

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1629 of 2018**

- Visheshar Patale @ Bodo S/o Salik Ram Patale Aged About 45 Years R/o Silpahari, Police Station- Sirgiti, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Police Station- Sirgiti, District-Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Rajeev Kumar Dubey, Advocate
For Respondent/State	:	Shri Anand Verma, GA

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

Order on Board**Per Manindra Mohan Shrivastava, J.****13/03/2019**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 26-09-2018 passed by the Sessions Judge, Bilaspur in Sessions Trial No.105/2017, whereby and whereunder the appellant has been held guilty for commission of offence under Section 302 of IPC and sentenced him, as described below-

Section-302 IPC Rigorous imprisonment for Life and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for six months

2. The prosecution case, as unfolded from the impugned judgment of conviction and order of sentence, is that on 15-05-2017, Parmanand, PW-3

lodged report in the police station that his aunt, Biras Bai, had gone to take bath in the morning on 13-05-2017 and was seen in the company of the appellant-Bodo by the villagers-Dadulal and Sarju. When she did not come, a search was carried out and finally, she was found dead in an abandoned building at Silpahari. Upon receipt of the said information, merg was recorded, the police proceeded to the scene of occurrence and inquest over the dead body was prepared and thereafter, the dead body was sent for postmortem. Dr. P. C. Benerji, PW-13 conducted postmortem and found that the deceased was strangled and cause of death was strangulation, which was homicidal in nature. Some other injuries were also found on the body, which included fracture of left arm, fracture of Tibia Fibula bone of left leg as well as of right leg. There were scratches and redness on the cheeks, throat, chest and shoulder also. Suspecting involvement of the appellant on the ground that the deceased was seen in the company of the appellant, investigation was carried out and charge sheet was eventually filed, alleging commission of offence under Section 302 of IPC against the appellant, alleging that the appellant murdered the deceased. The prosecution came out with the last seen evidence and recovery of bamboo and appellant seen in possession of bucket said to be belonging to the deceased. The learned trial Court, relying upon the prosecution case mainly that of last seen, held the appellant guilty of commission of offence of murder of Biras Bai and sentenced him, as described above, giving rise to this appeal.

4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the conviction of the appellant is wholly unsustainable in law, because the prosecution evidence of last seen is afterthought, concocted and not at all reliable. He would next submit that as far as recovery of bamboo is concerned, it does not constitute incriminating circumstance against the appellant, because

there are no bloodstains much less, group of the blood of the deceased was found on the said bamboo. The prosecution story that the appellant was seen in the possession of bucket said to be belonging to the deceased, is an afterthought story, because no such bucket was seized by the prosecution and it could not be proved by any evidence before the Court that the said bucket belonged to the deceased. He would thus submit that only on the basis of last seen evidence, no conviction could be ordered.

5. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence by submitting that the learned trial Court, in order to hold the appellant guilty for commission of offence, has relied upon proved circumstances that the deceased was last seen in the company of the appellant, he was seen in possession of bucket said to be belonging to the deceased as also bamboo, which was said to be used in the commission of offence was seized on the basis of memorandum of the appellant.

6. We have heard learned counsel for the parties and perused the records.

7. The entire case of the prosecution rests on a weak evidence of last seen. Parmanand, PW-3 deposed that he was informed by the children, who was playing in the field that the deceased-Biras Bai has been taken by Visheshar @ Boda (the appellant) across the river towards Ghumakhar. Thus, according to this witness, he himself has not seen the deceased in the company of the appellant, but, he has deposed on the basis of what was stated to him by the children.

8. Dadulal Kenwat, PW-4 has deposed that while he was taking buffalo for grazing in the banks of the river, he saw Biras Bai going along with the appellant across the river, towards Silpahari and Dhuma Village. He, however, has been confronted with his case diary statement, Ex.D-1, wherein it was written that on 13-05-2017 at about 09.30 hours, he had seen a boy, not known to him, with

whom Biras Bai was going across the river and he admits that no identification was held. Thus, from the evidence of this witness, it is clear that in his diary statement, what has been written is that he had seen an unknown person, with whom Biras Bai was going. In his Court statement, for the first time, he has made statement that he has seen Biras Bai going along with the appellant. It is relevant to notice that this witness says that he knows appellant, who is a resident of Village Silpahari. Thus, the appellant was known to this witness, but in his diary statement, this witness did not name the appellant as the person, with whom, he had seen Biras Bai going.

9. Smt. Purnima, PW-5 has deposed that on 13-05-2017, the appellant had come to her house for begging. She then states that children namely, Shweta and Suhana informed her that the appellant has taken Biras Bai along with him across the river towards Dhuma Village. In her cross-examination, she has been confronted with her diary statement, Ex.D-2 to elicit omission regarding mention of name of Shweta and Suhana in her diary statement and that it was not disclosed in the diary statement that Biras Bai had gone along with the unknown person across the river.

10. Smt. Santa Bai, PW-6 deposed that her brother-in-law told her that Biras Bai was taken across the river by the beggar, that means she herself has not seen Biras Bai going along with the appellant.

11. Parmeshwar Kenwat, PW-10 has also deposed that in the morning, at about 8-9 AM, when he was working in his courtyard, his niece informed him that Biras Bai has gone somewhere along with a beggar.

12. Rambati Kenwat, PW-11 deposed that she came to her house on the next day of the incident and her family members told her that the appellant had taken Biras Bai along with him.

13. None of the children, whose name were mentioned in the statement of

prosecution witnesses, have been examined.

14. Thus, except Dadulal Kenwat, PW-4, all other witnesses examined by the prosecution to prove the evidence of last seen, themselves have not seen the appellant and the deceased-Biras Bai going together across the river. As has been discussed hereinabove, the evidence of Dadulal Kenwat, PW-4 is highly doubtful, because it has been elicited in his cross-examination that in his diary statement, he has stated that Biras Bai had gone along with the person, whom he does not know, whereas in the Court statement, he has stated that he knows the appellant being resident of Village Silpahari.

15. In view of above consideration, we are of the considered view that the prosecution has utterly failed to prove by leading cogent and reliable evidence of appellant seen in the company of the deceased, much less that the deceased was last seen with the appellant.

16. Other incriminating circumstances relied upon by the learned trial Court to hold the appellant guilty of commission of offence is that the evidence has come that the appellant was found in possession of white coloured bucket, which belonged to the deceased, but no such bucket has been seized or put to identification that it belonged to the deceased. Parmanand Kenwat, PW-3 states that he was informed by Purnima that the bucket of the deceased was found in the house of the appellant. He admits in his cross-examination that no such plastic bucket was seized and he also admits that the plastic bucket was like any other bucket used to keep paint.

17. Smt. Purnima, PW-5 also made similar statement that she had seen the bucket in the hand of the appellant, which according to her, belonged to the deceased-Biras Bai, but she admits that it was an ordinary plastic bucket. How she identified the bucket to be that of aunt-Biras Bai, has not been stated. Similar is the statement of Smt. Santa Bai, PW-6.

18. Rambati Kenwat, PW-11, after having been declared hostile by the prosecution, is stated that she had seen the bucket in the hands of the appellant, which belonged to the deceased-Biras Bai. In her cross-examination, she admits that it was an old plastic bucket, which is readily available in the market and found in other's house and there was no particular sign or name to identify that it belonged to the deceased-Biras Bai.

19. The bucket was neither seized nor put to identification. Thus, the so-called evidence of appellant found in possession of the bucket, which according to some of the prosecution witnesses, belonged to Biras Bai, leads nowhere much less incriminating circumstances and those witnesses had admitted that it was an ordinary bucket like any other bucket easily available in the market and found in many houses.

20. What is then left is recovery of a bamboo, which is stated to be recovered on the basis of memorandum of the appellant. We, however, notice that the dead body of the deceased-Biras Bai was also recovered from the dilapidated abundant place and later on, bamboo is said to have been seized from that very place and it was said to be found in an open place. Therefore, it hardly constitutes incriminating circumstances against the appellant. The prosecution has failed to prove that it was stained with blood as would be clear from the Forensic Science Laboratory Report, Ex.P-24.

21. We thus find that the entire case of the prosecution could not travel beyond suspicion to prove beyond reasonable doubt, incriminating circumstantial evidence which would lead to the hypothesis of the guilt that in all probability, it is the appellant and the appellant alone who must have killed the deceased. Therefore, in our view, the appellant is entitled to be given benefit of doubt. Accordingly, the impugned judgment of conviction and order of sentence passed by the learned trial Court is hereby set aside. The appellant shall be set

at liberty forthwith.

22. In the result, the appeal is allowed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge