

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1022 of 2015**

- Dhaniram @ Latta, S/o Singur Baiga, aged about 40 Years, R/o Village Ghoghrakhurd, P.S. Kukdur, Civil and Revenue, District Kabirdham Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, through the Station House Officer Police Station Kukdur, Civil and Revenue District Kabirdham Chhattisgarh.

---- Respondent

For Appellant	Mrs. Laxmiin Tondey, Advocate.
For Respondent/State	Mrs. Fouzia Mirza, Additional A.G.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Shri Prashant Kumar Mishra J.

11/09/2019

1. The appellant would call in question the legality, validity and propriety of the judgment of conviction and order of sentence dated 22.12.2014 passed by the Sessions Judge, Kabirdham (Kawardha) C.G. in Sessions Trial No.46/2014 whereby he stands convicted under Sections 302 and 201 of IPC and sentenced to undergo R.I. for life and R.I. for 7 years respectively with fine of Rs.1,000/- for each of the offence, in default to undergo additional R.I. for 6 months each.
2. The appellant was sent for trial for committing murder of deceased Thugur Baiga during the period 12 noon to 7 pm. As per the prosecution case, as reflected from the merger intimation Ex.P-12 and FIR Ex.P-13, PW-4 Aghanu Baiga, PW-5 Nihali Baiga and deceased Thugur Baiga had gone to village Noonmatti to attend the last rites upon death of Dongar Singh. PW-4 Aghanu Baiga and PW-5 Nihali Baiga returned to their house, however,

Thugur Baiga returned with the appellant Dhani Ram and both of them went to bathe at the Ghoghra Dam where the appellant committed his murder by strangulation. One Bhaktu Baiga resident of place near Ghoghra Dam informed PW-4 Aghanu Baiga that dead body of his brother is floating in the water of the dam, on which PW-4 Aghanu Baiga went to the spot and found the information to be correct.

3. The postmortem was conducted by PW-2 Dr. B.L. Raj, who submitted his report vide Ex.P-2 opining that cause of death is Asphyxia due to strangulation and it is homicidal in nature. The appellant was taken into custody and his memorandum statement Ex.P-9A was recorded on 26.05.2014 consequent to which one shirt and one Dhoti belonging to the deceased were recovered vide Ex.P-10. Internal organs and femur bone of the deceased were preserved but there is no FSL report available in the record.
4. The appellant was sent for trial on the basis of evidence of last seen together, his memorandum statement and recovery of the clothes belonging to the deceased. The trial Court has convicted the appellant on these evidences.
5. Learned counsel for the appellant would argue that the chain of circumstantial evidence is not complete, therefore, the appellant deserves to be acquitted.
6. Learned State counsel would support the impugned conviction and sentence.
7. Admittedly, there is no eyewitness to the crime, therefore, the case of the prosecution rests on circumstantial evidence.
8. PW-4 Aghanu Baiga is the witness who had allegedly seen the deceased

and the appellant going to Ghoghra Dam for bathing. However, in his deposition he is not making clear statement about this fact that the deceased and the appellant were together and he had seen them bathing in the Ghoghra Dam. Moreover, PW-5 Nihali Baiga, father of PW-4 Aghanu Baiga and deceased Thugur Baiga, would state that when they were returning after attending the last rites at village Noonmatti, deceased Thugur Baiga and PW-4 Aghanu Baiga were coming together. If this statement is to be believed, deceased was last seen with PW-4 Aghanu Baiga and not with the appellant. The statement of PW-5 Nihali Baiga is to be given more importance in view of statement of PW-4 Aghanu Baiga at para 3 of his cross-examination where he says that appellant Dhani Ram had not gone to village of Dongarsingh and that while returning from Village Noonmatti, they stayed for sometime at the house of appellant where they consumed *Mahua* liquor. Thus, immediately on return from Village Noonmatti, PW-4 Aghanu Baiga had seen Dhani Ram in his house and as such, according to the statement of PW-4 Aghanu Baiga, appellant Dhani Ram was not last seen with the deceased.

9. PW-7 Ram Singh Baiga is the only witness who has been examined to prove the memorandum statement Ex.P-9A and seizure memo Ex.P-10. This witness would state that the clothes of the deceased were brought out by PW-4 Aghanu Baiga and at the time of recording of confessional statement, the police was threatening the accused. Moreover, the clothes have not been put to identification to prove that the seized clothes belonged to the deceased. Thus, neither the seizure is proved to have been effected from the appellant nor the seized clothes have been proved otherwise to be belonging to the deceased.
10. In view of the above, neither the fact of last seen together of the appellant and the deceased nor of memorandum and seizure have been proved to

nail the accused for commission of murder of deceased Dhani Ram. Furthermore, the prosecution has not alleged any motive against the appellant for commission of murder.

11. Considering the absolute lack of evidence against the appellant, we are of the view that the trial Court has wrongly convicted the appellant under Sections 302 & 201 of IPC and he deserves to be acquitted of the said charges.

12. Accordingly, the appeal is allowed and the impugned judgment is hereby set aside. The appellant is acquitted of the charges under Sections 302 and 201 of IPC. He is reported to be in jail, therefore, he is directed to be released forthwith, if not required to be detained in connection with any other offence, on his furnishing bail bonds for a sum of Rs.25,000/- with two equivalent sureties to the satisfaction of the trial Court for his appearance before the higher Court as and when required. The bail bonds so furnished shall remain in force for a period of six months from today in view of provisions of Section 437A Cr.PC.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge