

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 343 of 2014**

- Paluram Rathiya S/o Balakram Rathiya, aged- about 38 years, R/o Village Kantajhariya, P.S. Gharghoda, Crime No. 64/2011 Post and Tahsil Gharghoda, Distt.- Raigarh (C.G.)

----Appellant**Versus**

- State of Chhattisgarh, through – the in charge Officer Police Station Gharghoda, in Crime No. 64/2011 Post and Tahsil Gharghoda, Distt. Raigarh (C.G.).

---- Respondent

For Appellant	: Ms. Savita Tiwari, Advocate alongwith Shri Manoj Mishra, Advocate.
For Respondent/State	: Ms. Fauzia Mirza, Additional A. G.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Prashant Kumar Mishra****06/12/2019**

1. The appellant stands convicted under Section 302 of IPC for committing murder of deceased- Devlal Rathiya and sentenced to undergo life imprisonment and fine of Rs. 10,000/- with default stipulation vide judgment of conviction and order of sentence dated 12.07.2013 passed in ST No. 134/2011 by Sessions Judge, Raigarh (C.G.).

2. Appellant would call in question the legality and validity of above judgment of conviction and order of sentence rendered by the trial Court.
3. According to the prosecution, dead body of deceased- Devlal Rathiya was found at his agricultural field at about 5.00 pm on 08.05.2011. He had suffered injuries over his head. Chaitram Rathiya (PW 1) who lodged the FIR is the brother of the deceased. He informed the police vide Ex. P/1 FIR that at about 11 am on 07.05.2011, deceased had gone to the agricultural field for keeping vigil over the paddy crop whereas he himself had gone to pluck Tendu leave. On 08.05.2011, he again went to forest area for plucking Tendu leaves where villagers- Rai Singh, Gaishram and Shaukhi informed him to go and see his brother. The informant rushed to his agricultural field and saw the dead body of his brother. Informant was informed by Durpati Rathiya (PW 2), wife of the deceased, that deceased had land dispute with Palu Ram Rathiya, Alekhram Rathiya (PW 8) and Dev Singh Rathiya (not examined) and these persons have earlier threatened the deceased therefore, he has suspicion on these persons.
4. In course of investigation memorandum statement of the appellant was recorded vide Ex P/10 consequent to which *Lungi* and axe were recovered from his possession vide Ex.

P/11. These articles were sent for FSL examination however, the FSL report is negative for traces of blood.

5. After recording case diary statement of witnesses charge-sheet was filed against the appellant and at the end of trial he has been convicted mainly on the basis of recovery of weapon and statements of Alekhram Rathiya (PW8) & Maniram Rathiya (PW9).
6. Ms. Savita Tiwari, learned counsel for the appellant would submit that the evidence of last seen together is vague and not conclusive. In the absence of FSL report, seizure of Axe has no legal consequence. She would also submit that chain of circumstantial evidence is not complete.
7. *Per contra* Ms. Fauzia Mirza, Additional A. G. would argue that evidence of Alekhram Rathiya (PW 8) and Maniram Rathiya (PW 9) clearly implicates the appellant as the person who was seen in the company of the deceased at the time of occurrence. Therefore, the appellant has rightly been convicted.
8. Heard learned counsel for the parties at length and perused the record.
9. Chaitram Rathiya (PW 1) has proved the FIR by reiterating the contents. Durpati Rathiya (PW 2) has stated that she had gone to the agricultural field at about 3.00 pm but her

husband was not present there although the bundle of Tendu leaves was hanging on a tree. The next morning also she searched for her husband but could not locate him. Gaishram and other persons were present near her agricultural field on the next morning and they also searched for the deceased but they failed to locate him. In cross examination also she states that she had made intense efforts to trace the deceased near the agricultural field known as *Khalmuda Khet* .

10. Raisingh Rathiya (PW3) was also requested by Durpati Rathiya (PW2) to search for her husband and he too was involved in the search activity but he failed to find the deceased. This witness alongwith Gaishram and Gurla had found the dead body when they had gone to the Bore-well for drinking water. Atmaram Rathiya (PW 4) had consumed *Ganja* with deceased- Devlal, Alekhram Rathiya (PW8), Maniram Rathiya (PW9) and one Gurla. According to this witness deceased- Devlal and Maniram (PW9) had together gone towards the *Khalmoda* field. He says that the agricultural field of the appellant is also situated at *Khalmoda*. Itwarsingh Dhanuhar (PW5) was also involved in making search for the deceased. Bhagirathi Chouhan (PW6) is the *Kotwar*. He is witness to the memorandum vide Ex. P/10 and seizure memo (Ex. P/11). Ramkumar Jaiswal (PW7) is a *Patwari* who has prepared the site plan (Ex. P/6).

11. Alekhram Rathiya (PW 8) and Maniram (PW9) are the two important witnesses examined by the prosecution. They would depose that they had gone towards *Khalmoda* field for plucking Tendu leaves. At about 12.00 noon Devlal reached towards his Bore-well for bathing and at that time appellant came towards the Bore-well. They heard the deceased shouting “ऐ बाई रे” meaning thereby that the deceased was in distress. These two witnesses run away from the place out of fear. Alekhram Rathiya (PW8) admits that he, Kartik Ram and deceased- Devlal had consumed *Ganja* on the date of incident.

12. The above discussed evidence adduced by the prosecution is only to the effect that Alekhram Rathiya (PW8) and Maniram Rathiya (PW9) had seen the appellant reaching towards the same place where the deceased had gone for bathing. The statements fall short of saying that they have seen the deceased and the appellant together at the time of incident. In the FIR itself it is mentioned that these two witnesses alongwith appellant had land dispute with the deceased. Thus, statements of these two witnesses need to be very carefully scrutinized before placing reliance for making it foundation for conviction. We have to be more circumspect to believe this statement also for the reason that this is the only evidence in the case which is based on circumstantial evidence. Although these two witnesses had

seen the deceased and the appellant moving towards the same place but they kept quiet for about four days from 07.05.2011 to 13.05.2011 even though number of villagers were in search of the deceased on 07/08.05.2011 and the FIR itself was lodged by Chaitram Rathiya (PW01) on 09.05.2011. If these two witnesses had land dispute with the deceased it is possible that they are interested to see that someone else is implicated in the crime. Here it becomes important to refer to statement of Atmaram Rathiya (PW 4) who has stated that he alongwith deceased- Devlal, Alekhram Rathiya (PW 8), Maniram Rathiya (PW 9) and one Gurla had together consumed *Ganja* and thereafter deceased- Devlal and Maniram Rathiya (PW- 9) proceeded towards *Khalmoda* field. With this evidence, there are two sets of evidence of last seen together. While according to Atmaram Rathiya (PW 4) the deceased was last seen in the company of Alekhram Rathiya (PW 8) and Maniram Rathiya (PW 9) whereas Maniram Rathiya (PW 9) would state that the deceased and the appellant were at the same place at the time of incident. They are not saying that the deceased and the appellant were together. In any case, when there are two sets of evidence pointing out last seen together theory alongwith two different persons and the evidence which is relied by the prosecution is of such persons who themselves were suspects as mentioned in the FIR, it would

not be safe to base conviction on their statements. It is also to be seen that the *Axe* and *Lungi* recovered from the appellant were sent for FSL examination but human blood was not found over these articles.

13. For the foregoing reasons we are not in a position to affirm the impugned judgment of conviction and order of sentence. In the result, the appeal is allowed and conviction of the appellant under Section U/s. 302 of Indian Penal Code is hereby set aside. The appellant is in jail, he be set at liberty forthwith after his furnishing a bail bond for a sum of Rs. 25,000/- before the concerned trial Court which shall remain operative for a period of six months from today as per provisions of Section 437A of Cr.P.C.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge