

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 853 of 2011

Vibhishan @ Bhabhishan @ Khoshu,

Versus

State Of Chhattisgarh

Judgment for consideration

**JUDGE
17.09.2018**

Hon'ble Shri Justice Pritinker Diwaker

**JUDGE
24.09.2018**

Post for pronouncement of the judgment on 25.09.2018

**JUDGE
25.09.2018**

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 27.08.2018

Judgment delivered on : 25.09.2018

CRA No. 853 of 2011

- Vibhishan @ Bhabhishan @ Khoshu, S/o. Sohan Lal Bhinzwar, Aged about 23 years, R/o. Ghatadwari, Police Chowki Urga, Police Station Kotwali, District Korba (CG)

---- Appellant

Versus

- State Of Chhattisgarh through the District Magistrate, Korba, District Korba (CG)

---- Respondent

For Appellant	: Smt. Indira Tripathi, Advocate
For Respondent/State	: Shri Neeraj Mehta, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Per Rajani Dubey,J

C A V Judgment

25/09/2018

This appeal arises out of judgment and order dated 18.07.2011 passed by the Sessions Judge, Korba in S.T. No. 118/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- plus default stipulation.

As per prosecution case, on 09.03.2010, complainant Rathram lodged a report at Police Outpost Urga that his daughter namely Usha Kumari is missing since 3.3.2010. However, after five days of the

report, his daughter along with the accused/appellant returned to the village after getting married. Further case of the prosecution is that deceased Usha Kumari went to her matrimonial house along with her husband (accused/appellant). It is stated that accused/appellant used to consume liquor and thereafter beat the deceased. It is alleged that on the date of incident i.e. 11.07.2010 at about 6.30 a.m. one Jairam Bhinjwar came to the house of complainant and informed him that his daughter Usha Kumari is lying dead near the field of one Guha Ram Bhinjwar. Based on this information, FIR Ex.P-7 (unnumbered) was lodged by Rahram against the accused/appellant under Section 302 IPC. Merg intimation Ex.P-14 was recorded on 12.07.2010 by Rath Ram father of the deceased. Inquest on the body of deceased was prepared vide Ex.P-10 and body was sent for postmortem examination vide Ex.P-17 which was conducted by Dr. Jyoti Sahu (PW-13) and according to her, cause of death was throttling (manual strangulation) leading to asphyxia and death was homicidal in nature. On receiving postmortem report, FIR (Ex.P-15) was registered on 12.07.2010 under Section 302 IPC against the accused/appellant. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. So as to prove the guilt of the accused/appellant, prosecution has examined 16 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which, he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, learned trial Court has convicted and sentenced the accused/appellant as mentioned in para-1. Hence the present appeal.

5. Counsel for the appellant submits that

i) the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence collected by the prosecution is very weak and the chain of circumstantial evidence is not complete.

ii) the prosecution has only established the fact that appellant married the deceased but that itself does not prove that the appellant has committed murder of the deceased.

iii) the conviction of the appellant is based on the evidence of last seen by Jai Ram Bhinjwar (PW-4) who had seen the appellant and the deceased just one day prior to the incident but the same is not sufficient to connect the appellant with the commission of the offence.

iv) the trial court has convicted the appellant on the ground that he has failed to explain the incriminating and also failed to state as to who committed the murder of the deceased. Hence, the finding in para 20 of the judgment is against the evidence available on record because the prosecution has failed to prove motive behind the murder.

v) The evidence of last seen by Jai Kumar Bhinjwar (PW-4) is not corroborated by the evidence of Kaushal (PW-15) who is the witness before whom the accused/appellant has made extra judicial confession so the conviction of the appellant cannot be sustained on that basis as well as on the confessional statement of appellant Ex.P-26. She submits that the prosecution has failed to prove its case beyond reasonable doubt and it is well settled principle of law that the benefit

of doubt goes in favour of the accused/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 strictly 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. Rathram (PW-1), Meghnath (PW-2), Manmohan Singh Bhinjwar (PW-3), Jai Karan (PW-4), Jai Ram (PW-5), Guha Ram (PW-6) and Kaushal (PW-15) are the witnesses to the death of deceased Usha Kumari. Meghnath (PW-2), Manmohan Singh Bhinjwar (PW-3), Jai Ram (PW-5), Guha Ram (PW-6) and Kaushal (PW-15) have supported the statement of Rath Ram (PW-1) that the deceased was having love affair with the appellant and they eloped and got married. He has stated that after getting married they returned to the village. Even the accused/appellant DW-1 had made similar statement. Jai Karan (PW-4) has stated that at about 12.30 noon, when he was going towards the pond after grazing his cattle, he saw the accused/appellant and the deceased coming from the village Gitari and on the next day Usha Kumari was found dead in the field. In para 3 of his evidence he has stated that he saw the deceased and accused coming to the village. In cross-examination he has not stated anything specific.

9. Close scrutiny of the evidence makes it clear that the only piece of evidence against the accused/appellant is the evidence of last seen by witness Jai Karan (PW-4). As per the statement of Jai Karan (PW-

4), at about 12.00 noon, he saw accused/appellant and the deceased together coming towards the village and on the next day, he saw deceased lying dead. In the case of evidence of last seen, the time gap is very important and unless the said evidence is conclusive, it is not safe for the Court to convict the accused/appellant on the basis of such evidence alone. Moreover, the witnesses have not clearly stated that they saw the accused/appellant and the deceased quarreling and thereafter on the next day her body was found lying in the field. Furthermore, The prosecution has failed to establish the guilt of the accused/appellant beyond reasonable doubt and therefore benefit of doubt has to be extended to him.

10. Consequently, the appeal is allowed. Impugned judgment convicting and sentencing the accused/appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. Accused/appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Rajani Dubey)
Judge