

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 30 of 2011**

(Arising out of judgment/order dated 29.10.2010 in S.T. No.23/2007 of the learned 9<sup>th</sup> 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 - Dharsewa, District Raipur.

**---- Respondent**


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|----------------------|---|-------------------------------------------------------------------------|
| 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.    |

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**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 9<sup>th</sup> Additional Sessions Judge (FTC), Raipur, in S.T. No.23/07 convicting the appellant under Sections 302, 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 is Shyambati

Bai. As per the prosecution case, the accused/appellant was a labour supply contractor. On 15.09.2006, he took Kruti (PW/4), Rajni (PW/7) and Rubi (PW/18) to WRS colony, Khamtarai, Raipur on 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/11-C wherein he disclosed that prior to 15.09.2006 he had taken Tara Bai and deceased Shyambati Bai to Khamtarai bridge and then to village Siltara on the assurance of providing some work to them. In Siltara, Tarabai stayed in hotel and accused/appellant took deceased Shyambati Bai to work site, on the way he threatened her, removed her clothes on the knife point, pressed her breast and made an attempt to ravish her but when he could not succeed due to erectile dysfunction, he committed her murder and threw her body near Siltara. In the meanwhile, on 13.09.2006, one unknown decomposed dead body was recovered near Siltara. On the same day, merg intimation Ex.P/18 was recorded and on the

basis of merg intimation, on 13.09.2006, FIR (Ex.P/21) was registered against an unknown person under Section 302 of IPC. Inquest on the body of deceased was conducted on 13.09.2006 vide Ex.P/10 and dead body was sent for postmortem examination which was conducted by Dr. V.K. Dhruv (PW/19) and he gave his report Ex.P/17 noticing following injuries/symptoms.

- (i) Body of female was in moderate stage of decomposition. Tongue was protruding, eye ball soft and bulging out. Scalp hair 30-35 cm long was easily pulled out. Face bloat, abdomen and whole body distended with gas. Both upper limbs flexed and placed posterior to the back of body, both lower limbs were straight. Greenish discoloration present on abdomen, chest, both upper lower limbs, face and back of the body.
- (ii) Postmortem blisters present at places on the body, tattoo mark present on both shoulder, both arm, both forearm and both ankle region. Marbling effect present on the chest and arms.
- (iii) Maggots in the size of 0.3 to 0.5 cm crawling all over the body.
- (iv) Right 2<sup>nd</sup> to 4<sup>th</sup> rib fractured at anterior axillary line, underneath soft tissues were dark greenish brown in colour, pleura and lung lacerated at injury side and about 300 ml blood was present in chest cavity. Injuries were caused by hard and blunt object and the same appears to be antemortem.
- (v) Ligature mark in the size of 2.7 cm present all around the neck at the level of thyroid

cartilage. Underneath ligature mark soft tissues were dark greenish brown in colour at surroundings. Thyroid cartilage was intact.

The Autopsy Surgeon opined that the dead body of female was in moderate stage of decomposition, ligature marks were present around the neck transversely and cause of death could not be ascertained and it remained open.

03. On 16.09.2006, the dead body of Shyambati Bai was identified vide Ex.P/13 by Balla Singh Dhruv (PW/11) and Santosh Singh (PW/13), husband and son of deceased respectively.

04. On 19.09.2006, memorandum of the accused/appellant was recorded vide Ex.P/11-C, based on which, nose pin was seized vide Ex.P/2-C from Vimal Karmakar (PW/2), goldsmith, which was pawed with him by the appellant and the same was identified to be that of deceased Shyambati Bai by her daughter Madhu (PW/12) in the test identification parade conducted by Harvansh Singh Miri (PW/5), Nayab Tahsildar. After filing of the charge sheet, the trial Court framed the charges against the accused/appellant under Sections 302, 201 and 397 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.

06. 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.

07. Learned counsel for the appellant submit:-

- That the accused/appellant has been convicted on the basis of weak type of circumstantial evidence.
- That even the evidence of last seen is very weak and witnesses Kruti Bai (PW/9) and Madhu (PW/12) to this effect are not reliable and moreover the time gap between last seen and recovery of body of deceased is not as such where it can be said that it is the accused/appellant who had committed murder of the deceased.

08. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction under Section 302 of IPC of the appellant is in accordance with law and there is no illegality or infirmity in the same. He further submits that offence under Section 392 IPC has also been duly proved by the prosecution where on the basis of memorandum of the accused/appellant, looted ornaments were seized from Vimal Karmakar (PW/2)-Goldsmith, and those ornaments have been identified by Madhu (PW/12), daughter of deceased Shyambati Bai.

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

10. Sharda Charan Sharma (PW/1) - Home Guard assisted in the investigation.

11. Vimal Karmakar (PW/2) is goldsmith to whom the looted ornaments were sold by the appellant and seizure thereof has been effected vide Ex.P/2-C. This witness has duly supported the prosecution case.

12. Dr. Rajkumar Singh (PW/3) is a witness who medically examined the accused/appellant and gave his report Ex.P/5-C 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.

13. Ashok Tiwari (PW/4) - Additional Tahsildar, conducted the test identification parade of the accused/appellant and has duly supported the prosecution case. This witness has stated that it has been informed by Madhu, daughter of deceased, that on 11.09.2006 the accused/appellant had come to her house and demanded some money saying that her mother has purchased bed and had asked that her mother would come on Friday at 8.00 pm.

14. Harvansh Singh Miri (PW/5), Nayab Tahsildar, conducted identification of looted ornament i.e. nose pin vide Ex.P/7 and has duly supported the prosecution case.

15. Jain Singh Mandavi (PW/6) is a Patwari who prepared spot map vide Ex.P/8.

16. Dhanesh Yadu (PW/7) is witness to inquest made under Ex.P/10.

17. Rajni (PW/8) has stated that in the month of September, 2006 she along with Rubi and sister of Tara Bai were taken by the accused/appellant on the assurance that he would provide some cooking work to them. She has further stated that while they were going with the appellant, on the way, he threatened them that he would commit rape with them, however, this witness somehow managed to escape from the clutches of the accused/appellant. This witness has also stated that her ornaments were looted by the accused/appellant, which she identified in the test identification parade.

18. Kruti Bai (PW/9), witness to last seen, has made almost similar statement to that of PW/8.

19. Kartikram Yadav (PW/10) is witness to memorandum of the accused/appellant (Ex.P/11-C) and seizure of looted ornaments (Ex.P/2) has duly supported the prosecution case as well as contents of memorandum of appellant to the extent that he (appellant) first tried to commit rape with the deceased Shyambati Bai but when he could not succeed in it due to erectile dysfunction, he committed her murder.

20. Balla Singh Dhruv (PW/11), husband of the deceased, has identified the body of deceased to be that of his wife Shyambati. This witness has duly supported the dead body

identification panchanama (Ex.P/13).

21. Madhu (PW/12), daughter of deceased and witness to last seen, has stated the accused/appellant had taken her mother deceased Shyambati Bai along with him on the assurance of providing some cooking work. In para 5, she has stated that Rubu and others of her area had also gone for cooking work with the appellant. She has further stated that on Friday at night, police personnel had come to her village and asked about identification of her mother (deceased) and on the same day she came to know about the death of her mother Shyambati Bai through her brother. This witness has also stated that her father PW/11 had identified the body of deceased to be that of her mother. In para 7, she has categorically stated that the test identification parade of accused/appellant and ornaments of deceased was conducted vide Ex.P/6 and P/7 respectively, wherein she has identified the appellant and the ornaments of her mother.

22. Santosh Singh (PW/13), son of the deceased, has identified the body of deceased vide Ex.P/13.

23. Gangaram Yadav (PW/14) - Constable helped in the investigation. Dhaniya Tandi (PW/15) has turned hostile. R.B.S. Parihar (PW/16), Retd. Police Inspector and Balram Prasad (PW/17), Head Constable, assisted in the investigation. Lekhram Verma (PW/18) - Sarpanch is witness to inquest Ex.P/10.

24. Dr. V.K. Dhruv (PW/19) conducted postmortem

examination of the deceased and gave his report (Ex.P/17) opining that the dead body of female was in moderate stage of decomposition, ligature marks were present around the neck transversely and cause of death could not be ascertained and it remained open.

25. Farir Khan (PW/20) is Photographer who has taken photographs of the deceased under Article 'A' and 'B'.

26. Rubi (PW/22) is one of the girls who was taken by the appellant along with Rajni and Kruti. She has stated that the accused/appellant had taken her on the assurance of providing some cooking work and on the way he threatened her for dire consequences. This witness has duly supported the test identification of the accused/appellant made under Ex.P/6.

27. L. Venkat Rao (PW/23) witness to memorandum of the accused/appellant (Ex.P/11-C) and seizure of ornaments (Ex.P/2-C) has duly supported the prosecution case.

28. Vishwas Chandrakar (PW/24) - Investigation Officer has duly supported the prosecution case.

29. Close scrutiny of the evidence available on record makes it clear that on or around 11.09.2006, the accused/appellant took the deceased Shyambati Bai along with him on the assurance of providing some cooking work to her, on the way he tried to commit rape with her and when he did not succeed in it due to erectile dysfunction, he looted her ornaments and committed her murder. The body of deceased was found in decomposed condition at village Siltara and the same was

identified by PW/11 and PW/13, husband and son of the deceased respectively to be that of deceased Shyambati Bai and they have duly supported the dead body identification panchanama vide Ex.P/13. That apart, witnesses to last seen PW/9 and PW/12 have also supported the case of the prosecution stating that the accused/appellant had come to their house and took them along with him on the assurance of providing cooking work. PW/12, daughter of deceased Shyambati, has categorically stated about the incident which finds support by test identification of accused/appellant conducted by Ashok Tiwari (PW/4)-Addl. Tahsildar vide Ex.P/6 and identification of looted ornaments vide Ex.P/7. All that apart, on the memorandum of the accused/appellant (Ex.P/11-C), looted ornaments were seized vide Ex.P/2-C and those ornaments were duly identified by PW/12 vide Ex.P/7 to be that of her mother deceased. The witnesses (PW/10 & PW/23) to memorandum of the accused/appellant (Ex.P/11-C) and consequent seizure of looted ornaments (Ex.P/2) have duly supported the contents of memorandum and seizure. Defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially to the fact that the accused/appellant has not committed murder of the deceased. The complicity of the accused/appellant in the commission of crime has been duly proved by the prosecution beyond reasonable doubt.

30. 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.

31. Appeal is thus dismissed.

Sd/-  
**(Pritinker Diwaker)**  
**JUDGE**

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