

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 2-4-2018

Judgment delivered on 15-5-2018

CRA No. 651 of 2010

- Jitendra Kumar Sahu S/o Dharam Lal Sahu R/o Balco, Korba (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Police Station Katghora, District Korba (CG).

---- Respondent

CRA No. 670 of 2010

1. Girish Thakur S/o Bodhan Singh Thakur, aged 25 years, r/o. Quarter No. 905, Sector No.4, Balco, District Korba (CG).
2. Bali Sarthi S/o Johit Ram Sathi r/o. Quarter No. 5f, CSEB Colony, Korba (CG).

---- Appellants.

Versus

- State of Chhattisgarh through the District Magistrate, Korba

---- Respondent

CRA No. 749 of 2010

- Narendra Kumar Lata S/o Puran Chandra Lata aged about 28 years, r/o. Rajgamar, PS and District Korba (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Station House Officer, Police Station Katghora, District Korba (CG).

---- Respondent

For Appellant in	:	Mr. Roshan Dubey, Advocate.
CRA No. 651 of 2010		
For Appellants in	:	Mr. Abhijeet Mishra, Advocate.
CRA No. 670 of 2010		
For appellant in	:	Mr. Pramod Kumar Verma, Sr. Advocate
with		
CRA No. 749 of 2010		Mr. Virendra Verma, Advocate.
For Respondent/State	:	Mr. Prasoon Bhaduri, Govt. Advocate.

**Coram: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

- 1) As these three appeals arise out of common judgment dated 18-8-2010 passed in Sessions Trial No. 51 of 2008, therefore, they were heard analogously and are being disposed of by this common judgment.
- 2) Challenge in all these three appeals is to the judgment of conviction and order of sentence dated 18-8-2010 passed by the 2nd Additional Sessions Judge, (FTC), Korba, Sessions Division Korba (CG), in Sessions Trial No. 51 of 2008, whereby the trial court has convicted all the four appellants in these three appeals for commission of offence punishable under Sections 302, 120-B and 201 of IPC, 1860 and sentenced them to undergo RI for life and fine of Rs100/-, RI for one year and fine of Rs.100/- and RI for one year and fine of Rs.100/- respectively with default stipulations for commission of murder of one Priyanka Sharma on 11-4-2008 at her parental house at village Molainbhata, Police Station Katghora between 11.00 pm of 10-4-2008 to 5.30 am of 11-4-2008 and for being part of criminal conspiracy of murder of Priyanka Sharma and for causing disappearance of

evidence of the said offence with intention of screening them from legal punishment.

3) In the present case, appellant Narendra Kumar Lata was married to deceased Priyanka Sharma on 23-6-2007. As per case of prosecution, deceased Priyanka Sharma and appellant Narendra Kumar Lata were staying together in the room of the parental house of Priyanka Sharma on 10-4-2008 at village Molainbhata and dead body of Priyanka Sharma was found in the said room where both were staying together and nature of death of the deceased is homicidal. Banti @ Ashish Sharma, who is brother of the deceased Priyanka Sharma lodged first information report in Police Station Katghora on 11-4-2008 against all the accused/appellants as per Ex.P/11. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and after completion of the investigation charge-sheet was filed before the Court of Judicial Magistrate First Class, Katghora, who in turn committed the case to the Sessions Court, Korba (trial Court). The trial Court framed charges against the appellants under Sections as mentioned above, to which they did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statements of the appellants under Section 313 of the Cr.P.C., were recorded. After completion of trial, the trial Court considering the material available on

record, by the impugned judgment, convicted and sentenced the accused/appellants as mentioned above.

4) Learned counsels appearing for the accused/appellants would submit as under:

- i) The case of the prosecution is based on circumstantial evidence, but the circumstances taken cumulatively is not forming complete chain.
- ii) The trial Court erred in holding against the appellant Narendra Kumar Lata that he has not explained the reasons for his becoming unconscious constitutes a circumstance against him, but the same is not a circumstance in favour of the prosecution.
- iii) The trial Court erred in not giving due emphasis to the facts and circumstances including seizure of rod clearly indicating that the entry in the house was effected through house breaking by professional robbers with intention of committing robbery, therefore, involvement of the appellant Narendra Kumar Lata is clearly ruled out.

- iv) The seized articles were not sent for chemical examination, therefore, offence against the appellants is not established.
- v) One alleged gold chain and one gold ring are said to be seized from the appellant Jitendra Kumar, but no identification is done for the said articles, therefore, seizure does not connect the appellant Jitendra Kumar for commission of offence.
- vi) Attesting witnesses have not supported the factum of seizure of knife from appellant Jitendra Kumar and the same is not connecting piece of evidence.
- vii) So-called seizure from appellants Girish Thakur and Bali Sarathi is not connecting piece of evidence and the same is not substantiated by seizure witnesses. Seized articles were not identified, therefore, there is nothing on record to connect these two appellants with the crime in question.

viii) There is no iota of evidence to establish any agreement amongst the appellants for commission of offence and there is nothing on record to show that any of the appellants caused disappearance of the evidence of commission of offence.

5) As against the aforesaid submissions, learned State counsel, supporting the impugned judgment, would submit that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity warranting any interference by this Court.

6) We have heard counsel for the parties and perused the material on record.

7) In order to prove the complicity of the accused/appellants in commission of crime in question, the prosecution has examined 18 witnesses before the trial Court. To nullify the charge, defence side has examined three defence witnesses.

8) PW/8 Dr B.R. Ratre conducted post-mortem of deceased Priyanka Sharma on 11-4-2008 brought by Constable No. 361, Uma Shankar Singh of Police Station Katghora and noticed the following injuries.

i) Incised wound at anterolateral part of left

side of neck in the size of 3x2x1 ½ inch, from mid-line.

- ii) Incised wounds superficial below left side of chin transversely in the size of 7x1/2x1/2 cm, 7x1/2x1/2 cm parallel upto post part of left ear.
- iii) Multiple abrasion 12 in number varying from 1 ½ to 2 inch superficial of left mandible serrated.
- iv) Linear serrated abrasion 12 in numbers at right side of neck 1 to 5 ½ inches variable vertically and obliquely 2 inch size.
- v) Linear serrated abrasion 2 to 5 inches variable from right medial to left lateral side of neck in the size of 2 inches.
- vi) Lacerated wound in the size of 1 ½ x 1/2x ½ inches at lower part of neck at left side below clavicle.

He opined that cause of death is shock due to extensive haemorrhage and nature of death is homicidal. He further opined that death is done since 6 to 18 hours of the examination. Version of this witness is unshaken during cross examination and there is no other expert opinion contrary to the opinion of the

said expert, therefore, it is held that death of deceased Priyanka Sharma is homicidal.

9) PW/1 Krishna Goyal deposed that he purchased one golden chain and one pair of golden tops from one Dorelal Sahu on 10-4-2008 having weight of 32 grams and 560 milligrams for Rs.33,700/-. PW/14 Dorelal Sahu deposed that the said golden chain and golden tops were given to him by appellant Narendra Kumar Lata for selling. PW/3 C.L. Markande is Tahsildar who conducted inquest of the body of the deceased. PW/4 Ramsnahi is Patwari who prepared spot map. Constable Umashankar Singh (PW/6) is a person who took the dead body of the deceased for post-mortem. Constable Chhabilal (PW/7) is a person who assisted during post-mortem. PW/10 Sayyad Iqbal Ali is the tailor who stitched one shirt, but he is not sure for whom he stitched the shirt.

10) PW/12 Sheikh Habib is having a locksmith to whom Police authorities of Khatghora called and showed him one lock and after watching the lock he opined that lock is opened by any screwdriver and it was not broken or hammered. PW/13 Bajrang Lal Soni is a witness of seizure but he has not supported the case of prosecution. PW/15 Jyoti Prakash Minj and PW/16 Arpan Singh are also witnesses of seizure but they have not supported the case of prosecution. PW/17 Kailash Sharma deposed that one knife was seized by the Police after search. He further deposed that one shirt having bloodstains was seized from one of the accused and one motor-cycle was also seized

from one of the accused. He further deposed that one mobile phone was also found and black purse and clothes from Narendra Kumar Lata were seized. PW/18 Lalji Shukla is a Police Sub-Inspector who investigated the case. As per statement of this witness he seized Rs.33,700/- (all Rupees 100 denomination) from Dorelal Sahu as per Ex P/17 and there is one knife seized from appellant Girish Thakur as per Ex.P/18, Two silver anklets were seized from appellant Girish Thakur as per Ex.P/19. Two shirts were seized from appellant Bali Sarathi as per Ex.P/20. One pillow was seized from appellant Narendra Kumar Lata as per Ex.P/21 One golden chain, one golden ring and one knife were seized from appellant Jitendra Kumar Sahu as per Ex.P/27 and seized one iron rod, one knife, handkerchief, bed-sheet, baniyan, mattress, bangles from the spot.

11) PW/2 Dhiraj Shrma, PW/9 Mohan Sharma, PW/11 Banti @ Ashish are the persons who were present in the house in question on 10-4-2008. As per version of Dhiraj Sharma (PW/2), deceased Priyanka Sharma and her husband, appellant Narendra Kuamr Lata both were sleeping in the bed-room inside the house. He deposed that he was made to wake up at 5 -6 am and saw the dead body of the deceased Priyanka Sharma in the room and appellant Narendra Kumar Lata was also present in the said room. Version of this witness is supported by PW/9 Mohan Sharma and PW/11 Banti @ Ashish.

12) It is proved beyond doubt by testimony of these three witnesses that the appellant Narendra Kumar Lata slept with deceased in the

night inside the room of the house and both remained in the same room till morning where the dead body of the deceased is found in the morning and death is homicidal in nature.

13) In defence, appellant Narendra Kumar Lata examined (DW/1) Dr. M.S. Pal, DW/2 Dr. P.S. Sisodiya and DW/3 Dr.H.D. Dahire. Dr. M.S. Pal (DW/1) deposed regarding treatment of appellant Narendra Kumar Lata on next day of the incident i.e., 11-4-2008 at 11.00 a.m. DW/2 Dr.P.S. Sisodiya also examined the said appellant on next day of the incident. DW/3 Dr. H.D. Dahire deposed that on 11-4-2008 appellant Narendra Kumar Lata was brought unconscious and in cross examination he deposed that he did not find any external injury on the body of the appellant Narendra Kumar Lata.

14) Learned counsel appearing for the appellant Narendra Kumar Lata would submit that the appellant was unconscious and therefore, he has no role to play in commission of offence. He placed reliance on the decision of Hon'ble the Supreme Court in the matter of **Dhal Singh Dewangan vs. State of CG, reported in AIR 2016 SC 4745** in which it has been held that explanation given by the accused regarding his unconsciousness cannot be called "absence of explanation or "false explanation".

15) Now the point for consideration is whether explanation offered by the appellant Narendra Kumar Lata is acceptable in the facts and circumstances of the case.

16) Examination of appellant Narendra Kumar Lata under Section 313 of Cr.P.C., is done twice; first to explain the circumstances brought by prosecution witnesses in which he plainly denied all the circumstances and his second examination is done after statement of defence witnesses. In second examination he explained in the answer of question No. 23 that when he went to bath room, someone assaulted him on neck and thereafter he felt unconscious and reached to the stage of coma. Looking to the evidence adduced by the prosecution, the explanation is false. As per version of PW/2 Dhiraj Shurma, PW/9 Mohan Sharma, PW/11 Banti @ Ashish, they have found the appellant Narendra Kumar Lata in the same room where he was sleeping with deceased in the night. If he felt unconscious in the bath room, he would have been found in bath room but he was found in the same room of Priyanka Sharma in the morning. Again from the statement of Dr. H.D. Dahire (DW/3), he did not find any external injury on the body of the appellant Narendra Kumar Lata.

17) It is clear from the evidence that the offence is committed in the same room where appellant Narendra Kumar Lata was present through out. His explanation regarding assault in bath room is false explanation and it would be an additional link in the chain of circumstances. Appellant Narendra Kumar Lata was under obligation to offer cogent explanation as to how the crime was committed but he failed to do so.

18) Learned counsel for the appellant Narendra Kumar Lata would submit that no motive is proved, therefore, offence is not made out.

19) Hon'ble the Supreme Court In the matter of **Ranganayaki vs. State by Inspector of Police, reported in 2004 AIR SCW 6613**, has held as under:

“Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Though, it is a sound presumption that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailants. In some cases it may be difficult to establish motive through direct evidence, while in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes it may appear that

the motive established is a weak one. That by itself is insufficient to lead to an inference adverse to the prosecution. Absence of motive, even if it is accepted, does not come to aid of the accused. These principles have to be tested on the background of factual scenario”.

20) In the present case, offence is committed in secrecy inside the room where no one is present except appellant Narendra Kumar Lata and the deceased Priyanka Sharma, therefore, it is not possible for the prosecution to collect any kind of evidence regarding motive of the claimant. True it is that even in case of commission of offence in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of [Section 106](#) of the Evidence Act there will be a corresponding burden on the inmates of the house.

21) As per explanation of the appellant Narendra Kumar Lata and looking to the series of facts that the injuries sustained by the deceased cannot be committed by self and the appellant Narendra Kumar Lata and deceased were in the same room where dead body of the deceased is found. It is clearly established that it is the appellant Narendra Kumar Lata who eliminated his wife Priiyanka

Sharma. Conviction of appellant Narendra Kumar Lata under Section 302 of IPC for committing murder of his wife Priyanka Sharma is not liable to be interfered with.

22) So far as other appellants Jitendra Kumar Sahu, Girish Thakur and Bali Sarathi are concerned, it is not proved that the articles seized from any of these three appellants is connecting piece of evidence with the crime in question. There is no identification of any seized article and no human blood was found in the articles sent for chemical examination. There is no other direct or circumstantial evidence against these three appellants regarding their entrance in the house in question for removing anything from the place of incident. When seized articles are not incriminating circumstances, they cannot be held liable for the crime in question. Again, there is no evidence to establish regarding agreement for commission of the said crime between the appellant Narendra Kumar Lata and these three appellants. It is also not established that anyone has caused disappearance of any article of the offence or evidence of the offence under Section 120-B of IPC and offence under Section 201 of IPC is not established against any of the appellants. Offence under section 302 of IPC is not established against these three appellants.

23) In the result, Criminal Appeal No. 651 of 2010 filed by Jitendra Kumar Sahu and Criminal appeal No. 670 of 2010 filed by Girish Thakur and Bali Sarathi are allowed and their conviction and sentence under Section 302, 120-B and 201 of IPC is set aside and they are

acquitted of the said charges. It is reported that the three appellants are on bail. Their bail bonds shall continue for a further period of six months in view of Section 437-A of Cr.P.C.

24) Criminal Appeal No. 749 of 2010 filed by appellant Narendra Kumar Lata is dismissed for conviction and sentence under Section 302 of IPC. Conviction imposed by the trial court upon him under Section 120-B and 201 of IPC is set aside while maintaining conviction under Section 302 of IPC. Fine amount shall remain intact.

25) The trial Court shall prepare supersession warrant against the appellant Narendra Kumar Lata and will issue warrant of arrest against him and after his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. Compliance of this order be submitted before this court on or before 16-7-2018.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)

Raju