

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 735 of 2014**

- Smt. Laxmi Bai aged about 39 Years, W/o Vifun Manjhi, R/o vill.- Narmadapur Bhipara, P.S.- Kamleshwerpur, Civil and Revenue District- Sarguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, through Police Station Kamleshwerpur, District- Sarguja (C.G.)

---- Respondent

For Applicant	:	Shri Rakesh Thakur, Advocate
For Respondent/State	:	Shri Suryakant Mishra, P.L.

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

Judgment On Board**03.04.2019****Per Manindra Mohan Shrivastava, J**

1. Heard.

2. This appeal is directed against the judgment of conviction and order of sentence dated 12.03.2014 passed by Additional Sessions Judge (FTC), Ambikapur, in Sessions Trail No. 392/2011 whereby and whereunder, the appellant has been held guilty of commission of offence under Sections 302 and 363 of IPC and sentenced as described below:-

Conviction	Sentence
U/s 302 of the I.P.C.	Imprisonment for life and fine of Rs. 1000/-, failing which one month additional R.I.

U/s 363 of the I.P.C.	R.I. for seven years and fine of Rs. 500/-, failing which 15 days additional R.I.
-----------------------	---

3. Pramila, a girl child aged about 1 ½ years was suddenly found missing from the house when her mother Rajmani (PW-2) got up early in the morning. Rajmani (PW-2) and her husband Davel (PW-1) got panic when they found that the child was not there in the bed. According to the prosecution case, when they came out and inquired, Paneva (PW-3) informed them that he had seen the appellant taking the child away in the night and at that time, the child was crying. The needle of suspicion turned towards the appellant. Though, she was searched, she was not found in the house. Later on, appellant is said to have been traced in an adjacent village Uranga where she was inquired but initially, she did not disclose anything and finally, according to prosecution story, she disclosed that she had thrown the child in the nearby well. On this disclosure, the dead body of the child was seen in the well and was taken out. The FIR in Ex.P/1 was lodged against the appellant and investigation culminated in filing of charge-sheet against the appellant on the allegation that she had abducted the child and murdered. The learned trial Court framed charges on the basis of material contained in the charge sheet. As the appellant abjured guilt, she was put to trail.

4. The prosecution case was based only on circumstantial evidence of last seen. The learned trial Court, relying upon the prosecution evidence, that in the midnight, the appellant was seen taking the child with her and that next day, upon inquiry, the appellant

was found in village Uranga, and at her instance, dead body of the child was recovered from the village situated in village Uranga, the appellant was convicted.

5. Learned counsel for the appellant would argue that the entire case of the prosecution is based only on circumstantial evidence, therefore, in order to bring home guilt of the appellant, the prosecution was required to discharge heavy burden to prove that all the circumstances formed a complete chain excluding every hypothesis of innocence and only pointing towards the guilt of the appellant so as to draw an inference that, in all probability, the appellant and the appellant alone must have killed the child. However, the prosecution evidence with regard to motive, last seen and recovery of the child at the instance of the appellant are doubtful and not reliable. According to him, the evidence of Paneva (PW-3) that he had seen the child being taken away by the appellant in the night is highly improbable because this being a suspicious act that someone was seen taking the child away in the midnight, ought to have resulted in natural conduct of immediately informing the parent of the child, but Paneva (PW-3) does not say that he informed this to the parents of the deceased. It is next contended that there is contradiction in the evidence of Davel (PW-1), Rajmani (PW-2) and Paneva (PW-3) with regard to the time when deceased was seen going along with child in her lap. As Paneva (PW-3) is the younger brother (not real) of Davel (PW-1), father of the child, he is a concocted witness who, somehow, involved the appellant in the alleged commission of offence. Next submission is that even according to Paneva (PW-3), he claims to have seen the appellant, either late in

the night or in the midnight and, it being a village place, it was all dark, therefore, it is wholly improbable that he would have seen with the appellant with the child. Further submission is that as far as recovery of the dead body of the child is concerned, the prosecution has not come out with any memorandum of the appellant that on appellant's disclosure, the child was recovered from the well. Therefore, on all circumstantial evidence relied upon by the learned trial Court, there is serious doubt cast and the prosecution cannot be said to have proved its case beyond reasonable doubt, benefit of which should invariably go in favour of the appellant.

6. State counsel, on the other hand, supporting the impugned judgment of conviction and order of sentence submits that the appellant was seen going with the child in the night by Paneva (PW-3) and his evidence has remained firm and coherent. The conduct of the appellant going with the child late in the night itself creates suspicion against the appellant. Once, it is proved by the prosecution that the appellant was seen taking the child with her in the midnight, the appellant was required to explain as to where she had taken the child. There is not only the evidence led by the prosecution but in the cross-examination of prosecution witnesses, it has been suggested and admitted that the appellant, after being searched, was not found in her own village but was found in village Uranga. Lastly, it is submitted that recovery of the dead body of child from a well in village Uranga is proved from the prosecution witnesses, and in absence of any serious challenge to such evidence, merely because no memorandum of the appellant was recorded by the police, recovery of child, at the instance

of the appellant, could not be doubted.

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

8. According to Davel (PW-1), father of the deceased girl child, he had gone along with the appellant for work and they had brought chicken, which was prepared in the house of one Bifan. Thereafter, he came back home and went to sleep. In the night when his wife got up to feed child Pramila, she was not found on the bed and, thereafter, they started searching the child and next day, Paneva (PW-3) informed him that he had seen the child with Laxmi Bai at about 2.00 AM. Thereafter, they went to the house of Laxmi Bai, the appellant, but she was not found in the village. Later on, Laxmi Bai was found in village Uranga, and upon inquiry, she first disclosed that she had given the child to another person but no name was disclosed. Finally, Laxmi Bai was handed over to police and upon inquiry, she disclosed that she has killed the child due to her dispute with Rajmani (PW-2), wife of this witness, and thrown the child in the well. This witness has been declared hostile at this stage, because it does not support the entire case of the prosecution, particularly with regard to motive. Upon examination by the prosecution, this witness admits that on the day he and Laxmi Bai had returned from work, Laxmi Bai was demanding Rs. 200/-, which he expressed his inability to give, where after Laxmi Bai went to her house. He has also admitted suggestion that Paneva (PW-3) informed him that at the time when he had seen Laxmi Bai going along with child Pramila, there were lights on and he had seen the appellant. In the cross-examination, he admits that after Laxmi Bai left

him, she did not come back and she had also admitted that after returning from work she had not demanded money. However, this witness has been given a suggestion, which he has admitted that Laxmi Bai was seen on the next day in village Uranga. He has also admitted that they had consumed liquor after taking dinner. According to his evidence, the well, where the child was found, is about 800 meters away from his house. A suggestion that the child herself went out and fell into well and died, has been denied. He also admits that when they inquired from the appellant, she did not disclose anything but when police inquired, she disclosed that the child was in the well. This witness has stated that the door was locked from inside by using a wooden lock which was found broken in the morning. He admits that the appellant did not disclose that she has thrown the child in the well but he says that it was disclosed to the police and panchas.

9. From the evidence of the witness what is proved is that a day before the dead body of the child was found in a well, the appellant had spent sometime with this witness in taking dinner and further that, when child was not found in the house, he along with his wife went for search.

10. He disclosed that he had seen the appellant taking the child away. However, the motive for killing the child, as stated by the witness, appears to be in contradiction with his own diary statement. While in the court statement he states that motive was quarrel with his wife, in his diary statement, what has been stated is that the appellant had demanded Rs. 200/- which he had refused, due to which, appellant was annoyed. Moreover, we find that this witness had

consumed liquor in the night before going to sleep.

11. The evidence of his wife Rajmani (PW-2) is similar to what has been deposed by her husband (PW-1). Though, she states that when in the evening, her husband did not come back home, she searched him out and finally he was found in the house of appellant, enjoying liquor and chicken. She states that when she got up early in the morning, she did not find her child Pramila and when they went out for searching, Paneva (PW-3) informed that at about 2.00 AM, he had seen the appellant going along with the child. In cross-examination, she has admitted that the door was locked from inside. From the evidence of this witness what appears to be reliably stated is that her husband had spent evening with the appellant and in the night when she got up to feed the child, the child was not there and upon search made in the morning, Paneva (PW-3) informed her that he had seen the child being taken away by appellant.

12. Paneva (PW-3) is one of the important prosecution witnesses. He has deposed that the appellant is his aunt. According to him, at about 10.11 in the night, when he had come out from his house to respond to the call of nature, he saw the appellant keeping the child Pramila in her lap while Pramila was crying. He states that Pramila was 1 ½ years girl child of his brother Davel (PW-1) and at that time, Laxmi Bai was attempting to calm the child. Thereafter, he came back and went to sleep. He further deposes that when he informed his brother that the child was with Laxmi Bai in the night, the child was searched. In his cross examination, he has admitted that he had seen Laxmi Bai going along with child from a distance of about 25 feet and also states

that it was dark, but he himself says that there were lights on all over and further that he did not ask Laxmi Bai as to why she was taking another's child with her. He, however, has stated that on the next day, Laxmi Bai was found in village Uranga, which is at about a distance of 1 km. from his house.

13. From the evidence of this important prosecution witness, what is proved is that he had seen Laxmi Bai keeping the child in her lap in the night, the child was crying and she was making attempt to calm the child, thereafter, he came back and went to sleep. The testimony of this witness is sought to be doubted mainly on the premise that he having seen Pramila, daughter of his brother, in the lap of another lady in the midnight, his natural conduct was to inquire from that lady as to how she was keeping in lap another's child.

This witness, in his opening statement, has stated that the appellant is his aunt and the child was his niece. He had seen the child crying in the lap of the appellant and the appellant was trying to calm the child. Therefore, it cannot be said to be unusual on the part of this witness in not making any inquiry because it is not that he had seen her niece in the hands of some unknown person in the night. The evidence of Davel (PW-1) and Rajmani (PW-2) is that Laxmi Bai was well known to all of them and she used to frequently come to their house. Not only that, the evidence of Davel (PW-1) and Rajmani (PW-2) is that, in fact, a day before, Davel (PW-1), father of the child, had taken dinner along with the appellant. This witness says that appellant is his aunt. Therefore, it is not unusual to find the child in the lap of appellant in the night. No question has been put to this witness in the

cross-examination as to why he did not immediately inform the parents of the child or inquired from the appellant having seen his niece in her lap. Therefore, only on this ground, the evidence of this witness that, he had seen the appellant in the night along with the child cannot be discarded. An attempt has been made to discredit the testimony by arguing that it is highly improbable that this witness would have identified appellant in the night as it was all dark. Not only this witness, but Davel (PW-1) both have stated in their evidence that there were street lights and Paneva (PW-3) has asserted that he had seen the appellant in the night going along with the child. Not only that, he noticed that the child was crying and the appellant was attempting to calm the child. Therefore, on this ground also, we do not have any doubt with regard to the testimony of this witness. This witness appears to be not only related to the appellant but also to Davel (PW-1), though not real. There is no reason as to why this witness would falsely implicate his own aunt, the appellant.

14. On doubt raised as to how the child could be taken away from the custody of the parents of the child by breaking open the door, we have noticed that the parents of the child Davel (PW-1) and Rajmani (PW-2) are said to have consumed liquor in the night. It is not a case that the door was closed with lock and key and that it was difficult to break open the door. A wooden plank appears to be used as lock, as is usually found in the village houses. Therefore, even if we accept the evidence on record that it was found broken, it is not wholly improbable to accept that under no circumstance the appellant could have taken the child away from the house of the parents.

15. The evidence of the prosecution witnesses clearly proved and indeed there is a suggestion given to Davel (PW/1), which has been admitted that when the appellant was searched in the morning, she was found in village Uranga. Both Davel (PW/1) and Rajmani (PW/2) have stated that when they searched their child and the appellant, the appellant and child both were not found in their own village but the appellant was, later on, traced in village Uranga.

16. The evidence of all the witnesses, particularly of the independent witness Mohar Sai (PW/4), the Sarpanch of village Uranga, is that he had seen the dead body of the child lying in the well where from it was taken out. True, it is that, in the present case, the memorandum of the appellant was not taken by the police and, therefore, it cannot be said that on the disclosure statement given by the appellant to the police, dead body of the child was recovered, the prosecution evidence that dead body of girl child, Pramila was found lying in a well in village Uranga has nevertheless been proved beyond reasonable doubt. This coupled with the evidence that the appellant was also at that time found in village Uranga, links the appellant with the alleged commission of offence. The appellant having been last seen with the child in the mid night, and next day the dead body found in a well and the appellant also found in the same village, all being not explained by the appellant in her statement recorded under Section 313 Cr.P.C. or by leading any defence witness, only point towards the guilt of the appellant.

17. We must hasten to observe at this stage that it is not the law that in all cases based on circumstantial evidence, motive is required to be

proved. Though, motive may be one of the strong circumstance, if all other circumstances are indicating guilt of the accused, the prosecution case may not be doubted only because clear motive has not been proved.

18. In the result, we do not find any merit in the appeal warranting interference by this Court. The appeal deserves to be and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge