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HIGH COURT OF CHHATTISGARH, BILASPUR

(Arising out of the judgment dated 31.10.2011 passed by the Second Additional Sessions Judge, Ambikapur, District Surguja in ST No.246/2010)

CRA No. 1003 of 2011

- Smt. Thunki Bai W/o Late Sukhdeo Uraon, aged about 47 years, R/o Village Sewari, P.S. Rajpur, Distt.-Surguja (CG)

---- Petitioner

Versus

- State Of Chhattisgarh, Through PS Rajpur, District Surguja (CG)

---- Respondent

CRA No. 408 of 2012

1. Sahdev Bhagat S/o Biro Bhagat, aged about 40 years, R/o Village Sewari, Police Station Rajpur, District Surguja (CG)
2. Smt. Thunki Bai W/o Late Sukhdev Oran, aged about 47 years (Deleted as per the Court order)

---- Petitioner

Versus

- State Of Chhattisgarh Through - P.S. Rajpur , Distt. Surguja C.G.

---- Respondent

For Respective Appellants

Mr. DN Prajapati and Mr. I Lakhra,
Advocates

For Respondent /State

Mr. Anil Pillai, Dy. AG

**DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Order On Board By
Prashant Kumar Mishra

18/7/2018

1. Heard.
2. The appellants would challenge their conviction under Section 302/34 of IPC for committing murder of deceased Sukhdev Uraon during the period from 4:00 p.m. of 5.4.2010 to 6:00 am of 6.4.2010.
3. Deceased Sukhdev Uraon was the husband of appellant Smt. Thunki Bai. The deceased was suspecting that his wife appellant Smt. Thunki Bai has illicit relations with the other appellant Sahdev Bhagat and for this reason, deceased Sukhdev and appellant Sahdev had an altercation about 20-25 days back prior to the date of the incident. On the date of the incident, at about 5:00 pm, appellant Thunki Bai and deceased Sukhdev had gone towards their tomato field. However, the deceased did not return as he was supposed to guard the agricultural field during the night hours. On the next morning, the dead body of deceased Sukhdev was found by his son Ramesh (PW-3) in the agricultural field of one Japan Uraon. Ramesh lodged merger intimation-Ex.P/2 at 10:30 am, after which, the dead body was sent for autopsy, which was conducted by PW-2 Dr. Rajesh Bhajgawali, who opined vide his report-Ex.P/1 that the cause of death was cardio respiratory arrest due to seminal loss; nature of death seemed homicidal and; duration of death was 12-24 hours. During investigation, the investigating officer recorded

the case diary statements of the witnesses where-from it was gathered that appellant Smt. Thunki Bai has illicit relations with appellant Sahdev, therefore, both of them have shared common intention to eliminate the deceased.

4. The prosecution examined PW-1 Shanti, PW-2 Dr. Rajesh Bhajgawali, PW-3 Ramesh Kumar Baig, PW-4 Amarsai, PW-5 Vishnath, PW-6 Tedu, PW-7 Krishna, PW-8 Sushil Yadav, PW-9 Krishna Pandey, PW-10 Umesh Kumar Sahu & PW-11 Umesh Kumar Yadav. Thereafter, the trial Court has convicted both the appellants mainly on the evidence that appellant Thunki Bai was last seen with deceased Sukhdev at about 5:30 p.m. on 5.4.2010; there was motive for both the appellants to eliminate the deceased as he was objecting to their illicit relations; appellant Sahdev gave memorandum statement- Ex.P/13, pursuant to which, his *lungi* was recovered vide Ex.P/14 and the said *lungi* was used to strangle the deceased.
5. Assailing the conviction, Mr. DN Prajapati, learned counsel for appellant Smt. Thunki Bai and Mr. I Lakhra, learned counsel for appellant Sahdev Bhagat, would strenuously urge that there is absolutely no evidence against the appellants to connect them with the said crime, therefore, they deserve to be acquitted.
6. Mr. Anil Pillai, learned Dy. AG for the State, would submit that there being evidence of last seen together, coupled with the motive, the prosecution has successfully established the case against the present appellants and no interference is called for with the impugned judgment.

7. Without referring to the entire details of the evidence, we would refer to the circumstances, which have been pointed out by the learned trial Court resting the finding of guilt against the appellants.
8. PW-1 Shanti had seen appellant Thunki Bai and deceased Sukhdev together in the evening of 5.4.2010 and at that time, Sukhdev had requested her husband Amarsai (PW-2) to start the tube well for irrigating the tomato field. PW-4 Amarsai has also stated that he had seen appellant Thunki Bai and deceased Sukhdev together in the tomato field. PW-6 Tedu has been declared hostile; however, in his cross-examination, he admits that Thunki Bai was sitting on the embankment of the field of Japan Uraon, but, at the same time, he denies that appellant Sahdev was also seen at that place at the same time.
9. From the statements of PW-1 Shanti and PW-4 Amarsai, it appears that appellant Thunki Bai and deceased Sukhdev were together in the tomato field but significantly, PW-1 Shanti has also stated that at that point of time, their entire family was reaping the wheat crops, meaning thereby, that they were also present on the agricultural field of appellants Thunki Bai and Sukhdev. It is also worth notice that the dead body was not found on the tomato field where Thunki Bai and Sahdev were allegedly seen together, but it was found on the agricultural field of Japan Uraon. The distance between the tomato field of the appellants and the field of Japan Uraon is about 300 meters as shown in the crime detail form Ex.P/4. The other

other circumstance found proved by the trial Court against appellant Sahdev is that at his instance, his *lungi*, which was used to strangle the deceased, was recovered vide Ex.P/14. However, there is no evidence that the *lungi* was blood stained nor there is any evidence as to the origin of blood, if any such blood stains were found and moreover, PW-2 Dr. Rajesh Bhajgawali has not found any ligature or any other corresponding injury, which may have been caused for strangulating the deceased, neither the finding in the postmortem report suggests that the death has occurred on account of strangulation. Thus, even if seizure of *lungi* has been found proved by reading the evidence of PW-8 Sushil Yadav, the same is of no assistance to the prosecution.

10. If the evidence of last seen together and seizure of *lungi* do not render any assistance to the prosecution, motive alone, however strong, may not be sufficient to nail the accused persons to hold them guilty for committing the offence.

11. It is the settled law that suspicion howsoever strong cannot take place of proof. **(Please see Sujit Biswas vs. State of Assam, AIR 2013 SC 3817).**

12. Therefore, we are of the considered view that the prosecution having failed to prove the circumstances of last seen together and seizure of *lungi* against the appellants Thunki Bai and Sahdev respectively, the judgment of conviction and sentence deserves to be set-aside.

13. For the foregoing, both the appeals are allowed. The impugned judgment of conviction and sentence is set-aside and the appellants are acquitted of the aforementioned charge. The appellants are on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the higher Court as and when directed.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Vimla Singh Kapoor)

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