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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 166 of 2014

Judgment reserved on : 03/12/2019

Judgment delivered on : 07/02/2020

- Bibhuti Bhushan Sahu (Wrongly mention Vibhuti Bhushan Sahu in Judgment), Aged 28 years, S/o Shri Binod Chandra Sahu (Wrongly mention Vinod Chandra Sahu in Judgment), R/o H.No. B/444, Village & Post, Balramprasad (Amantapur) Via Banarpal, P.S. Nalco Nagar, District Angul (Odisha)

---- Appellant

Versus

- State of Chhattisgarh Through – Police Station- Ganj, District- Raipur (C.G.)

---- Respondent

For Appellant : Shri Chandrabhushan Kesharwani, Advocate
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Gautam Chourdiya

C.A.V. Judgment

Per Gautam Chourdiya, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.12.2013 passed by learned Sessions Judge, Raipur (C.G.) in Sessions Trial No. 274/2011, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for life and pay a fine of Rs.5,000/-, in default of payment to further undergo additional rigorous imprisonment for five months

2. In the present case, the name of deceased is Mini @ Minati. Case of the prosecution, in brief, is that Appellant Bibhuti Bhushan Sahu @ Bidyadhar Sahu booked one room in Citizen Hotel, Raipur mentioning his name as Bidyadhar Sahu where he was staying alongwith deceased Mini @ Minati in

room No. 103 of the said Hotel from 04.08.2011. As per Ex.-P/7 Merg intimation was lodged on 07.08.2011 at about 11:00 am by PW- 2 Suresh Kumar Sahu, Manager of Citizen Hotel, in which he stated that at about 09:15 am on 04.08.2011, one person came alongwith one lady for staying in Hotel and got their name entered in the register maintained by the Hotel as Bidyadhar Sahu aged about 28 years and Minati Sahu aged about 22 years. At that time, Bidyadhar deposited Rs.500/- in advance and then PW-2 had given the key of room No. 103 of upper floor of the said hotel. PW-2 further stated that on 05.08.2011 at about 09:30 am, Bidyadhar again deposited Rs.500/- and on 06.08.2011, he (PW-2) did not see Bidyadhar entering or leaving the hotel on that day. Considering that Bidyadhar might have checked out on 07.08.2011 at about 10:30 am, he (PW-2) went towards room No. 103 of upper floor and when he peeped from window of that room, he saw a lady who came with Bidyadhar lying on the bed and some blood like clot was spread near her body and this was also seen by one Sisendu Sanyal.

3. After registering the merg (Ex.-P/7), the Investigating Officer Kumari Chandrakar (PW-16) alongwith staff left for the scene of occurrence and after breaking open the lock of room No. 103 which was locked from the outside, prepared *Panchnama* under Ex.-P/5 in the presence of witnesses. After preparing the *Panchnama*, they entered the room and seized latch & bolt vide Ex.-P/14. Thereafter, in the presence of witnesses, they inspected the place of occurrence, prepared *Nazri-naksha* vide Ex.-P/10 and gave notice to *Panchnama* witnesses vide Ex.-P/30. After taking photograph of dead body of the deceased, inquest of dead body was prepared vide Ex.-P/6 and cloths, brush, ladies underwear, browser, medimax soap etc from the room of the deceased were seized vide Ex.-P/13. The police personnel seized blood stained clothes, pillow cover, one red coloured hankerchief

from the place of occurrence vide Ex.-P/12. One entry register of Citizen Hotel was also seized from Suresh Sahu vide Ex.-P/8. Thereafter, the dead body of the deceased was sent for postmortem examination to Dr. B.R. Ambedkar Hospital vide Ex.-P/31 and the postmortem examination was conducted by Dr. S.K. Bagh (PW-5), who prepared his report Ex.-P/15. He noticed following injuries on the body of the deceased:

- (1) Contusion was present on the right elbow lateral aspect in size of 6 cm x 4 cm obliquely with blackish ecchymoses;
- (2) Few scrap mark present on right side in size of 4 cm, right lateral to thyroid cartilage level;
- (3) Neck (internal exam):- Ecchymoses present on cricothyroid muscle left side 2 cm x 1.5 cm, and right side just above thyroid cartilage, muscle contused 1 cm diameter area; trachea ring 1st to 4th were compressed, fractured and diameter of lumen reduced; grater cornu of thyroid cartilage fractured inward detected; after opening trachea, white froth with mucoid fluid filled.

Doctor opined that the cause of death was asphyxia as a result of throttling and death was homicidal in nature. The death had occurred within 36 hours prior to postmortem examination.

4. Thereafter, F.I.R. (Ex.-P/32) was registered at police station Ganj on 07.08.2011 at about 18:35 hours against accused/appellant Bidyadhar Sahu S/o B.K. Sahu. Accused/appellant was arrested on 08/09/2011 and his memorandum statement was recorded under Section 27 of the Evidence Act. Accused Bibhuti Bhushan Sahu was put to identification in Test Identification Parades (TIP) which was conducted in Raipur jail under Ex.-P/9 on 23.09.2011 and appellant Bidyadhar Sahu was duly identified by Akhilesh Kumar Paswan, who is the staff of Citizen Hotel and Suresh Kumar Sahu (PW-2), who is manager of the hotel, in TIP. Copy of attendance register of Adarsha Industrial Training Institute, Rantalei, District Angul

(Odisha) where the accused was studying was seized vide Ex.-P/3A. As per Ex.-P/4, an information was given by Principal of Adarsha Industrial Training Institute, Rantalei, District Angul to Incharge, Police Station, Gang, District Raipur that accused underwent his training for the session 2010-2012 in electrician trade. But from 01.08.2011 to 05.08.2011 our institution classes were suspended due to A.I.T.T. Exam. After that from 08.08.2011, Bibhuti Bhusan Sahu was absent till now.

5. After completion of the usual investigation, the charge-sheet was filed against the accused/appellant under Sections 302 and 201 of IPC and while framing the charge, the trial Judge framed the charge against accused/appellant Bibhuti Bhushan Sahu @ Bidyadhar Sahu under Section 302 IPC.
6. So as to hold the accused/appellant guilty, the prosecution has examined as many as 18 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Criminal Code of Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. There was no witness examined on behalf of the defence.
7. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant mentioned as para-1 of this judgment, hence this appeal.
8. Learned counsel for the appellant submits that in this case no any evidence available on record to connect the accused/appellant in commission of murder of deceased Mini @ Minati and there was no relation of the appellant with the deceased, nor the accused came at Citizen Hotel, Raipur with the deceased. He submits that if it is considered that the accused came in Citizen Hotel, Raipur with the deceased on 4th & 5th August, 2011 as

mentioned by PW-2 Suresh Kumar Sahu, as per postmortem report (Ex.-P/15), deceased Mini @ Minati died within 36 hours prior to postmortem examination which was conducted on 07.08.2011 at about 01:00 pm. He further submits that there is a long gap between two points of time when the deceased was last seen alive with the accused and when she was found dead and that no any explanation has been given by the prosecution, therefore, on the basis of last seen together, conviction cannot be sustained. He also submits that there is possibility of any person other than the accused being the author of crime because one key of the room was kept in possession of owner or staff of the Hotel Citizen. Therefore, the accused cannot be held guilty of committing murder of deceased because on 06.08.2011, the accused was not seen by Hotel Manager or employees of the Hotel. In support of above contention, reliance has been placed on the decision of this Court in the matter of **Gendu vs. State of C.G., 2008(1) C.G.L.J. 387 (DB)**.

9. Learned counsel for the appellant submits that no any motive was attributed to the appellant by the prosecution for commission of murder of the deceased and the appellant never visited Citizen Hotel along with the deceased. He also submits that PW-4 Shyam Kumar, a rickshaw puller, has not identified the accused in his court evidence. The appellant has been falsely implicated in this case. He further submits that there are many contradictions and omissions in the evidence of prosecution witnesses which cannot be accepted because they are planted by the prosecution. Therefore, the impugned judgment of conviction and sentence of the trial Court is liable to be quashed.
10. On the other hand, learned Panel Lawyer appearing on behalf of the State opposes these arguments made by learned counsel for the appellant and supported the judgment of the trial Court. He argued that the sequence of events has been duly proved by the prosecution beyond reasonable doubt.

He submits that the accused and the deceased came from Angul to Raipur by train vide Ex.-P/47 reservation-chart and as per evidence of PW-4 Shyam Kumar, accused and one lady asked him to drop at Citizen Hotel and thereafter accused gave Rs.10/- to PW-4 as rickshaw fare. He also submits that as per hotel register (Ex.-P/41) maintained by Hotel Manager, accused Bibhuti Bhushan Sahu was staying alongwith deceased Mini @ Minati in Citizen Hotel mentioning his name as Bidyadhar Sahu. He submits that during the course of business of the Hotel, it is specifically mentioned that on 04.08.2011, accused had booked one room No. 103 and also gave Rs.500/- in advance where two persons (No. of two persons) stayed. Therefore, looking to the register (Ex.-P/41) in which the handwriting of accused is there and was proved by the handwriting expert and as also the fact that the accused was absent from place where he was studying and the reservation chart, identification of the accused as Bibhuti Bhushan Sahu whose name was mentioned in the hotel register as Bidyadhar, which is proved by the prosecution beyond reasonable doubt, the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

11. We have heard the counsel for the respective parties and perused the evidence available on record.

12. It is not disputed by both counsel for the parties that it was proved that deceased Mini @ Minati died due to injury found on her body, her death was due to asphyxia as a result of throttling and death was homicidal in nature. As per Ex.-P/6 inquest and Ex.-P/15 postmortem report proved by PW-5, it was also proved that the death of deceased was due to asphyxia as a result of throttling and death was homicidal in nature.

13. Looking to the sequence of events, we first consider that the appellant and deceased came from Angul to Raipur. This fact is also proved by PW-18 Shanker Babu, TTE of railway. As per reservation chart (Ex.-P/47), PW-18

was on duty in Train No. 18425 Puri-Durg Express in which the accused and the deceased were travelling. In the reservation chart of Puri-Durg Express, the name of accused is mentioned as B.B. Sahu means Bibhuti Bhushan Sahu and the deceased name mentioned as M. Sahu. PW-18 has proved the reservation chart of sleeper class (Ex.-P/47) dated 03.08.2011 in which the same PNR No. 6459047474, the berth/seat No. 25 was booked in name of B.B. Sahu (M) aged 28 years from Angul to Raipur and berth/seat No. 28 was booked in the name M. Sahu (F) aged 25 years from Angul to Raipur in Coach No. SE1. Therefore, it was proved beyond all reasonable doubt that the accused and the deceased started journey in Train No. 18425 Puri-Durg Express from Angul to Raipur and when they reached Raipur station, from there PW-4 Shaym Kumar, a rickshaw-puller, has dropped them i.e. one male and one female passengers by his rickshaw to Citizen Hotel. PW-4 has also stated that the accused gave him Rs.10/- as fare of rickshaw from railway station to Citizen Hotel. Thereafter, the accused booked one room in Citizen Hotel where he stayed with one lady and it was proved on the basis of Ex.-P/41, a register of Hotel Citizen.

14. PW-2 Suresh Kumar, who is working as Manager in Citizen Hotel at the time incident, has also identified accused Bibhuti Bhushan Sahu as Bidyadhar Sahu in identification parade (Ex.-P/9) even in court also. He stated that on 04.08.2011, the accused came in Hotel along with one lady and he booked one room No. 103 whereas in the register Ex.-P/41, appellant has entered his name as Bidyadhar Sahu, deceased name as Minati, his mobile No.9124879554 and also put his signature. PW-2 has proved Ex-P/9 test identification parade and there is no contradiction and omission in the identification parade and dock identification. One Akhilesh Kumar Paswan had also identified the accused in the same identification parade (Ex.-P/9). The statement of PW-2 remain uncontroverted with regard to the fact that on 04.08.2011, the appellant stayed in Citizen Hotel alongwith the deceased as

also on 05.08.2011, the appellant has also deposited Rs.500/- in advance for further staying in the hotel. Therefore, it is proved by the prosecution beyond reasonable doubt that accused Bibhuti Bhushan Sahu @ Bidyadhar Sahu along with one female (lady) stayed in room No. 103 of Citizen Hotel from 04.08.2011.

15. PW-17 R.K. Alma, who is Additional State Examiner of Questioned Documents after examination of Articles A/1 to A-22, has opined that the handwritings and signatures found in the register of Citizen Hotel (Ex.-P/41) are similar and same has been stamped and marked as Q-1 and Q-2. As per Ex.-P/45 & Ex.-P/46, the handwriting found in the red coloured register "DOLLY" seized at the instance of the appellant i.e. Ex.-P/43 and the specimen handwriting of Bibhuti Bhushan was found to be of common authorship. PW-17 has proved his reports Ex.-P/45 and Ex.-P/46 and this fact has rightly been found proved by the trial Court.

16. Learned counsel for the appellant merely submitted two grounds for disbelieving the prosecution evidence. First, time gap between death of Mini @ Minati as per postmortem (Ex.-P/15) and last seen of the appellant with the deceased. Deceased Mini @ Minati died within 36 hours prior to postmortem examination which was conducted on 07.08.2011. There is no dispute that on 04.08.2011 the appellant stayed with deceased in room No. 103, thereafter, he gave Rs.500/- for staying further on 05.08.2011 in the said hotel, but after on 05.08.2011, the accused was not seen in the hotel. When he left the hotel, nobody had seen the appellant as per evidence available on record.

17. Therefore, it cannot be said that there is any time gap between the death of the deceased and the last seen of the accused. As per register of the hotel (Ex.-P/41), accused/appellant booked room and was staying with the deceased, this fact is also proved that the accused was absent from his institution where he was studying at Angul. But when he checked out from

the said hotel, no any intimation has been given to the hotel staff by the appellant. Normally when the room of a hotel is vacated, the time and date of departure of the customer is also mentioned in the hotel register. But no any time and date of check out from the hotel was mentioned in the hotel register (Ex.-P/41) by appellant Bibhuti Bhushan Sahu who mentioned his name as Bidyadhar Sahu and no key of room No. 103 of the said hotel was deposited by the appellant in hotel. The accused/appellant gave memorandum statement (Ex.P/17) to the police. According to his memorandum (Ex.-P/17), he stated that the deceased was adamant and wanted to go to native place of the appellant at Nalconagar and for this reason dispute arose between the appellant and the deceased. On this, the appellant slapped Mini @ Minati and committed her murder by throttling. On the next, he locked the room No.103 from outside and he has deposited Rs.500/- in advance in the counter of the hotel for further staying and left the hotel. The key of the room, one bag containing the clothes and other articles belonging to the deceased were thrown in the river by the appellant and no any recovery was made regarding the same. But, this fact was within the exclusive knowledge of the appellant when he left the hotel. The judgment relied upon by the learned counsel for the appellant in the matter of *Gendu* (supra) is of no help to the appellant.

- 18.** Accused has taken plea of alibi in his 313 Cr.P.C. statement. Question No. 19 was put to accused that the lady who had come with accused in the room was found in dead condition and inquest of her dead body (Ex.-P/6) was prepared by the police. In reply to Question No. 19 he has stated that no lady was with him and he had not gone to hotel. Therefore, though the accused was taking the plea of alibi but he had not given explanation as to why his name was written as Bidyadhar Sahu in the register of hotel (Ex.P/41) whereas his actual name is Bibhuti Bhushan Sahu. He (accused) had come from Angul to Raipur as B.B. Sahu as mentioned in reservation

chart (Ex.-P/47) of Coach No. SE1 and berth/seat No. was M-25 (PNR No. 6459047474) and one lady i.e. deceased as M. Sahu had also come with the accused on the same PNR number and her berth/seat No. was F-28 and it shows guilty mind of the accused/appellant.

19. Therefore, it is clear that the accused/appellant had come from Angul to Raipur along with one lady aged about 25 years on 04.08.2011 and he stayed in Citizen Hotel in room No. 103. On the next morning, some dispute arose between the appellant and the deceased, then appellant committed murder of deceased by throttling her. Thereafter, the appellant locked the room from outside and left the hotel without informing the hotel staff and key of the room was also kept in his possession, which was thereafter, thrown in the river.

20. PW-9 Sufala Sahu is the elder sister of deceased Mini @ Minati. PW-9 has proved this fact that her sister was living with one person at Angul. Therefore, the statement of PW-9 is corroborative evidence against the appellant. PW-8 Naresh Chandra Pradhan who is residing at Angul, Odisha, has stated that the accused/appellant was living in his house on rental basis and the appellant was living in his house for approximate two months, thereafter, he (appellant) left his (PW-8) house. PW-8 has turned hostile, but it is clear that the accused/appellant is the resident of Angul, Odisha.

21. PW-1 R.K. Dhaal is the Principal of Adarsha Industrial Training Institute, Runtalei, Odisha where the accused/appellant was studying in electrician trade. PW-1 has stated that the accused had taken admission in his institution on 02.08.2010 as per Ex.-P/1A. PW-1 has proved admission register (Ex.-P/1A), statement showing the particulars of the candidates to register their names in State Council for Sessions 2010-2012 (Ex.-P/2) and attendance register (Ex.-P/3A) of Adarsha Industrial Training Institute, Runtalei, Odisha and these documents remained unchallenged before the trial Court. As per Ex.-P/3A, attendance register of Adarsha Institute, the

classes were suspended from 01.08.2011 to 05.08.2011 and from 08.08.2011 the accused was absent during whole month of August, 2011. PW-1 has given information to Incharge, Police Station- Ganj, District Raipur by way of letter dated 07.09.2011 (Ex.-P/4) regarding absence of accused in his institution till the date of issuing that letter.

22. Looking to the facts and circumstances of the case, it is clear that the accused/appellant along with deceased Mini @ Minati has performed their journey from Angul, Odisha to Raipur on 03.08.2011 by Train No. 18425 (Puri-Durg Exp.) on same PNR No. 6459047474 and they reached Raipur station. From Raipur station, they went to Citizen Hotel by rickshaw and booked one room No. 103 from 04.08.2011 till 05.08.2011 and this was proved by Manager of the hotel PW-2 Suresh Kumar. The accused without intimating the hotel staff, left the hotel on 05.08.2011 after committing murder of deceased Mini @ Minati in room No. 103 of Citizen Hotel and locked the said room from outside. Thereafter, the dead body of deceased was found on 07.08.2011 in room No. 103 where the accused and the deceased had stayed. Thereafter, as per Ex.-P/3A, the accused was not attending the Adarsha Institute where he was studying in electrician trade. Therefore, the chain of circumstances is proved against the appellant/accused to connect him with the crime in question. Therefore, the plea of alibi taken in answer to Question No.19 that the appellant had not come alongwith lady in the said hotel, he had not gone to hotel and he has been falsely implicated for the offence under Section 302 of IPC, was not established.

23. Ex.-P/9 test identification parade has been proved by PW-2 Suresh Kumar Sahu beyond reasonable doubt and no specific reason was found as to why the accused was falsely implicated in this case.

24. Specifically there is no motive proved by the prosecution in this case. Motive is a fact in mind of the culprit and it cannot be directly or indirectly collected

for prosecution case. But looking to the facts and circumstances of the case and evidence adduced by the prosecution, the motive was proved by the accused himself in his memorandum statement (Ex.-P/17) that some dispute arose between the deceased and the accused on 04.08.2011 in the room of Citizen Hotel on account of deceased insisting that the appellant should take her to his native place and on this, the appellant had committed murder of deceased by throttling her neck. Thereafter, the appellant had locked the room from outside and left the hotel without intimating the hotel staff and the dead body of the deceased was found in the room of hotel which was booked by the appellant. No explanation has been given by the appellant in his examination under Section 313 Cr.P.C. as to why he left the room and also kept key of that room. Further, the appellant was throughout absent in the month of August, 2011 from his institution at Angul where he was studying.

25. In view of the above discussions, we are of the considered opinion that it is appellant Bibhuti Bhushan Sahu @ Bidyadhar Sahu who committed murder of deceased Mini @ Minati by throttling her neck in the room of hotel where both had stayed and thereafter the appellant left the hotel alone without intimating the staff of the hotel. Therefore, the learned trial Court has rightly convicted the appellant/accused under Section 302 of IPC and the conviction is based on credible and clinching evidence sustainable under the law.

26. For the foregoing reasons, we do not find any substance in the appeal. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge