

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 548 of 2013**

- Arjun Singh S/o Budharam Netam Aged About 27 Years R/o Village Kotetara , P.S. Jaijaipur , Distt. Janjgir Champa C.G. Civil And Rev. Distt. Janjgir Champa C.G. , Chhattisgarh

**---- Appellant**

**Versus**

- State Of Chhattisgarh S/o Through - District Magistrate Janjgir , Distt. Janjgir Champa C.G. , Chhattisgarh

**---- Respondent**

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| For Appellant        | : Shri Kamlesh Kumar Pandey, Advocate |
| For Respondent/State | : Shri Vaibhav Goverdhan, P.L.        |

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**Hon'ble Shri Justice Pritinker Diwaker**

**Hon'ble Shri Justice Sanjay Agrawal**

**Judgement on Board by Pritinker Diwaker J.**

**15/03/2018**

This appeal arises out of judgment and order dated 17.04.2013 passed by the Second Additional Sessions Judge, Sakti, District Janjgir-Champa in S.T. No. 134/2012 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000/- plus default stipulation.

2. In the present case name of the deceased is Chandrika Sahu who prior to 1-11/2 months of the incident was living as second wife of the appellant. As per prosecution case, prior to his marriage appellant was having affair with the deceased Chandrika Sahu however on account of social compulsions instead of marrying Chandrika Sahu he married with Bhuneshwari Netam. However few

months after the marriage Chandrika Sahu came to the appellant and they started living together in a separate hut built in the backyard of his house. On 20.03.12, in the morning, dead body of the deceased was seen by Asharam (PW-2) near the canal and he informed about the same to Amaru Sahu PW-1 father of the deceased who saw his daughter dead and there were injuries on his head, neck and nose. At his instance the merg intimation Ex.P-10 was recorded on 20.03.2011 and soon thereafter at about 9.45 a.m. FIR was registered against the appellant under Section 302 IPC . Inquest Ex.P-4 was prepared and body was sent for postmortem examination which was conducted by Dr. K. L. Uraon (PW-13) vide Ex. P-11 and according to him, cause of death was hemorrhagic shock due to cut of left side external carotid artery and vein and death was homicidal in nature. On the basis of memorandum of accused/appellant Ex.P-7 seizure of axe vide Ex.P-8, blood stained clothes i.e. pant and shirt vide Ex.P-9 was given effect to however there is no FSL or serological report. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 13 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. This apart two defence witnesses have also been examined.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

Contention of counsel for the appellant is as under :

i) that there is no eyewitness to the occurrence and conviction of the appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of the appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder.

ii) That the main piece of evidence against the appellant is the witness Anganmati (PW-3) and it is said that this witness saw the appellant and the deceased together on the fateful night.

iii) He submits that merely on the basis of last seen the accused cannot be convicted for the offence of murder.

iv) Witness to the memorandum and seizure have not supported the prosecution case and in absence of FSL or serological report seizure is of no consequence.

5. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law. He submits that the evidence of last seen PW-3 Anganmati is good enough to hold the accused/appellant guilty.

6. Heard counsel for the parties and perused the material on record.

7. Anganmati (PW-3) has stated that he knew the accused/appellant and the deceased and few months back in the night deceased and the accused/appellant came to watch TV in her

house and after staying for sometime they went back. She has further stated that she got the information of the death of the deceased but she is not aware as to how she died. After being declared hostile she has stated that she never heard about any quarrel between the appellant and the deceased and that they were living near her house. She has denied the fact that there was any quarrel between the accused/appellant and the deceased. She has further stated that the deceased and the appellant were living happily and as there is TV in her house the neighbours in the village used to come for watching TV. It is relevant to note here that the main witness of the prosecution allegedly saw the appellant and the deceased together prior to the incident but in her statement she had nowhere stated that as to on what date the deceased and the appellant came to her house and further she has not made it clear that on the subsequent day dead body of the deceased was found. Amaru Sahu (PW-1) father of the deceased and lodger of merged intimation and FIR has stated that the deceased was having affair with the appellant and she had gone along with him and after few days they started living in a separate hut. He has stated that prior to the date of incident he and his wife had gone to the hut of the deceased and thereafter he and his wife returned back and on the next morning when he had gone to the house of PW-3, she informed him that in the night itself the deceased and the appellant had come to watch the TV and immediately thereafter he came to know that the deceased was killed. Asharam (PW-2) has stated that he accompanied PW-1 to the house of PW-3 and then she disclosed that the couple had already left in the night. He has stated that subsequently they came to know about the murder of the deceased. Purushottam Sagar PW-4 is a witness to inquest has

not stated anything against the appellant and has been declared hostile. Dileshwar Kumar Sahu (PW-5) is a witness to memorandum and seizure has though been declared hostile but has admitted his signature. Harprasad (PW-9) is the Constable who assisted in the investigation. Amar Kumar Sahu (PW-10) is the witness who accompanied the father of the deceased when he had gone to meet his daughter. Smt. Sonkuwar (PW-11) is the mother of the deceased who had accompanied Amaru Sahu (PW-1) to the house of the appellant and the deceased has stated that Anganmati (PW-3) informed them that after watching TV the appellant and the deceased left her house. Ramjeevan Patl (PW-12) is the patwari who prepared spot map Ex.P-16. Dr.K.L.Uraon is the doctor who conducted postmortem examination on the body of the deceased vide Ex.P-11 and according to him, cause of death was hemorrhagic shock due to cut of left side external carotid artery and vein and death was homicidal in nature.

Appellant had examined himself as DW-1 and has stated that a day prior to the death of the deceased, at night one Sita Ram and Babulal took the deceased along with them by saying that her father had called her in the village meeting and then she did not return. Thereafter on the next day her dead body was found. He has raised his suspicion that the deceased might have been killed by the members of the Sahu community. Mahadev (DW-2) has also stated that there was a meeting of Sahu community in which deceased was also called and she was asked by them to leave the appellant but she did not agree and on the next day her dead body was found. On the basis of memorandum of accused/appellant Ex.P-1 seizure of axe vide Ex.P-8 and blood stained clothes Ex.P-9 were made however

there is no FSL report.

8. Close scrutiny of the evidence makes it clear that the appellant has been convicted solely on the basis of evidence of Anganmati (PW-3) however in her entire statement she has nowhere stated as to on what date the appellant and the deceased were watching TV in her house and that on what date her dead body was found. Her statement does not make it clear that in the intervening night of 19-20.03.2012 accused/appellant and the deceased came to her house to watch TV. In fact the statement of this witness is vague and does not make the picture clear as to in respect of which date she is describing in the court. She also admits that quite often her neighbours used to come and watch TV and in absence of positive evidence particularly the date, it does not appear safe for us to hold that in the intervening night of 19-20.03.2012 accused/appellant and the deceased came to her house to watch TV and thereafter they left. We cannot presume so many things of our own unless the same is a matter on record. Likewise statement of PW-1 and PW-2 has not been corroborated with that of Anganmati (PW-3) and merely on the basis of their statement appellants cannot be convicted. Though certain seizures have been effected on the memorandum of accused/appellant but in absence of FIR and serological report the seizure is of no consequence.

9. Thus, there is no legally admissible evidence regarding the involvement of the appellant in the commission of the offence. The entire case of the prosecution is based on circumstantial evidence. We may also make a reference to the various judgments on circumstantial evidence in the matter of ***Mustkeem v. State of***

**Rajasthan (4(2011)11 SCC 742:(2011) 3 SCC(Cri) 473**; in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : 1984 SCC(Cri) 487, in para 153**, wherein some key principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under : (SCC p.185)

- i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely “may be” fully established;
- ii) 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;
- iii) The circumstances should be of a conclusive nature and tendency;
- iv) they should exclude every possible hypothesis except the one to be proved and
- v) 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.

11. In **State of U.P. v. Ashok Kumar Shrivastava (1992) 2 SCC 86: 1992 SCC (Cri) 241: 1992 Cri LJ 1104**, it was pointed out that great care must be taken in evaluating circumstantial evidence and if

the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

12. A reference may be made to a later decision in ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116: 1984 SCC(Cri) 487***, wherein while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established.

13. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence, the chain of circumstances must be so complete that they lead to the only conclusion, that is, the guilt of the accused. Taking the cumulative effect of the evidence we are of the view that the evidence led by the prosecution is a weak type of evidence and the prosecution has failed to establish its case beyond the shadow of reasonable doubt. Only on the basis of last seen the accused cannot be convicted for the offence of murder.

14. Thus, after taking all the facts and circumstances in consideration we do not find ourselves in conformity with the findings arrived at by the Learned trial court. Accordingly, the appeal filed by the appellant is allowed and the judgment impugned convicting and

sentencing the appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. The appellant is in jail. He be set free forthwith if not required in any other case..

Sd/-

Sd/-

(Pritinker Diwaker)

(Sanjay Agrawal)

Judge

Judge

suguna