

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1409 of 2019**

- Rukmani Mahant W/o Shri Nanhiram Aged About 30 Years R/o Village Baiskimuda, Police Station Lailunga, District Raigarh Chhattisgarh. Civil And Revenue District Raigarh Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station Lailunga, District Raigarh Chhattisgarh.

---- Respondent

For Appellant
For Respondent /State

Mr. Ashutosh Mishra, Advocate
Mr. Neeraj Mehta, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Judgment On Board by Prashant Kumar Mishra, J.****13/11/2019**

1. The appeal is posted of hearing on IA No.1, an application for suspension of sentence and grant of bail, however, with the consent of learned counsel for the parties, we have heard the appeal finally.
2. The appellant has been convicted by the Additional Sessions Judge, Gharghoda District Raigarh (CG) vide judgment dated 8.8.2019 passed in ST No.71/2018, for committing murder of deceased Sarita at about 11:30-22.30 hours on 4.8.2018.

3. The merger intimation-Ex.P./1 was lodged by PW-1 Puniram Yadav, father of the deceased, informing the Police that his daughter has left the house at 11:30 hours in the morning but has not returned to the house and was not traceable till 21:00 hours. At about 22:30 hours, one Suman informed him that the dead body of his daughter is lying in the *Gali*, on which, he went to the place and found that the dead body is lying near the house of Sunil Das. He did not mention the name of any culprit in his information neither he raised suspicion on anybody.
4. The postmortem was conducted by Dr. Manoj Kumar Patel (PW-6), who submitted his report vide Ex.P/6 opining that the death was due to asphyxia as a result of strangulation, ante-mortem & homicidal in nature and was within 24 hours. During further investigation, memorandum statement of the appellant was recorded vide Ex.P/4, consequent to which, a scarf was recovered from her possession vide Ex.P/5. The scarf was not sent for FSL examination as it was not blood stained. The appellant was sent for trial only on the basis of recovery of scarf from her possession. The trial Court has convicted the appellant on the basis of this recovery as also for the reason that the trail of dragging the dead body was found from the house of the appellant to the place where the dead body was lying.
5. We have heard learned counsel for the parties at length and perused the entire record.
6. PW-1 Puniram Yadav, father of the deceased, has stated that

her daughter used to visit the residences of Sunil Das, Set Das, Kishore, Shiv Kumar, Bharat and Yugal for watching TV and that her dead body was recovered in front of the house of Sunil Das. He also admits that his daughter was used to consuming liquor and further that the place where the dead body was found is cemented *Gali*. PW-3 Suman Prasad Chauhan is a witness to the memorandum statement and seizure vide Ex.P/4 and Ex.P/5 respectively. He has turned hostile although he states that the Police had recovered the scarf from the possession of the appellant. PW-4 Kailash Ram Chouhan is also a witness to the memorandum statement and seizure, however, he denies that the appellant has given any memorandum statement. Deceased's mother PW-5 Manjhno Bai also admits that the dead body was recovered in front of the house of Sunil Das.

7. PW-7 Kishore Kumar Yadav states that the dragging trail was visible from the house of Nanhi Das, appellant's husband, to the place where the dead body was found lying, however, he admits that the said place is having the cement concrete road. According to his statement, few days prior to the death of deceased Sarita, she had a quarrel with Nanhi Das, husband of the appellant and further that Nanhi Das used to persuade the appellant not to befriend Sarita. He would further admit that there was no dispute between deceased Sarita and the appellant at any point of time.
8. From the above evidence, it is apparent that the dragging trail on a CC road is ordinarily not possible. The dead body was

found in front of the house of Sunil Das and not in front of the house of the appellant. If the deceased had any dispute with anybody, it was Nanhi Das and not the appellant. The map-Ex.P/2 clearly shows that the dead body was found in front of the house of Sunil Das and near the said place, there are houses of Setdas, Jaidayal and Jugaldas also. The IO has not prepared any *Panchnama* of the dragged trail from the place where the dead body was found to the house of the appellant. Moreover, PW-7 Kishore Kumar Yadav admits in para 6 of his statement that ordinarily dragged trail is found whenever *Rawai* Wood, locally known as *Geda*, is taken from one place to another. Thus, even if there was any trail, it is not conclusively established that the said trail occurred because of the dragging of the deceased from the house of the appellant to the place where the dead body was found. In any case, there is no corroboratory evidence that it was the appellant who dragged and carried the deceased from her house to the place where the dead body was found.

9. There is no 'motive' attributed to the appellant for commission of crime. In a case based on circumstantial evidence, the motive is an important circumstance. Simply because there is some doubt because of the dragged trail or recovery of scarf, mere suspicion cannot take place of proof of murder in absence of any motive attributed to the appellant.
10. The present is a case where the prosecution has not been able to establish the circumstances in such a manner that it establishes only the guilt of the accused to the exclusiveness of

any other person, who might have committed the crime. The circumstantial evidence brought on record by the prosecution does not satisfy the law laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda vs. State of Maharashtra**¹.

11. In **Sharad Birdhichand Sarda (supra)**, the Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-153 as under:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahebrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

‘certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and must be’ is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion

¹(1984) 4 SCC 116,

consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

12. In view of the above discussed evidence in the instant case, in our considered opinion, the appellant is wrongly convicted for commission of murder of deceased Sarita and the impugned judgment of conviction and sentence deserves to be set-aside.

13. Accordingly, the appeal is allowed and the impugned judgment of conviction and sentence is set-aside.

14. The appellant is in jail. She be released forthwith if not required in any other case, on her furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Gautam Chourdiya)

Judge