

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1037 of 2013**

- Manoj Patel S/o Jagdish Patel Aged About 23 Years R/o. Vill. Chhoti Koni, Thana-Koni, Civil And Rev. Distt. Bilaspur C.G.,

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Kotwali, Distt. Korba C.G.,

---- Respondent

For Appellant	:	Smt. Kiran Jain, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment On Board By Justice Pritinker Diwaker****27/02/2018:**

This appeal arises out of the judgment of conviction and order of sentence dated 17.7.2013 passed by the Sessions Judge, Korba in S.T. No.20/2012 convicting the appellant under Sections 364, 302 & 201 of IPC and sentencing him to RI for 10 years, fine of Rs.2000/-; imprisonment for life, pay a fine of Rs.3000/-; and RI for 2 years, fine of Rs.1000/- with default stipulations respectively.

02. In the present case, name of the deceased is Vineet Patel, aged 10 years. PW-2 Lata Patel is wife of the appellant and deceased was

son of PW-1 Santosh, brother of Lata Patel. Further case of the prosecution is that marriage of the appellant was solemnized with Lata Patel about three years prior to the incident and he was a drunkard and did not do anything for his livelihood. After few years of marriage, he started living with PW-1 Santosh and Santosh was repeatedly asking the appellant for doing some work, as a result of which he got annoyed with Santosh and on 29.11.2011 kidnapped minor child Vineet Patel, took him near river and killed him by throttling and hid the dead body in the river under a stone. As deceased Vineet Patel was missing since 29.11.2011, a missing report Ex.P/10 was lodged by Santosh on 30.11.2011 expressing suspicion over the appellant. On the basis of enquiry conducted on the missing report, FIR (Ex.P/12) was registered on 1.12.2011 against the appellant under Section 364 of IPC. On the same day memorandum of the appellant (Ex.P/5) was recorded wherein he has stated as to the manner in which he killed the deceased and hid the dead body in the river under sand and stone. Thereafter, dead body of the deceased was recovered vide Ex.P/8 from the indicated place which was identified by PW-1 Santosh and other villagers. Merg intimation Ex.P/12 was recorded on 1.12.2011. Inquest on the dead body was conducted on 1.12.2011 vide Ex.P/2 and thereafter the body was sent for postmortem which was conducted on the same day vide Ex.P/3 by PW-11 Dr. PPS Tawar. The autopsy surgeon noticed lacerated wound above right eye, eye ball bulging out from socket, mouth open, tongue bitten in between upper and lower teeth, tongue protruded out, rigor mortis present over upper and lower limb as well as neck, bruises around neck and lacerated wound on

right lateral of upper lips with active bleeding; hyoid bone of neck was fractured, windpipe and foodpipe were pressed. In his opinion, the cause of death was throttling due to asphyxia which seems to be homicidal in nature and that after throttling the dead body was thrown in the river water. After filing of charge sheet, the trial Court framed charge under Sections 364, 302 & 201 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 11 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellants submits as under:

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

(ii) that PW-1 Santosh has falsely implicated the appellant as he was having inimical relation with him.

(iii) that the so-called witnesses of last seen PW-4 Girdhari and PW-

5 Harish Patel are not reliable ones.

(iv) that the dead body of the deceased was recovered prior to memorandum of the appellant.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the impugned judgment warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Santosh Yadav, father of the deceased, is lodger of missing report Ex.P/10 based on which FIR (Ex.P/12) was registered. He has stated that after marriage the appellant was not doing anything and since Diwali he started living in his house along with his wife. He has stated that the appellant was a drunkard and was interested to take his wife along with him but he (this witness) did not permit him because he was a drunkard and used to commit marpeet with his wife. On 29.11.2011 i.e. the date of incident the appellant came to his house, tendered apology and assured that he would not consume liquor, on which his father asked the appellant to wait till arrival of Santosh (this witness). However, on that day itself the appellant kidnapped his child Vineet who was playing outside the house, which was seen by Girdhari (PW-4) and Harish (PW-5). He states that the missing report was lodged by him and father of the appellant was also informed that the appellant had taken the deceased along with him.

Initially, the appellant did not disclose the correct things and thereafter he made confession that after killing the deceased he kept the dead body in the river under a stone. He states that at the instance of the appellant the dead body was recovered and thereafter inquest was conducted and body was sent for postmortem. In cross-examination this witness remained firm.

09. PW-2 Lata Patel, wife of the appellant, has stated that her marriage was solemnized with the appellant about three years back, as the appellant used to drink and was not doing anything she started living in the house of her brother Santosh. She states that on 29.11.2011 the appellant came to her father and expressed his desire to take her along with him, however, he was not permitted. Thereafter the appellant took the deceased along with him and after two days his dead body was found. PW-3 Bhole Prasad is a witness of memorandum and seizure, He has duly supported the prosecution case. PW-4 Girdhari and PW-5 Harish Patel are the witnesses who last saw the appellant taking the deceased along with him. They have supported the prosecution case on the point of last seen. PW-6 Mangtaram, Head Constable, registered the missing report Ex.P/10. PW-7 Nagaiya is a formal witness. PW-8 Lallan Singh, investigating officer has duly supported the prosecution case. PW-9 Abhimanyu is a witness to memorandum of the appellant Ex.P/5, recovery of the dead body Ex.P/8 and seizure Ex.P/7 of stone. PW-10 PR Patel, Patwari, prepared the spot map Ex.P/18. PW-11 Dr. PPS Kanwar conducted postmortem on the body of the deceased on 1.12.2011 vide Ex.P/3

and noticed lacerated wound above right eye, eye ball bulging out from socket, mouth open, tongue bitten in between upper and lower teeth, tongue protruded out, rigor mortis present over upper and lower limb as well as neck, bruises around neck and lacerated wound on right lateral of upper lips with active bleeding; hyoid bone of neck was fractured, windpipe and foodpipe were pressed. In his opinion, the cause of death was throttling due to asphyxia which seems to be homicidal in nature and that after throttling the dead body was thrown in the river water.

10. Close scrutiny of the evidence makes it clear that relations of the appellant with his wife PW-2 Lata Patel were strained as he was a drunkard, was doing no work for livelihood and used to commit marpeet with her as a result of which few years after her marriage she started living with her parents in Korba. The appellant also started living with her brother PW-1 Santosh in Korba. PW-1 also used to ask the appellant for doing some work, on account of which he got annoyed with him. It has also come in the evidence of PW-1 & PW-2 that the appellant wanted to take back his wife/PW-2 but she was not willing to go with him on account of his bad habits and PW-1 was also supporting PW-2. Evidence suggests that it is in this background that the appellant kidnapped the minor child Vineet of PW-1 Santosh and committed his murder. PW-4 Girdhari and PW-5 Harish Patel are the witnesses of last seen and they have remained firm in their cross-examination.

11. When the deceased could not be traced out, a missing report

was lodged by PW-1 Santosh vide Ex.P/10 on 30.11.2011 expressing suspicion over the appellant and on the same day memorandum of the appellant (Ex.P/5) was recorded wherein he has stated as to the manner in which he killed the deceased and hid the dead body in the river under sand and stone. Thereafter, dead body of the deceased was recovered vide Ex.P/8 from the indicated place which was identified by PW-1 Santosh and other villagers. The autopsy surgeon (PW-11 Dr. PPS Kanvar) also noticed corresponding injuries on the person of the deceased as mentioned above and in his opinion, the cause of death was throttling due to asphyxia which seems to be homicidal in nature and that after throttling the dead body was thrown in the river water. Witnesses to the memorandum and seizure have also duly supported the prosecution case.

12. Thus, considering the overall facts and circumstances of the case, the motive attributed to the accused/appellant, his conduct during the incident and subsequent thereto, medical evidence consistent with the prosecution case and non-explanation of the incriminating circumstances in his statement under Section 313 of CrPC by the appellant, it can safely be held that it is the appellant who kidnapped the deceased in order to commit his murder and after committing his murder, concealed his dead body in the river under a stone with a view to causing disappearance of the evidence of the crime. Being so, his conviction under Sections 364, 302 & 201 of IPC recorded by the trial Court and the sentence awarded thereunder cannot be faulted with and the same are hereby affirmed.

13. In the result, the appeal being without any substance is liable to be dismissed and is dismissed accordingly. He is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Sanjay Agrawal)
Judge