

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 861 of 2010

(Arising out of judgment/order dated in Case No. of the
learned.....)

- Shivram Dugga, S/o. Ankaluram Dugga, Aged 19 years, resident of village Alwarkala, P.S. Bhanupratappur, District Kanker (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through P.S. Bhanupratappur, District North Bastar, Kanker, CG

---- Respondent

For Appellant	: Shri Neeraj Pradhan, Advocate.
For Respondent/State	: Shri Avinash Mishra, P.L.

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

Judgment On Board

Per Pritinker Diwaker, J.

08/08/2017

This appeal arises out of judgment and order dated 29.10.2010 passed by the Sessions Judge Kanker, district North Bastar in S.T. No. 30/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/- plus default stipulation.

2. In the present case, name of the deceased is Rateshwari, daughter of Ramesh Salam (PW-1) aged about 18 years. It is alleged

that accused/appellant was having affair with the deceased however marriage of the deceased was settled with some one else and in the intervening night of 7-8.11.2009, accused/appellant committed murder of the deceased after strangulating and throwing her body near the brook. On 08.11.09, in the morning hours when father of the deceased Ramesh Salam (PW-1) was cleaning is teeth, he was informed by one villager Jagatram Dugga that body of the deceased was lying near the brook. Merg intimatin EX.P-1 was lodged by Ramesh Salam at 9.45 a.m. Inquest on the body of deceased was prepared and body was sent for postmortem examination which was conducted by Dr. Preeti Singh vide Ex.P-10 and according to her, cause of death was asphyxia and shock due to compression of neck and death was homicidal in nature. On 14.11.09, on the basis of merg enquiry, FIR Ex.P-14 was registered under Section 302 showing the accused/appellant to be suspect. Memorandum of the accused/appellant was recorded on 15.11.09 vide Ex.P-3 wherein the appellant has said to have confessed about the commission of murder of the deceased however no incriminating articles has been seized on the basis of memorandum of accused/appellant. After investigation charge sheet was filed against the accused/appellant under Section 302 and 201 IPC and accordingly charges were framed.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned,

has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) the accused/appellant has been convicted solely on the basis of circumstantial evidence and the nature of circumstantial evidence is not as such where, he can be convicted.

ii) the only piece of evidence against the appellant is the evidence of last seen by Jageshwar (PW-2), Sharmila (PW-6) and Kirti Bai (PW-9) however on the basis of this weak type of evidence, the appellant could not have been convicted.

iii) nothing incriminating has been seized from the possession of the appellant.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

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

8. Ramesh Salam (PW-1) father of the deceased and lodger of merged intimation has stated that upon coming to know from one Jagatram that the body of his daughter is lying near the canal under the mango tree, he along with some villagers had gone there and saw the body of deceased lying there. He has further stated that subsequently he came to know that on the previous night deceased was watching TV in the house of Jageshwar (PW-2). Jageshwar (PW-2) is a person at

whose house deceased was allegedly watching TV on the previous night. He has stated that while watching the TV deceased asked him to drop her at the house of accused/appellant and accordingly he and his wife had gone to the house of the appellant and dropped her. He has further stated that the appellant and the deceased were having affair and the accused/appellant used to say that he would marry the deceased. Ishwar (PW-4) and Ranjan (PW-5) are the witnesses to inquest Ex.P-6 and memorandum of accused/appellant Ex.P-3. Sharmila (PW-6) was also watching TV along with the deceased. She has stated that while she was watching TV in the house of Jageshwar, accused/appellant came there and had asked for *gudaku* (mixture of tobacco and jaggery) from the deceased and then he dragged her towards the backyard. She has stated that on the next morning she came to know that Rateshwari had died. Shantu Ram (PW-7) has not stated anything against the appellant and has been declared hostile. Dr. Preeti Singh (PW-8) had conducted postmortem examination on the body of deceased vide Ex.P-15 and according to her, cause of death was asphyxia and shock due to compression of neck and death was homicidal in nature. Keerti Bai (PW-09) wife of Jageshwar has stated that she had gone along with her husband Keerti Bai (PW-09) to drop the deceased at the house of accused/appellant as was asked by her. Salim Tigga (PW-11) is the investigating officer who has done the investigation.

9. Close scrutiny of the evidence makes it clear that but for the witnesses of the last seen Jageshwar (PW-2), Sharmila (PW-6) and Keerti Bai (PW-09) there is no other evidence connecting the accused/appellant with the murder of the deceased. The most important circumstance which the prosecution has relied upon against the

appellant is the deceased being last seen alive in the company of the appellant. It is settled proposition of law that evidence of last seen is a weak evidence and it will not be safe for us to uphold the conviction of the appellant only on the basis of evidence of last seen specially when there is no other corroborative evidence against the appellant. As per Jageshwar PW-2) on the request made by the deceased, he and his wife had gone to drop her at the house of appellant whereas as per Sharmila (PW-6) accused/appellant came to the house of Jageshwar where she along with the deceased was watching TV and dragged the deceased towards the backyard. Though the witnesses have not disclosed the exact time as to at what time they dropped the deceased at the house of the appellant. The prosecution has utterly failed to connect any other evidence against the appellant showing the involvement and complicity of the offence. Moreover, the memorandum of the appellant has been recorded on 15.11.2009, but nothing has been seized at his instance.

10. Taking the cumulative effect of the evidence we are of the view that the prosecution had failed to establish its case beyond the shadow of reasonable doubt. No doubt a very strong suspicion arises with respect to involvement of the accused/appellant in the commission of the offence for the reason that the deceased was having love affair with him and that on a day prior to her death, at night, she was seen alive in the company of the accused/appellant.

11. Hence, merely stating that last seen together of the deceased and accused/appellant cannot be the only ground for holding accused guilty, a connectivity must be established, the circumstance of "last seen together" does not by itself and necessarily lead to the inference

that it was the accused who committed the crime. It is settled position of law that suspicion however strong cannot be a substitute for proof. We therefore deem it expedient to award benefit of doubt to the accused/appellant. Accordingly we are awarding the benefit of doubt and acquitting him accordingly.

12. Appellant is reported to be in jail. He be set at liberty forthwith unless required to be in custody in connection with any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge