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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 783 of 2016**

Ramkumar Baghel son of Dholi Singh Baghel, aged about 28 years, resident of Jamgaon, Police Station- Moti Nagar (Mandla), at present resident of Durga Nagar, Khamtarai, Police Station- Khamtarai, Raipur, Tehsil & District Raipur (CG)

----Appellant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station- Khamtarai, Raipur, Tehsil & District Raipur(CG)

---- Respondent

For Appellant	:	Shri Maneesh Sharma and Shri Trivikram Nayak, Advocates.
For Respondent/State	:	Shri Avinash Choubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra,**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Gautam Chourdiya****26/02/2020**

1. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 7.5.2016, passed by the 6th Additional Sessions Judge, Raipur (CG) in S.T.No.59/2014, whereby and whereunder the appellant stands convicted for committing murder of Kalindri Bai under Sections 302 and 201 of the IPC and sentenced him to undergo imprisonment for life and fine of Rs.100/-, in default of payment of fine to further undergo R.I. for 3 months; and R.I. for 3 years and

fine of Rs.100/-, in default of payment of fine to further undergo R.I. for 3 months respectively.

2. Brief facts of the case are that on 22.11.2013 at about 4.30 pm, Police Inspector, Sanjay Tiwari received an information at Police Station Khamtarai, Raipur that dead body of a lady was lying in the culvert behind Govardhan Nagar, on which, he went to the spot and prepared Dehati Merg(Ex.P22). The dead body was taken out from the culvert, which was tied with the sari of the deceased by a heavy stone and it was identified by Mantora as that of one Kalindri Bai on the basis of her clothes (Ex.P1). Kalindri Bai was wife of Dilip Kumar Koshale(PW2). After summoning witnesses vide Ex.P4 and P5, inquest on the dead body of the deceased was prepared vide Ex.P10. On returning to the Police Station, numbered Merg Intimation- 105/2013 (Ex.P23) was lodged. The dead body was sent for postmortem examination vide Ex.P19 to District Hospital, Raipur, where Dr.S.K. Bagh (PW9) conducted postmortem and he opined that death was due to asphyxia as a result of manual strangulation and injuries present on body caused with hard and blunt object. He also opined that the injuries were caused 24 hrs. prior to death, duration of death was within 36 hrs. prior to postmortem and death was homicidal in nature. The postmortem report is Ex.P20. FIR Ex.29 was lodged against unknown person on 22.11.2013 at about 6.30 pm. During investigation spot map was prepared by Patwari vide Ex.P11 and Investigating Officer prepared spot map vide Ex.P28. Memorandum of the accused/

appellant was recorded vide Ex.P13 and clothes(blue colour nighty) of the deceased, one mobile phone and motorcycle were seized at his instance vide Ex.P14 and P15. One bottle water of the culvert and a big stone which was tied along with the sari of the dead body were seized vide Ex.P17. After postmortem, dead body of the deceased was handed over to her husband, Dilip Kumar Koshale(PW2) vide Ex.P2. The appellant was arrested vide Ex.P25.

3. Statements of the witnesses were recorded and charge sheet was filed against appellant under Sections 302 and 201 of the IPC followed by framing of charge by the trial Court accordingly. The accused/ appellant denied the charges framed against him and prayed for trial.
4. So as to hold the appellant guilty prosecution has examined as many as 24 witnesses. The accused/appellant was examined under Section 313 of the Cr.P.C., in which, he denied the circumstances appearing against him and stated that he has been falsely implicated in the case. However, no defence witness has been examined by him. After completion of trial, the appellant was convicted and sentenced as mentioned in para 1 of this judgment.
5. Learned counsel for the appellant submits that the appellant has been convicted and sentenced on the basis of suspicion that the deceased was 'last seen' with the appellant, but no 'last seen' and 'motive' was proved by the prosecution nor any reliable

witness has been produced in this regard and there are contradictions and omissions in the statements of the witnesses. He submits that the actual dispute of the deceased was with her husband, Dilip Kumar Koshale(PW2) as she was not willing to live with him. Dilip Kumar Koshale (PW2) himself has admitted that on 22.11.2013 when he went on duty, the deceased was present in house. Ranjit Koshale (PW24) is relative of husband of the deceased and he has turned hostile and not supported the case of prosecution regarding 'last seen' of the appellant with the deceased. Mantora (PW1) has seen the appellant with the deceased in the evening prior to the date of incident at about 5.30 pm and she has given one yellow colour sari and blouse to the deceased, thereafter, the deceased was alive and next day morning her dead body was found. He submits that there is no eye-witness to the incident, therefore, the alleged circumstance of 'last seen' was not proved and the trial Court has wrongly convicted and sentenced the appellant under Sections 302 and 201 of the IPC.

6. On the other hand, learned Panel Lawyer appearing for the State opposed the arguments advanced on behalf of the appellant and submits that Mantora(PW1), who has identified the dead body of the deceased had 'last seen' the deceased in the company of the appellant and the appellant has not offered any explanation as to how Kalindribai died when she had gone with him, therefore, the learned Court below has rightly convicted and sentenced the

appellant and same is not liable to be interfered with while invoking jurisdiction of appeal.

7. We have heard learned counsel for the parties, perused the judgment impugned and the evidence on record.
8. Dr. S.K.Bagh (PW9), has conducted postmortem on the dead body of the deceased on 23.11.2013 at 10.30 am vide Ex.P20 and found following injuries :
 - (i) Contusion on left frontal region of 4 x 3 cm
 - (ii) Contusion on left arm posterior region of 4 x 3 cm
 - (iii) Contusion on right side of neck on lower 1/3 rd part of 6 x 3.5 cm
 - (iv) Echymosis on left scapular region of 4 x 2 cm

He opined that death was due to asphyxia as a result of manual strangulation and injuries present on body caused with hard and blunt object. The injuries were caused 24 hrs. prior to death and duration of death was within 36 hrs. prior to postmortem and death was homicidal in nature. The postmortem report is Ex.P20.

9. As per inquest report Ex. P10, the dead body was found tied with a big heavy stone by the sari of the deceased. The Doctor proved that the death of the deceased was caused due to asphyxia as a result of manual strangulation and injuries present on her body were caused with hard and blunt object. He also opined that the injuries were ante mortem and death was homicidal in nature. Thus, from the above evidence it stands proved that the nature of death of the deceased was homicidal.

10. Mantora (PW1) is a labourer and she has identified the dead body of the deceased. She has deposed that about 5 months prior to recording of her statement, at about 5.30 pm she has seen the deceased with the appellant. They came on a motorcycle and were sitting near Tengna Talab and Kalindribai had worn nighty which was torn, on which, she had provided her one sari and blouse, thereafter, they went on the motorcycle. She has also identified the sari of the deceased vide Ex.P1. Dilip Kumar Koshale(PW2), husband of the deceased has also identified the dead body of his wife Kalindribai as per Ex. P2.
11. Now, we shall consider the evidence of Mantora (PW1) and Ranjit Koshale(PW24) regarding 'last seen together'. Both are the star witnesses in this case. Ranjit Koshale (PW24) is cousin of Dilip Kumar Koshale(PW2). He has not seen the deceased going on motorcycle of the appellant and he had never informed about this to his cousin. Ranjit Koshale (PW24) has turned hostile and not supported the case of prosecution. Surendra Koshale (PW6) has not supported the case of prosecution on the point of 'last seen' as well as memorandum and consequent seizure. Mantora (PW1) only now remains the witness of 'last seen'. She has stated in para 2 and 3 that at about 5.30 pm she has seen the appellant along with the deceased Kalindribai near Tangana Talab. The deceased was wearing nighty, which was torn, therefore she had given the deceased one sari and blouse. Thereafter, the appellant and the deceased went on motorcycle. She also stated that she was under the impression that the

deceased was wife of the appellant. Mantora (PW1) has identified the dead body of the deceased on the basis of clothes, Sari and blouse which were given by her to the deceased. Dead body of the deceased was found on 22.11.2013. Mantora has clearly stated in her statement Ex.D1 that on Thursday at 5.00 pm, the appellant was standing near her house along with one lady and that lady had worn purple colour nighty, it was torn then she gave her one yellow colour sari and yellow colour blouse and the deceased worn those clothes. Thus, when Mantora saw the deceased along with the appellant, that day was Thursday i.e. 21.11.2013. One nighty belonging to the deceased was seized from the possession of the appellant vide Ex. P14, but the same was not produced before the trial Court nor it was identified by anyone.

12. Dilip Kumar Koshale (PW2) admitted in para 5 of his deposition that on 22.11.2013 in the morning at 7.00 am, the deceased was present in house and at 8.00 am she went from house and when he returned in the evening, his wife was not present at home. He also stated that when he was on duty, at 6.00 pm Police came to him with photograph of his wife and took him to Hospital to identify the dead body then he identified the dead body of his wife. It means Mantora (PW1) had seen the deceased with the appellant on 21.11.2013 and she was present with her husband at home till 7.00 am on 22.11.2013 and thereafter, nobody has seen the deceased. Thus, there was a long time gap when the deceased was allegedly seen in the company of the appellant

and the dead body found and a possibility of any third person coming in between cannot be fully ruled out. Therefore, this circumstance is also not incriminating against the appellant. There is no 'motive' with the appellant to commit murder of the deceased. Sunita Bai (PW23) is sister in law (*Devrani*) of the deceased. She has stated that the deceased was not happy with her husband and she wanted to live with the appellant and they went to Police Station where the appellant accepted to keep Kalindribai with him.

13. Dr. S.K. Bagh (PW9) has conducted postmortem on the dead body of the deceased on 23.11.2013 at 10.30 am and the dead body was sent for postmortem on 22.11.2013 at 6.00 pm. He opined that the death of the deceased was within 36 hours of postmortem. It means the deceased might have died in the night of 21.11.2013. As per statement of the husband of the deceased, she was present with him on 22.11.2013 at 7.00 am. It creates doubt on the statement of this witness.
14. Much emphasis is given on the circumstance of illicit relations between the appellant and the deceased and denial of the deceased to live with her husband. As per evidence when the appellant agreed to keep the deceased with him, then the question arises as to why he would kill the deceased. Call details of mobile No.7879638913 and mobile No.8120726109 are produced before the trial Court as per Ex.P24. Mobile No.7879638912 has been seized from the custody of the appellant and Mobile No.8120726109 belonging to the deceased

was produced by the husband of the deceased. But the prosecution has not explained as to how this mobile was found in custody of the husband of the deceased. If the deceased was 'last seen' in the company of the appellant then the mobile phone should have been seized from the custody of the deceased and not from her husband. Even if it is proved that the appellant and the deceased were talking to each other on these mobile numbers, nothing incriminating is found on the basis of it and evidence of mobiles is of no use.

15. In the matter of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***¹, the Hon'ble Supreme Court has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-152 as under:

"152.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

¹ AIR 1984 SC 1622

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

16. For the foregoing reasons, we are of the view that the learned Additional Sessions Judge has erred in law in resting the conviction of the appellant on the above set of circumstantial evidence and the same deserves to be set-aside. Being so, the appellant is entitled to be acquitted of the charges.

17. In the result, the appeal is allowed. The conviction and sentence of the appellant are hereby set aside and the appellant is acquitted of the charges under Sections 302 and 201 of the IPC. The appellant is in jail. He be released forthwith, if not required in any other case on his furnishing a personal bond for a sum of Rs.25,000/- to the satisfaction of the trial Court for his appearance before the higher forum as and when required as per provisions of Section 437-A Cr.P.C. This bail bond shall remain in force for a period of six months from today.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

