiable.

Injuries/symptoms of unknown body vide Ex.P/9.

- (i) Scalp hair were missing. All body joints loosen, both feet missing. Left tibia and fibula lower ends having irregular broken effect with gnawing.
- (ii) Eye ball missing, both ears were present, skull at vertex region exposed, both tibia and femur bones exposed partially, posteriorly exposed. Pelvic cavity opened. Loose number of maggots present at pelvic cavity region and also crawling all over body.

- (iii) Soft tissues and muscles of neck region partially missing. Both hyman bone were partially exposed. Both breast present and external genitalia present partially.
- (iv) Deglazing of hands present. Tattoo mark present on both forearm and legs. Tattoo mark as Suk Bai on right forearm flexor and left forearm flexor as Molwa.
- (v) Lipoma present on scalp at occipital region in the size of 4 x 3 cm. Blackish colour mud present at places on the body. Skin, muscles and soft tissues present rest of the body except few places.

The Autopsy Surgeon opined that the dead bodies of female were in advance stage of decomposition, cause of death could not be ascertained and it remained open.

03. On 16.09.2006, the dead body of Ram Bai @ Devsundar Bai was identified vide Ex.P/17 by Saroj Manikpuri (PW/22), daughter of the deceased. Likewise, dead body of Sukhbatu Bai @ Kendi Bai was identified vide Ex.P/18 by Raju Satnami (PW/23), son of the deceased.

04. On 19.09.2006, memorandum of the accused/appellant was recorded vide Ex.P/4, based on which, one wallet containing cash of Rs.3610/- and golden nose pin were seized vide Ex.P/2 and the same were identified to be that of deceased Sukhbatu Bai by her daughter Santoshi (PW/14) in the test identification parade conducted by Executive Magistrate Harvansh Singh Miri (PW/17). On the basis of

memorandum of the accused/appellant, some looted ornaments were also seized from Vimal Karmakar (PW/13), goldsmith, vide Ex.P/3, which was sold to him by the accused/appellant. After filing of the charge sheet, the trial Court framed the charges against the accused/appellant under Sections 201 (on two counts), 397 (on two counts) and 302 (on two counts) of IPC.

05. So as to hold the accused/appellant guilty, the prosecution examined as many as 24 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the appellant as mentioned in para 1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submit:-

- That homicidal death of two deceased namely Ram Bai @ Devsundar Bai and Sukhbatu Bai has not been proved by the prosecution.
- That there is no proper identification of the dead bodies and the related witnesses Saroj Manikpuri (PW/22) in respect of deceased Ram Bai @ Devsundar Bai, and Raju Satnami (PW/23) in respect of deceased Sukhbatu Bai

have not deposed in the Court about the identification of the bodies.

- That even the evidence of last seen is very weak and witnesses Santoshi (PW/14) and Saroj (PW/22) to this effect are not reliable and moreover the time gap is not as such where it can be said that it is the accused/appellant who had committed murder of the deceased.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is in accordance with law and there is no illegality or infirmity in the same. He submits that offence under Section 392 IPC has been duly proved by the prosecution where on the basis of memorandum of the accused/appellant, looted ornaments were seized from Vimal Karmakar (PW/13)- Goldsmith, and those ornaments have been identified by Santoshi (PW/14), daughter of deceased Sukhbatu Bai.

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

09. Dr. Rajkumar Singh (PW/1) is a witness who medically examined the accused/appellant and gave his report Ex.P/1 opining that there is nothing to suggest that the accused/appellant is incapable of performing sexual intercourse. However, he had advised for vascular and neurogenic examination of his private part to arrive at a proper

conclusion.

10. S. Venkatrao (PW/2) witness to memorandum (Ex.P/4) of the accused/appellant and seizure made thereunder vide Ex.P/2 and P/3 has duly supported the prosecution case.

11. Chhanulal Sharma (PW/3) is Patwari who prepared spot map vide Ex.P/5. Kirti (PW/4) has stated that the accused/appellant was a labour contractor, took her along with her sister Tara Bai on the assurance of providing work and thereafter he also took one Jiran Bai, Rubi, Rajni and on the way he made an attempt to outrage her (this witness) modesty but somehow she managed to flee from the spot. She has further stated that the accused/appellant caught hold Rajni and looted her ornaments. Rajni (PW/7) and Rubi (PW/18) have made almost similar statements as has been made by Kirti (PW/4).

12. Dr. S.N. Manjhi (PW/5) conducted postmortem examination on the bodies of deceased, gave his report (Ex.P/8 and P/9) and opined that the dead bodies of female were in advance stage of decomposition, cause of death could not be ascertained and it remained open.

13. V.P. Sahu (PW/6) - Assistant Sub Inspector and Sundarlal Sahu (PW/8) - Home Guard, assisted in the investigation.

14. Kartikram Yadav (PW/9) is witness to memorandum of the accused/appellant (Ex.P/4) and seizure made under Ex.P/2 and P/3.

15. Vimal Karmakar (PW/13) is goldsmith to whom the looted ornaments were sold by the appellant. This witness has duly

supported the prosecution case.

16. Santoshi (PW/14), daughter of deceased Sukhbatu Bai, had identified the looted ornaments to be that of her mother. In cross-examination, she has duly supported the identification panchanama (ExP/27) of the ornaments.

17. Harvansh Singh Miri (PW/17) is Nayab Tahsildar who had conducted test identification of looted ornaments, has duly supported the prosecution case. This witness has also conducted identification of the body of Ram Bai @ Devsundar Bai vide Ex.P/17 and Sukhbatu Bai vide Ex.P/18 and has duly supported it.

18. R.B.S. Parihar (PW/19) - Retd. Police Inspector, Arjun (PW/20) - Constable and Dinesh Kumar Sahu (PW/21) - Home Guard, have assisted in the investigation.

19. Saroj Manikpuri (PW/22) is daughter of deceased Ram Bai. She has stated that in her presence no identification of the dead body was conducted and when she had gone to hospital, she became unconscious and body of deceased was identified by her uncle Gangaram. It is relevant to note here that Gangaram has not been examined.

20. Raju Satnami (PW/23) is son of other deceased Sukhbatu Bai. This witness has also stated that neither he saw the dead body nor any identification of the body was conducted before him.

21. Close scrutiny of the evidence available on record makes it clear that there is no legally admissible evidence showing

involvement of the accused/appellant in the commission of offence and the appellant has been convicted mainly on the basis of evidence of last seen by PW/14, PW/22, recovery of looted ornaments effected vide Ex.P/2, P/3 on the basis of memorandum of accused/appellant Ex.P/4 and identification panchaname of dead bodies vide Ex.P/17 and P/18.

22. It is well settled position of law that the conviction cannot be recorded against an 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. In the matter of **State of Goa V. Sanjay Thakran**¹, Supreme Court has held as under:-

“In the light of the factors that evidence regarding the recovery of the incriminating materials from the accused persons has been discarded; that there has been sufficient time gap between the instances when the accused persons were last seen together with the deceased persons; and in the absence of any other corroborative piece of evidence to complete the chain of circumstances to fasten the guilt on the accused

1 2007 (3) SCC 755

couple, we are of the opinion that the accused have been rightly given the benefit of doubt by the courts below. We have found that the finding of the High Court that the chain of circumstances is not complete to conclusively establish that either A-1 or A-2 alone or with the common intention of each other have committed the dreadful crime of murder of newly married couple, is correct and merely suspicion, however grave, cannot replace the weight attached to the evidence”.

23. In the present case, PW/14 and PW/22, so called witnesses to last seen have stated that the accused/appellant had come to their house and took their mother deceased Sukhbatu Bai and Ram Bai @ Devsundar Bai respectively on the assurance of providing some work and thereafter they did not return. The evidence i.e memorandum of the appellant (Ex.P/4), dead body identification panchanama (Ex.P/17 & P/18) and their diary statements go to show that the accused/appellant took the deceased along with him on or around 10.09.2006 and their bodies have been found on 15.09.2006 i.e after about five days. The time gap between last seen and recovery of bodies is so long that the possibility of killing the deceased by someone else cannot be ruled out.

24. Another most important piece of evidence against the accused/appellant is the identification of two dead bodies. The identification of body of deceased Ram Bai @ Devsundar Bai was conducted vide Ex.P/17 and it is said that her daughter Saroj Manikpuri (PW/22) had identified the same but in the

Court statement she has categorically stated that identification panchanama of dead body was not conducted before her and she had never identified the body of deceased. She has also stated that before she could see the body, she became unconscious. This witness has further stated that her uncle Gangaram had identified the body of deceased to be that of Ram Bai @ Devsundar Bai but the said Gangaram had not been examined by the prosecution. Likewise, identification of body of deceased Sukhbatu Bai which was conducted vide Ex.P/18 has also not been proved by the prosecution. Raju Satnami (PW/23), witness to dead body identification panchanama (Ex.P/18), has categorically stated that he had not seen his mother's body whereas his uncle had seen the same. In cross-examination, he has stated that the no identification panchanama was conducted before him. The prosecution has utterly failed to establish the identification of dead bodies beyond reasonable doubt and it cannot be said with certainty that the two bodies found near the brook were of the deceased.

25. The picture what emerges from the evidence on record is that on the memorandum of the accused/appellant (Ex.P/4), looted articles i.e. one wallet containing cash of Rs.3610/- and golden nose pin were seized from the appellant vide Ex.P/2, and from Vimal Karmakar (PW/13), goldsmith, some golden ornaments were seized vide Ex.P/3, which was sold to him by the appellant. In the test identification parade, these articles were identified by Santoshi (PW/14) and Kirti (PW/4) vide

Ex.P/27 and P/28 respectively to be that of respective deceased. PW/14 and PW/4 have also duly supported the identification panchaname of looted ornaments. That apart, Vimal Karmakar (PW/13) has categorically stated that the accused/appellant had pawned some ornaments with him. Thus, it can safely be inferred that the conviction of the appellant under Section 392 of IPC is in accordance with law.

26. In view of the aforesaid discussion and considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the appellant under Section 302 IPC (on two counts) is not based on due appreciation of the evidence available on record and that being so, he is entitled for benefit of doubt in respect of these charges.

27. Consequently, the appeal is partly allowed. The conviction of the appellant under Section 302 of IPC (on two counts) is set aside and he is acquitted of the said charges by extending him benefit of doubt. However, his conviction and sentence under Section 392 of IPC are hereby maintained. The accused/appellant is reported to be in jail and is undergoing sentence in other case, therefore, the jail authority to act in accordance with law.

28. Appeal is thus partly allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE