

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 214 of 2010****Judgment reserved on 17-1-2018****Judgment delivered on 24-1-2018**

. The State of Chhattisgarh.

----Appellant.

Versus

- Dayanand Dubey S/o Kamashankar Dubey R/o Purana Sarkanda, Bilaspur

---- Respondent

For Appellant/State	Mr. Satish Gupta, Govt. Advocate
For respondent	Mr. Sushil Dubey, Advocate.

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

CAV Judgment**Per Ram Prasaanna Sharma, J**

1. This acquittal appeal is preferred against the judgment of acquittal dated 7-1-1999 passed by the Sessions Judge, Bilaspur (for short, "the trial Court") in Sessions Trial No. 382 of 1997 wherein the trial Court acquitted the respondent for commission of offence under Sections 302 and 201 read with Section 34 of the IPC.
2. In the present case, name of the deceased is Ms. Sangeeta Shukla, who died on 22-6-1997 at about 5.00 p.m., at Sarkanda, Bilaspur. It is

alleged that respondent asked the deceased for sexual favour and when she resisted, respondent strangled her by her Dopatta (Tippet) and done to death. After commission of murder of said Sangeeta Shukla, he threw her dead body into well which is situated at his kitchen garden. The dead body of the deceased was seen by Ved Kumari who was maid-servant in the house of the respondent. Elder brother of respondent namely Vidyanand Dubey (PW/2) went to Police Station and informed about the dead body of the deceased, upon which merg intimation Ex.P/2 was recorded. Dead body was sent for autopsy where Dr. R.K. Verma, (PW/14) conducted autopsy and after autopsy he opined that cause of death is strangulation. Offence under Sections 302 and 201 read with Section 34 of the IPC was registered against the respondent and his servant namely Ramdayal and the matter was investigated.

3. After completion of investigation charge-sheet was filed against the respondent. Respondent did not plead guilty, therefore, trial was conducted. After examination of prosecution witnesses, statement of respondent under Section 313 of Cr.P.C., was recorded and after hearing both the parties, the trial Court acquitted the respondent as mentioned above.

4. Learned State counsel submits as under:

- i) Recovery of the dead body is from Well of kitchen garden of the respondent and for that he has not offered any explanation, therefore, the view taken by the trial Court is not in accordance with law.
- ii) Articles seized at the instance of the respondent are incriminating circumstances against him, but the trial

Court disbelieved the same in arbitrary manner.

- lii) Minor contradictions are bound to occur, but the trial Court has not ignored the same against the settled principles of law.

5. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial Court is strictly in accordance with law and based on admissible evidence and same is not liable to be interfered with invoking jurisdiction of the appeal.
6. We have heard learned counsel for the parties and given thoughtful consideration to the record of the trial Court.
7. To substantiate the charge, prosecution has examined as many as 14 witnesses.
8. PW/1 Kalindri Shukla, is mother of the deceased but from her version she has not seen the respondent near his house or in the company of the deceased. PW/4 Sunita Tiwari, PW/5 Mahesh Chandra Shukla, and PW/6 Ramswaroop Shukla deposed in same line and it is not established from the statement of any of the witnesses that deceased was seen in the company of the respondent. Case of the prosecution is based on the facts that body of the deceased was found in the well of kitchen garden of the respondent and seizure of one hand-kerchief, Bindi (sticker) and clip was seized from the respondent, but no identification was conducted that the same articles were in possession of the deceased just before the incident and no one identified the same as articles of the deceased. Again some portion of wall of the house of the respondent was extracted and same was sent

for chemical examination, but it is not established that any human blood is found in the same, therefore, the trial Court was not in a position to connect the respondent with the commission of the instant crime. Again one wrist-watch was seized from the said well, but there is nothing on record to connect the wrist-watch with the commission of offence. Evidence adduced by the prosecution was shaky in nature and circumstances pointing to the guilt of the respondent were not established. Body was not found in the house and same is found in a Well which is situated at open place and there are other members residing in the house of respondent, therefore, it cannot be inferred that the respondent is author of the crime.

9. It can be a case of may be true, but there is a long mental distance between “may be true” and “must be true” and the same divides conjectures from sure conclusions. Case of “may be true” is worthless for the prosecution.
10. When the evidence was not sufficient to bring home the guilt, the finding arrived at by the trial Court is not liable to be interfered. Considering all the facts and circumstances of the case, we are of the opinion that the respondent deserved to be acquitted.
11. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)