

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 659 of 2006**

- Dilip Bara S/o Michail Bara, aged about 24 years, Occupation : Agriculture, R/o village Bada, Karonja Hajari Toli, Thana & District Jashpur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Station House Officer, Jashpur, District Jashpur (C.G.)

---- Respondent

For Appellant	:	Shri Sanjay Agrawal, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma
Judgment on Board by Pritinker Diwaker, J

10/07/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 31.08.2006 passed by the Additional Sessions Judge, Jashpur, District Jashpur, in Sessions Trial No. 83/2006 convicting the accused/appellant under Sections 302, 201 IPC and sentencing him to undergo imprisonment for life plus fine of Rs.1000/- with default stipulation, imprisonment for three years respectively.

02. In the present case, name of the deceased is Rekha Bai aged about 18 years. It is said that marriage of Rekha was to take place with one Arjun Ram on 01.06.2006, however, she was having affair with the accused/appellant and, therefore, on 23.05.2006 she left her house, stayed in accused/appellant's house and therefrom she went missing. On 25.06.2006 body of the deceased was found in

hanging condition from mango tree. On 26.05.2006 at 1.00 pm, merg intimation Ex.P/1 was recorded at the instance of Sewa Ram (PW/1) - father of the deceased. On the same day, inquest on the body of deceased was prepared vide Ex.P/7 and body was sent for postmortem examination to District Hospital where Dr. Lalit Ekka (PW/9) conducted postmortem on the body of deceased and gave his report Ex.P/10 wherein he has stated that ligature mark was present on the neck but its nature being antimortem or postmortem could not be determined. However, as per query report (Ex.P/11), it could not be said with certainty whether the injuries were antimortem or postmortem. Further, it has not been opined that the death of deceased was homicidal or suicidal. After merg inquiry, on 02.06.2006, FIR (Ex.P/16) was registered under Sections 302 and 201 IPC against the accused/appellant and two acquitted persons namely Rupan Ram and Tew @ Amit Tirkey. After filing of charge sheet, the trial Court framed the charge against the accused persons under Sections 302, 201 read with Section 34 IPC.

03. In order to prove the complicity of the accused persons in the crime in question, the prosecution has examined 13 witnesses. Statements of accused persons under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

04. After hearing the parties the Court below while acquitting the accused persons namely Rupan Ram and Tew @ Amit Tirkey has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence, this appeal.

05. Pursuant to arrest warrant issued by this Court, today the accused/appellant has been produced before this Court, his bail bonds

are cancelled and he is directed to be sent back to jail.

06. 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.

(ii) That nature of circumstantial evidence proved against the accused/appellant is not sufficient to hold him guilty for any offence.

(iii) That the trial Court has erred in law in holding that the accused/appellant was having motive to commit murder of the deceased as she was having affair with the appellant and that earlier the report was lodged against all the accused persons.

(iv) That other piece of evidence which has been relied upon by the trial Court is the village meeting in which the accused/appellant has admitted the fact that on the previous night the deceased was in his company. Learned counsel submits that neither the date of meeting has been proved by the prosecution nor there is any conclusive evidence that deceased was in the company of the accused/appellant. He further submits that as per the statement of Sewa Ram (PW/1) -father of the deceased and Pyari Bai (PW/2), the deceased had slept in her house.

(v) Yet another piece of evidence which has been relied upon by the trial Court against the accused/appellant is the seizure of shawl made under Ex.P/5 allegedly belonging to father of the appellant. It has been argued that the said shawl was not of the appellant and, therefore, it has no connection with the crime in question. It has been further argued that even if the said shawl is considered to be that of the appellant, the same cannot be made basis for his

conviction because according to the prosecution itself, the appellant was having affair with the deceased and thus if any shawl of the appellant is taken by the deceased, that cannot be the evidence against the appellant for commission of murder of the deceased.

(vi) That Pyari Bai (PW/2) has admitted the fact that name of appellant has been implicated by Sewa Ram (PW/1) because he was having inimical relation with the appellant over the marriage of the deceased. It has been argued that similar defence has been taken by the accused/appellant in his 313 Cr.P.C. statement.

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

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

09. Sewa Ram (PW/1) is father of deceased at whose instance merg intimation Ex.P/1 was recorded. He has stated that about a month prior to the incident, the acquitted accused Rupan Ram and Tew @ Amit Tirkey had taken the deceased to Delhi and the said fact was confirmed by accused Rupan and his father. He has further stated that he lodged the report against the two in the police station and subsequently the deceased was found in the company of accused persons. He has also stated that from 23.05.2006 the deceased went missing, she was extensively searched and then he had suspicion in his mind that it is the accused persons who might have taken the deceased along with them. Accused/appellant Dilip and his father were called in the

meeting, however, on being questioned, the appellant expressed ignorance. This witness has also stated that on the second day he came to know that body of deceased was hanging from the mango tree. After seeing her, he reported the matter to police. In cross-examination, he admits that the marriage of deceased was fixed with one Arjun Ram. He has further stated that on 22.05.2006 the deceased slept along with her mother in her house and in the morning of 23.05.2006 deceased left the house.

10. Pyari Bai (PW/2) is the sister-in-law of deceased who has stated that on 22.05.2006 at night deceased slept along with her mother and from next morning she went missing. She has further stated that subsequently information was received from one person belonging to Ziling area and other family members that body of deceased was found hanging from the mango tree. This witness has not made any allegation against the accused/appellant and has stated that on account of animosity and suspicion Sewa Ram (PW/1) had taken the name of accused persons.

11. Budhwa Ram (PW/3) has stated that shawl, which was seized vide Ex.P/5, was purchased by father of the accused/appellant. Keshav Ram Bhagat (PW/4) is the witness to village meeting who has stated that the accused/appellant had admitted the fact that in the night the deceased was with him. Jeram Tirkey (PW/7) is witness to inquest Ex.P/7 and village meeting. Dr. Lalit Ekka (PW/9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P/10 noticing following injuries/symptoms:-

- (i) Eye ball absent, massive foul smell coming, blisters all over the body, tongue clinched between the teeth. Body was in moderate stage. Neck was wrapped with printed while blue shawl. Knot was

below left ear.

- (ii) Ligature mark of 4 cm wide was present all around the neck.
- (iii) Cartilage intact compressed with trachea. Uterus normal in size and empty. Both the heart chambers were full of blood.

The Doctor has stated that the ligature mark was present on neck but whether it was antimortem or postmortem in nature, could not be determined and circumstantial evidence should be taken in to consideration to decide the case. On query being made by the police, this witness has reiterated the same thing vide Ex.P11. In the cross- examination this witness has stated that he has not given any opinion regarding nature of death of deceased whether it was homicidal or suicidal.

12. Bonifas Tirkey (PW/10) is a witness to inquest Ex.P/7. He has stated that the body of deceased was hanging with shawl, which was of the accused/appellant. Pilwan Ram Bhagat (PW/12) is the Investigating Officer who has supported the prosecution case. Baiju (PW/13) is also witness to panchayat meeting.

13. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence against the accused/appellant showing his involvement in the commission of offence. As per PW/1, about a month prior to the incident, the accused persons namely Rupan and Tew abducted the deceased and had taken her to Delhi along with them. In cross-examination, he has stated that the marriage of deceased was fixed with one Arjun Ram. This witness has also stated that on 23.05.2006 his daughter went missing and as he had suspicion in his mind, he made allegation against the accused/appellant. Thus, merely on the basis of some allegations made by the PW/1 - father of deceased, the accused/appellant has

been implicated in the present case. Further, according to the prosecution, on 22.05.2006 the deceased was in the company of the accused/appellant and this fact was admitted by him in the village meeting, however, as per the statement of PW/1 and PW/2, on 22.05.2006 at night the deceased slept along with her mother in her house. Thus, it cannot be said that prior to her death the deceased was in the company of the accused/appellant. Even assuming this to be correct that deceased was in the company of the accused/appellant, but merely on that basis the accused/appellant cannot be held guilty for commission of murder of the deceased. The another piece of evidence in this case is seizure of shawl made under Ex.P/5. Bare perusal of the evidence of prosecution witnesses goes to show that even they (prosecution witnesses) are not sure as to whether shawl seized from the body of deceased was of the accused/appellant or his father. Here also even if the said shawl is considered to be that of appellant or his father, the prosecution has utterly failed to connect the said shawl with the commission of offence. The doctor conducting postmortem examination has nowhere stated that the death of deceased was homicidal or suicidal in nature. According to autopsy surgeon, ligature mark was present on neck but it could not be determined whether it was antimortem or postmortem in nature. However, at the same, the autopsy surgeon has opined that circumstantial evidence should be taken into consideration to decide the case. Thus, in this case the prosecution has not been able to prove that ligature mark found on the neck of deceased was antimortem or postmortem in nature.

14. Likewise, there is nothing on record to show that after the death of the deceased the accused/appellant did anything to cause

disappearance of the evidence of the crime and that way his conviction under Section 201 of the IPC is also not sustainable in the eye of law.

15. Thus, considering the nature and quality of evidence adduced by the prosecution, we are of the opinion that the prosecution has utterly failed to prove involvement of accused/appellant in the crime in question beyond reasonable doubt and he is definitely entitled to be acquitted of the charges by extending him benefit of doubt.

16. For the foregoing reasons, the appeal is allowed. Conviction and sentence of the appellant under Sections 302 and 201 IPC are hereby set aside and he is acquitted of those charges by extending him benefit of doubt. As today after cancellation of the bail bonds of the accused/appellant he has been sent back to jail, he be released forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge