

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 533 of 2010**

- Alam Anshari

---- Petitioner**Versus**

- State Of Chhattisgarh

---- Respondent

For Appellant
For Respondent-State

None
Shri R. K. Mishra, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****31/01/2018**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 15.06.2010 passed by the Special Judge (Atrocity), Korba (Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act, 1989) in Special Sessions Trial No.2/2008, whereby the said Court convicted the appellant under Sections 302 and 201 of IPC and sentenced him to undergo imprisonment for life and fine of Rs.1,000/- and RI for 2 years and fine of Rs.1,000/- with default stipulation, respectively.

2. In the present case, name of the deceased is Shyam Singh @ Neta Dhanuk. As per the prosecution case, the deceased was originally resident of Bhind and came to Bilaspur for his livelihood. One Kiran Sahu @ Jarhi was working as Labourer with the deceased. In the meanwhile, the deceased came into contact with the accused Alam Anshari and after that Kiran Sahu was residing with the accused appellant. The deceased and accused both were residing at Imlibhatha. On 27.06.2007, the deceased was last seen with the accused appellant and thereafter the dead body of the deceased was found on 01.07.2007 near electric tower at Village Mudapar. On information, the Police came into action and certain articles were seized from the spot. Upon enquiry, FIR was registered and the matter was investigated. Two doctors have examined the dead body of the deceased. After completion of the investigation, the charge sheet was filed. The appellant did not plead guilty and the trial was conducted. After completion of the trial, the trial Court convicted the appellant as mentioned above.
3. The appeal is preferred on the grounds as mentioned below:-
 - I. The statements of the prosecution witnesses are contradictory and the chain of circumstances is not complete looking to the evidence adduced by the prosecution.
 - II. So called last seen theory is also not established because the deceased and the appellant were living together.

III. The prosecution has totally failed to prove the ingredients of Section 302 of IPC.

4. Learned State counsel submits that as per the evidence, the theory of last seen is established and as per the medical report, death is caused by strangulation, therefore, the finding of the trial Court is not liable to be interfered with.
5. Dr. A. N. Kanwar (PW-5) conducted autopsy of the deceased on 01.07.2007 at Primary Health Centre, Hardi Bazar. After autopsy, he opined that no definite opinion can be recorded regarding death of the deceased, though he opined that death was caused prior to 2-7 days of the autopsy. He further opined that it may be a case of strangulation. Dr. Rajkumar Singh (PW-9) is Forensic Expert and as per the statement of this witness, there was incise wound on the neck of the deceased by some hard and sharp object, but due to decomposition of the body, it is not established as to whether injuries found are antemortem or postmortem. From the evidence of both the experts, it is not established formally that the deceased died homicidal death.
6. Brajesh (PW-4), Chhoti Lali (PW-10), Kiran Sahu @ Jarhi (PW-12) are the witnesses of last seen, rest of the witnesses have assisted during the investigation. As per version of Brajesh (PW-4), he has seen the appellant, Raju and one other person and after 15 days, body of one person was found, who is known as Neta. As per version of Chhoti Lali (PW-10), the deceased was her husband and he came into contact with one contractor namely Jaivir and they were working at Bilaspur. She further

deposed that the deceased was living in the house of Kiran Sahu @ Jarhi. She further deposed that on 23.06.2007, her husband informed her that he is living with Alam Anshari and soon he will return to his native place. She further deposed that after 8 days of these information, she received information regarding death of her husband. Kiran Sahu @ Jarhi (PW-12) deposed that the deceased was residing with the accused appellant at Imlibhatha and on 26.06.2007, the deceased informed her that he is going outside for some urgent work and he left the place saying that the appellant will accompany him. From the statement of these witnesses, it is established that the deceased was alive on 27.06.2007 and as per version of Lallan Singh, Assistant Sub Inspector (PW-13), the body of the deceased was found on 01.07.2007 near electric tower at Village Mudapar. When the deceased and the appellant were residing together and started from the place of their residence, it is not a case of last seen because when they were living together, it is natural that they will start from the same place. If for the sake of argument, it is a case of last seen, even then the body is found after 4 days after the departure of the deceased. The theory of death comes into play when there is very small gap between the departure and time of death. In the present case, the exact time of death is not established, therefore, in the facts and circumstances of the case, it is not a case of last seen to connect the appellant with the crime. There is no eye witness account to the offence. The case of the prosecution is based on the circumstantial evidence and in case of circumstantial evidence, each circumstance would

be proved beyond reasonable doubt and all linking should form a complete chain of commission of crime. But in the present case, no single link is established and, therefore, the evidence is lacking to complete the chain.

7. The finding arrived at by the trial Court is not sustainable in the eyes of law and the same is liable to be reversed. Accordingly, the judgment of conviction/sentence is set aside. The accused appellant is acquitted of the charges framed against him as mentioned above. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the Higher Court as and when required.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Ram Prasanna Sharma