

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 196 of 2012**

1. Narendra Kumar Yadav, son of Shobhnath Ram Yadav, aged about 30 years, Occupation Agricultural, R/o village Phoordih, P.S. Bagicha, District Jashpur (C.G.)
2. Tankeshwar Ram Yadav, son of Jageshwar Yadav, aged about 50 years, Occupation Agricultural, R/o village Phoordih, P.S. Bagicha, District Jashpur (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : P.S. Bagicha, District - Jashpur (C.G.)

---- Respondent

For Appellants : Smt. Hamida Siddiqui, Advocate.
 For Respondent/State: Shri Neeraj Mehta, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt Justice Vimla Singh Kapoor

Judgment On Board**By Pritinker Diwaker, J****21/08/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 19.01.2012 passed by Sessions Judge, Sessions Division, Jashpur (C.G.), in S.T. No.33/2011 convicting the accused/appellants under Sections 302/34, 201 IPC and sentencing them to undergo imprisonment for life with fine of Rs.1,000/- and R.I. for three years with fine of Rs.1000/- each, plus default stipulation respectively.

02. In the present case, name of the deceased is Kumari @ Priyanka Bai, wife of accused/appellant No.1-Narendra Kumar

Yadav. Accused/appellant No.2-Tankeshwar Ram Yadav is uncle of the accused/appellant No.1. Marriage of the deceased was solemnized with the accused/appellant No.1 sometime in the year 2003 and out of their wedlock they had two issues.

03. As per the prosecution case, the deceased went missing from 27.10.2010 and on 01.11.2010 her body was found in the open field adjacent to appellants' house and as per the postmortem report, the death was homicidal in nature. The body of deceased was first noticed by Janki Bai (PW/5), who in turn, informed the same to Shobhnath, father of accused/appellant No.1 and then merged intimation (Ex.P/8) was recorded on 01.11.2010 at his instance. Inquest on the body of deceased was conducted on 02.11.2010 vide Ex.P/1 and body was sent for postmortem examination to Community Health Center, Bagicha where Dr. D.C. Bakhla (PW/7) conducted postmortem on the body of deceased and gave his report Ex.P/5 noticing following injuries:-

- (i) Bruise with blackish colour on the left side of face above left eyebrow upto chin with swelling.
- (ii) Blueish purple colour bruise on upper part of chest and neck.
- (iii) Multiple pinkish abrasions in the size of 2.5 x 1.5 cm below left deltoid to elbow on dorsal surface.
- (iv) Multiple pinkish abrasions in the size of 2.5 cm

x 1.5 cm below right deltoid upto elbow on dorsal surface.

- (v) Abrasion in the size of 3.5 x 2.5 cm on posterior aspect on left ankle.

Autopsy Surgeon opined the cause of death of deceased to be asphyxia due to compression of chest and neck, the death of deceased was homicidal in nature and the death was within 36 hours of postmortem.

04. One bottle of pesticide has also been seized from the spot but the prosecution utterly failed to connect the said pesticide with the crime in question. After merg inquiry, FIR (Ex.P/9) was registered on 03.11.2010 against the accused/appellants under Sections 302 and 201/34 IPC. The challan was filed on 31.01.2011 against as many as four accused persons declaring two out of them namely Shobhnath Yadav and Gomti Bai, father and mother of accused/appellant No.1, as absconder respectively. After filing of the charge sheet, the trial Court framed charges under Sections 302/34 and 201 IPC against the accused/appellants.

05. So as to hold the accused/appellants guilty, the prosecution examined as many as 11 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the appellants as mentioned in para-1 of this judgment. Hence, this appeal.

07. Learned counsel for the appellants submits:

- That there is no eye-witness to the occurrence and the conviction of the accused/appellants is based on circumstantial evidence but none of the circumstances from which the inference of guilt of appellants can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellants who committed the murder.
- That in the house in question apart from the accused/appellants, other family members were also residing including that of two absconded accused persons and, thus, principle of house murder will not apply in the present case and no presumption can be drawn against the accused/appellants.
- That the deceased was missing from 27.10.2010 and immediately thereafter the information was given to parents and other family members of the deceased, who in turn, came to appellants' house, stayed there for 3-4 days and during all this period extensive search was made by everyone but whereabouts of the deceased could not be ascertained. Learned counsel further submits that merely non reporting the

matter to the police will not draw any presumption against the accused persons because the fact remains that the deceased was extensively searched for three days by the accused/appellants and other family members.

- That there is absolutely no iota of evidence showing the involvement of the accused/appellants in the commission of offence.
- That as per the postmortem report (Ex.P/5), which was conducted on 02.11.2010 at 3.15 PM, the death was within 36 hours of postmortem. If the said fact is considered, the deceased might have been killed sometime early in the morning of 31.11.2010, whereas she went missing from 27.10.2010. Learned counsel submits that there is huge gap between missing and recovery of body of deceased and possibility of the deceased being killed by someone else in between 27.10.2010 to 01.11.2010 cannot be ruled out especially when the body of deceased was found in an open space accessible to everyone.
- That in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of

the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused.

08. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same. He submits that the room where the accused/appellant No.1 and the deceased were residing was intentionally locked by the accused/appellant No.1, it was not opened even after the arrival of the family members of the deceased and this conduct of the accused/appellant No.1 shows that there was something suspicion in his mind and it appears that the deceased or her body was inside the said room and that is why the said room was not opened by the accused persons. It has been further submitted that the accused/appellants have failed to offer any explanation in their 313 Cr.P.C. statements, as required under the law.

09. We have heard learned counsel for the parties and perused the material available on record.

10. Hari Ram Yadav (PW/1), father of the deceased, has stated that on 28.10.2010 he was informed by his brother Madhusudan Yadav that the deceased is missing from 27.10.2010 and this information was given to him by accused/appellant No.1- Narendra Yadav. He has further

stated that after receiving the information, within 5-6 hours he went to the house of accused persons, inquired about the deceased, she was searched by him (this witness) till 02.11.2010 and on 03.11.2010 he came to know that the body of deceased has been found in an open field of Shobhnath. He has also stated that few months prior to the incident the deceased had come to his house and informed that she is being tortured by the accused persons and hatching conspiracy to kill her. The deceased had further informed him that the accused persons were in a habit of gambling and used to consume liquor. It was also informed by the deceased that vehicle was demanded by the accused persons. This witness also went on to state that when he went to the house of accused persons, room of accused/appellant No.1 was locked and the same was not opened saying that ground nuts are kept inside the room. He has further stated that he had suspicion that the deceased has been killed by the accused persons and thrown her body in the field. This witness has admitted the fact that he had stayed in the house of accused persons for 3-4 days and during all this period he used to have meal in their house and ultimately on 02.11.2010 he lodged the missing report. This witness, in para 14, has admitted that the information was also given to the members of society and key of the room of the deceased was handed over to the police who inspected the said room. He has further admitted the fact that on account of accident the accused/appellant

No.1 had become handicapped.

11. Suresh Kumar Yadav (PW/2) is brother of the deceased. He has stated that his sister was subjected to cruelty by the accused persons. He has further stated that after coming to know that the deceased is missing, he reached the appellants' house and extensive search was made. This witness has admitted the fact that he is deposing all these first time in the Court and it has never been disclosed to anyone.

12. Rajesh Kumar Yadav (PW/3), another brother of the deceased, has made almost similar statement as has been made by PW/2. He has also admitted that key of the room of the deceased was handed over to Upsarpanch of the village by the police and the said key is still in possession of the Upsarpanch. This witness, in para 9, has stated that in the house in question apart from the accused/appellants, Shobharam - father of accused/appellant No.1, Jageshwar - grand father, their children and servants were also residing. In para 14, he has reiterated the said fact.

13. Jageshwar Ram (PW/4) is the witness to inquest made under Ex.P/1. Janki Bai (PW/5) first saw the body of deceased lying in an open field. She has stated that on many occasions she passed through the said place but did not see the body of deceased earlier. She has also stated that relation between the accused/appellant No.1 and the deceased was cordial and they never used to quarrel with each other. This witness has

also stated that the deceased, after leaving her children at home, left the house without informing to anyone.

14. Vimal Kumar Bhagat (PW/6) is the Patwari who prepared spot map vide Ex.P/3.

15. Dr. D.C. Bakhla (PW/7) conducted postmortem on the body of deceased and gave his report (Ex.P/5) opining the cause of death to be asphyxia due to compression of chest neck. He has further opining that the death was within 36 hours of postmortem.

16. J.P. Singh (PW/8) - Investigating Officer, has duly supported the prosecution case. Panduram (PW/9) - Constable and Varsha Mehar (PW/11) - Sub Divisional Officer, assisted in the investigation. Pushpendra Kumar Sharma (PW/10) did inquest on the body of deceased.

17. Admittedly, there is no direct evidence against the appellants to show their complicity in the crime in question and their conviction rests upon circumstantial evidence, main being the accused/appellants and deceased were residing in the same house and the body was found in an open field of father of accused/appellant No.1 adjacent to their house.

18. In the matter of **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210**, the Supreme Court while dealing with circumstantial evidence observed in paras 11, 12 & 13 as under:-

“11. In Hanumant Govind Nargundkar V. State of

M.P. [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:

“10..... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

12. In Padala Veera Reddy V. State of A.P. [(1989) Supp (2) SCC 706], this Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the

conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. **In Sharad Birdhichand Sarda v. State of Maharashtra** [(1984) 4 SCC 116], it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. There is no legally admissible evidence showing the involvement of the accused/appellants in the commission of offence. The trial Court recorded the finding of conviction on the ground that one room of the house in question was not opened even after request being made by family members of the deceased and after killing the deceased in the house her body was thrown. However, on close and careful scrutiny of the evidence on record, it is apparent that in the house of the accused/appellants, there were other family members like father, grand father of the accused/appellant No.1, children and servants. Thus, it is not the case of the prosecution that the accused/appellant No.1 and the deceased were residing all alone in the house. The evidence further reflects that deceased went missing from 27.10.2010 and her body was found on 01.11.2010 in an open field adjacent to the appellant's house i.e. after 6 days. During this period, the

deceased was extensively searched not only by the family members (father and two brothers) but also by the accused/appellants. True it is that body of the deceased was found in an open field adjacent to appellant's house and according to autopsy surgeon, the death was homicidal in nature, but merely on this basis presumption cannot be drawn against the accused/appellants. That apart, mere non filing of missing report by the accused persons alone is not sufficient to infer that it is the accused persons who killed the deceased particularly when the deceased was extensively searched for about three days by the accused/appellants and other family members of the deceased. There is six days long gap between missing of the deceased and recovery of her body, thus, the possibility of third person killing the deceased cannot be ruled out.

20. That apart, the postmortem on the body of deceased was conducted on 02.11.2010 at 3.10 PM vide report (Ex.P/5) which reveals that the death of deceased was as a result of asphyxia due to compression of chest, neck, and the death was homicidal in nature. The autopsy surgeon also opined that the death of deceased was within 36 hours of postmortem. The deceased went missing from 27.10.2010, her body was found on 01.11.2010 at about 8.30 PM, and postmortem was conducted on 02.11.2010 at 3.10 PM meaning thereby the deceased might have died on 31.10.2010 at about 1.00 AM. The family members of the deceased, after coming to know

the fact of her missing, stayed in the house of accused/appellants from 28.10.2010 to 30.10.2010 and extensive search was made by them but deceased could not be searched. It has come in the evidence of father of the deceased (PW/1) that one room of the house of appellants was locked, which was not opened despite their request saying that ground nuts were kept inside. No doubt, this conduct of the accused/appellants creates suspicion and the room should have been opened. As per the postmortem report, deceased died on 31.10.2010 at about 1.00 PM and the family member of the deceased stayed in the house of appellants till 30.10.2010. Even if it is considered that the deceased was inside the room during three days (28.10.2010 to 30.10.2010), in that case, she would resist herself or make some movement to mark her presence inside, but no such activity was noticed by the family members of the deceased, meaning thereby the deceased was not in the house or in the room in question from 27.10.2010 till 30.10.2010. Further, the present case would not fall within the ambit of house murder as other family member were also residing there and the prosecution itself has made the appellants as accused and that apart there were other two accused persons i.e. mother and father of the accused/appellant No.1 have shown to be absconder.

21. Though the facts involved in the case and the evidence on record give rise to the suspicion about the involvement of the accused/appellants in the crime in question, in a series of

cases it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of the evidence. One such judgment of the Apex Court dealing with this fact is **Commissioner of Police, Delhi & Others V. Jai Bhagwan** reported in **2011 (6) SCC 376**.

22. From the discussion made above it is apparent that none of the circumstances relied upon by the prosecution have been established in this case beyond reasonable doubt. In fact, the chain of circumstantial evidence is so incomplete that it cannot justify the conviction of the appellants at all. Being so, the benefit of doubt must be credited to the appellants and they deserve to be acquitted of the charges leveled against them.

23. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charge under Sections 302/34 and 201 IPC by extending them benefit of doubt. The appellant No.1 is in jail. He be set at liberty forthwith, if not required in any other case. The appellant No.2 is reported to be on bail. His bail bonds stand discharged.

24. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Vimla Singh Kapoor)
JUDGE