

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 341 of 2010**

(Arising out of judgment dated 10.5.06 in ST No.18/06 of the learned 1st Additional Sessions Judge, Raigarh)

- State Of Chhattisgarh, Through District Magistrate, District Raigarh (CG)

---- Appellant

Versus

- Balwant Soni, S/o Shyam Ratan Soni, aged about 22 years, Occupation Labourer, R/o Village Tiur, Thana & Village Kharsia, District Raigarh (CG)

---- Respondent

For Appellant : Shri Bhaskar Payashi, Panel Lawyer.
For Respondent : Shri Manoj Kumar Sinha, Advocate.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Vimla Singh Kapoor, JJ**

Judgment On Board By Prashant Kumar Mishra, J

20/07/2018

1. Under assail is the judgment of acquittal rendered by the trial Court acquitting the accused of the charge under Section 302 of the IPC which was fastened on him on the allegation that he has committed murder of the deceased by strangulating her in between 8 am – 1 pm on 5.11.2005.

2. The accused and the deceased as well as (PW-2) Ghanshyam Kumar Yadav were residing in the same locality. The accused and deceased Amita had an affair but later on Amita developed intimacy with (PW-2) Ghanshyam, therefore, according to the prosecution, the accused entered the house of the deceased in the morning of 5.11.2005 and strangled her by means of a towel (Gamcha). The prosecution case mainly rests on the evidence of (PW-1) Mohan Lal, (PW-2) Ghanshyam Kumar Yadav and (PW-5) Kailash Ram Sahu (father of the deceased). However, none of these witnesses have seen the accused either entering the house or even near the house at the time of occurrence.
3. Although homicidal death has been proved by (PW-7) Dr. Rajesh Kumar, vide postmortem report (Ex.-P/11) finding that the cause of death was asphyxia due to strangulation and death was homicidal in nature, however, in the absence of any direct or circumstantial evidence against the accused, he cannot be convicted merely on the basis of suspicion that since the deceased stopped loving him, he must have committed her murder.
4. It is settled principles of criminal jurisprudence that there is long distance between 'may be true' and 'must be true', therefore, to prove guilt of the accused, the prosecution is under obligation to

prove either by direct evidence or by circumstantial evidence, which points only towards the guilt of the accused to the exclusion of all other hypothesis or innocence.

5. On close scrutiny of the evidence available on record, we fail to persuade ourselves to take a different view of the matter than the one taken by the trial Court.
6. Consequently, judgment of acquittal rendered by the trial Court is affirmed. The Appeal being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Vimla Singh Kapoor)