

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 562 of 2012**

- Laxman Lal Sahu S/o Tekram Sahu Aged About 22 Years S/o Jogilal , R/o Parsadajoshi, P.S. Rajim, Distt. Raipur C.G. ,

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through - The Distt. Magistrate Gariyaband , Distt. Gariyaband C.G.

---- Respondent

For Appellant : Shri Raghavendra Pradhan, Advocate
For RespondentState : Shri Vikash Shrivastava,PL

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Rajani Dubey, J.

07/03/2019

This appeal is directed against the impugned judgment of conviction and order of sentence dated 29.02.2012 passed by the Second Additional Sessions Judge Mahasamund in S.T. No. 54/2011 whereby the appellant has been convicted and sentenced as described below:

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life and fine of Rs. 1,000/- with default stipulation

2. As per prosecution case, FIR was lodged on 09.04.2011 by

Surrendra Kumar, about missing of his mother-in-law Dineshwari Sahu, who at about 9.00 a.m. in the morning, went to Nayapara to buy water-melons and did not return till 15.04.2011, a missing report in Ex.P-7 was registered. During investigation, it was found that appellant took the deceased in his motorcycle to the forest of Koundkera and with her consent committed sexual intercourse and when she stated that she is willing to live with him, which was not liked by him and to get rid of her, he committed murder by cutting her neck with a sharp blade and ran away from the spot. *Dehati nalishi* Ex.P-1 was recorded and thereafter, FIR was registered. Inquest Ex.P-9 was prepared and body was sent for postmortem examination which was conducted by Dr.G.L.Chandrakar (PW-10) vide Ex.P-8 and according to him, cause of death was cardio respiratory failure due to injury on vital parts of the body i.e. trachea and severe hemorrhage as a result of bleeding from neck vessels. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charges were framed.

3. Prosecution in order to bring home the charges levelled against the accused, examined 19 witnesses. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C. in which, he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. The trial court, by the impugned judgment of conviction and order of sentence, convicted and sentenced the accused/appellant as described above.

5. Assailing correctness and validity of the impugned judgment of

conviction and sentence, counsel for the appellants argued that the prosecution has failed to bring home the charges by reliable and clinching evidence. It is argued that there is no eyewitness to the incident. Learned counsel for the appellant submits that the trial court has erred in law as well as on facts, in convicting the appellant under Section 302 IPC. He argued that the prosecution had failed to establish the last seen theory. None of the witnesses had deposed that they had seen deceased in the company of appellant soon before death. He also submits that the trial court has mis-appreciated the statement of the witnesses on the basis of which the conviction has been held. There is no last seen evidence and the trial court held the appellant guilty, resulting in miscarriage of justice. There is no direct or circumstantial evidence against the appellant and therefore, the conviction is bad in the eye of law.

6. On the other hand, counsel for the State supports the impugned judgment and submits that the conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the same.

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

8. PW-1 Bali has stated that at about 8.00 am, in the morning, Kumari Bai informed that when she went to Koundkera forest to collect *mahua*, she had seen the dead body of a lady and then he, along with other villagers went to see the dead body and informed at police station Mahasamund. Similar statement has been given by

Daulal PW-2. He has stated that he lodged *dehati nalishi* and admitted his signature in Ex.P-1, P-2 and P-3. Devki Manjhi (PW-3) has stated that she was not aware of the incident. She however, has stated that she knew the accused/appellant for two years and one year back, he came to her house and stayed overnight, gave one mobile set to her and left in the morning. She has stated that the police had seized the mobile set and seizure memo was prepared vide Ex.P-4. She was declared hostile but she has denied all the suggestions which have been given to her. Tulsiram PW-4, has stated that he saw Dileshwari Bai in the village meeting which was called by her on account of some land dispute with the appellant where the appellant had sold her land. He has further stated that in the meeting, it was decided by the society that the appellant was to repay the money to Dileshwari. Surendra Sahu PW-7 has stated in his evidence that Dileshwari Bai was his aunt-in-law. He was informed telephonically by one Punarad Sahu, that the deceased was missing since 3-4 days. Thereafter, he met with the daughter of the deceased, who informed that her mother had gone to village Champaran along with the appellant to buy water melons. He has stated that he along with Punarad Sahu, went to lodge the report at Abhanpur. Chumman Yadav PW-14 has stated that on 08.04.2011, accused/appellant came to him and took vegetables for selling in the market and after sometime, he went to roam around and after about 1 ½ hour, he returned along with one lady. In the postmortem report, the doctor has opined that the cause of death was cardio respiratory failure due to injury on vital parts of the body i.e. trachea and severe hemorrhage, as a result of bleeding from neck vessels.

9. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the accused/appellant in committing the murder of the deceased. Neither the circumstantial evidence nor any other piece of evidence is there on record to show the involvement of the appellant in the commission of the said offence. In the present case, there is no proximity of time and place. It is fairly well settled that the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any hypothesis other than that of the guilt of the accused. The trial Court, on the basis of the above evidence, held that the deceased had been taken by the appellant to the forest and killed by him. The essence of the legal requirement is that not only should the circumstances sought to be proved against the accused be established but also that such circumstances form so complete a chain as leave no option for the Court except to hold that the accused is guilty of the offences with which he is charged.

10. Thus, we are of the view that the prosecution has failed to establish its case against the appellant, beyond reasonable doubt. Therefore, the benefit must go to the appellant. The impugned judgment and order on sentence are set aside and the appellant is acquitted of the charges levelled against him. The appellant is entitled to be set free forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge