

(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

CRIMINAL APPEAL NO. 335 / 2002.

APPELLANT.  
(IN JAIL).

Mohan Singh Netam son of Chaitram Netam  
by Caste Gond, aged about 20 years, resident  
of village Deodonger, P. S. Farasgaon, Distt.  
Bastar.

VERSUS.

RESPONDENT.

State of Chhattisgarh,  
Through P. S. Kondagaon, Distt. Bastar, C. G.

CRIMINAL APPEAL U/S 374(2) OF Cr. P.C. 1973.

Being aggrieved by the judgement, sentence  
and conviction dt. 13.12.2001 passed by the  
Third Addl. Session Judge, Bastar in S.T.No.  
335/2001. Appellant prefers instant appeal  
on the following amongst other grounds:-

12-10  
Filed on..... 25-3-02  
by Shri. R. S. Vaidya  
Advocate  
R. to D.R. (J)

(24)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

(DIVISION BENCH)

CRIMINAL APPEAL No.335 OF 2002

Mohan Singh Netam

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-  
L.C.BHADOO  
Judge

28.10.2005

HON'BLE MR. JUSTICE V.K. SHRIVASTAVA

*Judge*

Sd/-  
V.K. Shrivastava  
Judge

POST FOR JUDGMENT ON 28th OCTOBER, 2005

Sd/-  
L.C.BHADOO  
Judge

28.10.2005

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Division Bench\*:

Hon'ble Shri L.C. Bhadoo and

Hon'ble Shri V.K. Shrivastava, J.J.

CRIMINAL APPEAL No.335 OF 2002

Mohan Singh Netam

Versus

State of Chhattisgarh

---

Present:

Miss Sangeeta Mishra, Advocate: For the appellant.

Shri Akhil Mishra with Shri Ravindra

Agrawal, Panel Lawyers: For the State/respondent.

---

J U D G M E N T

(Delivered on 28/10 October, 2005)

The following judgment of the Court was delivered by Justice L.C. Bhadoo:-

1. This appeal is directed against the judgment dated 13<sup>th</sup> December 2001 passed by the 3<sup>rd</sup> Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.335/2001 whereby the learned 3<sup>rd</sup> Additional Sessions Judge after holding the accused/appellant guilty for the commission of the offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.
2. The prosecution case, in brief, is that on 8-4-2001 Phool Singh Korram, Sarpanch of Gram Panchayat Kumharpara gave a report to the Police Station Kondagaon that one Basant Tiwari has informed him that the dead body of some lady is lying in the bed-river of river "Narangi", and the head of the dead body has been underneath the

sand. The Police registered the mereg intimation (Ex.-P/1). The Investigating Officer reached to the scene of occurrence. After giving notice to the Panchas, Panchanama of the dead body (Ex.-P/10) was prepared. The Investigating Officer took into possession one pair of Ladies 'Chappal', broken pieces of bangles, blood stained soil as well as plain soil from the place of occurrence under Ex.-P/11. While in the Police custody, the accused/appellant gave a memorandum (Ex.-P/12) about the place of occurrence and in pursuance of that the accused took the Investigating Officer to the place of occurrence and the memorandum (Ex.-P/13) in this regard was prepared. The Investigating Officer got clothes of the deceased identified from the mother and father of the deceased under Ex.-P/16(A). The Investigating Officer prepared the site plan Ex.-P/19. The postmortem of the dead body was conducted by the doctor in-charge, Primary Health Centre, Kondagaon and he prepared the postmortem report Ex.-P/29. After completion of the investigation, charge sheet was filed against the accused/appellant for the commission of murder of Geeta Bai in the Court of Judicial Magistrate, 1<sup>st</sup> Class, Kondagaon who in turn committed the case for trial to the Sessions Judge from where the learned 3<sup>rd</sup> Additional Sessions Judge, Bastar at Jagdalpur received the case on transfer.

3. The prosecution in order to prove the offence against the accused/appellant examined 17 witnesses. On the other hand, the statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused in the manner mentioned in the earlier part of this judgment.

4. We have heard Miss Sangeeta Mishra, learned counsel for the accused/appellant and Shri Akhil Mishra with Shri Ravindra Agrawal, learned Panel Lawyers for the State/respondent.
5. At the outset, learned counsel for the accused/appellant did not dispute the fact that the death of Geeta Bai was homicidal in nature. PW-8 Dr. Smt. S. Nagvanshi, Primary Health Centre, Makdi, has stated that she conducted postmortem on the dead body of Geeta Bai on 9-4-2001 and in her opinion, the nature of death was homicidal.
6. Now, coming to the involvement of the accused/appellant in committing murder of Geeta Bai, the extra judicial confession made by the accused has rightly been disbelieved by the trial Court as the confession is said to have been made in the presence of the police. The accused/appellant has been mainly convicted on the basis of the fact that the deceased was seen with the accused just before her death. Therefore, the whole case rests on the circumstantial evidence and there is no ocular evidence in this case. In order to convict the accused on the basis of circumstantial evidence, as per the settled law laid down by the Hon'ble Apex Court in the matter of **NESAR AHMED VS. STATE OF BIHAR** reported in AIR 2001 Supreme Court 2416 i.e. in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.
7. In convicting the accused on the basis of last seen, in the matter of **Bodhraj alias Bodha and others vs. State of Jammu & Kashmir** reported in (2002) 8 SCC 45 the Hon'ble Apex Court has held that:

"The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive together and when the deceased is found dead is so small, that possibility of any person other than the accused being the author of the crime becomes impossible. The Hon'ble Apex Court further held that it would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together."

Similarly in the matter of **Subhash Chand v. State of Rajasthan** reported in (2002) 1 SCC 702 the Hon'ble Apex Court has held that:

"Last seen together must be near about the date and time of the incident. Merely on the basis of last seen, the accused persons cannot be held guilty."

8. On the basis of the above principle if we examine the prosecution evidence in this case, mainly in this regard there are 2 witnesses produced by the prosecution. PW-12 Sangeeta has stated that on 4<sup>th</sup> March 2001 she went to the market of village Radhna and in the market she met with Geeta. She asked her that let us go for wearing bangles. After wearing the bangles, they ate some snacks in the market and thereafter Geeta informed her that she is going to Farasgaon in order to abort the child which she was carrying. She also informed her that she will be going along with Mohan and thereafter she returned to her house. In para-5 of the cross-examination, she has categorically stated that she had not seen Mohan. She has given evidence only on the basis of the statement made by Geeta before her. She had not seen Geeta and Mohan going together. Therefore, on the basis of the evidence of this witness it cannot be said that she saw the accused and deceased together. Moreover, she has stated that the date was 4<sup>th</sup> March 2001 whereas the dead body of Geeta was found in the bed river of river Narangi on

8-4-2001. Therefore, in view of the above fact, the evidence of Sangeeta is of no use.

9. Next evidence is of PW-15 Harish who has stated that at the time of the incident he was working as driver of Up Sarpanch Balkunwar Pradhan. In the evening, he came from Kondagaon to Farasgaon and he was standing there for going to Chowk Radhna. He knows Geeta and the accused both and he saw them standing near Banana trolley, at that time a luxury coach bus came and Geeta and the accused both boarded the bus which went towards Jagdalpur. Thereafter, he went to his house and next day he went to Raipur for repairing the jeep. He returned after 20-25 days and he came to know about the incident.
10. In view of the law laid down by the Hon'ble Apex Court, as mentioned above, the evidence of this witness is also of no assistance to the prosecution. He has not stated anywhere the date when he saw the accused and Geeta together as the dead body of Geeta was found in the bed river on 8-4-2001. Moreover, he has stated that Geeta and the accused were standing near Banana trolley, the bus came there and both of them boarded the bus. No inference can be drawn from the fact that merely standing near the bus stand and boarding the bus together, that the deceased had gone with the accused, as generally the bus is meant for all the passengers who used to travel by the bus. He has not stated in clear terms that deceased Geeta and the accused were talking with each other and the accused took Geeta along with him. Moreover, it is not clear from his evidence that, that was the time just before the death of Geeta. In the cross-examination, he has stated that he has not disclosed this fact to anyone that he saw the accused and the deceased together there. Only on the basis of this evidence the accused cannot be connected with the murder of Geeta Bai without further corroboration by any legal circumstantial evidence.

11. Connecting the accused with the crime on the basis of last seen theory must be so that there should not be possibility of meeting of third person between the time when the accused and the deceased were last seen together and commission of crime. The above evidence of the prosecution does not stand up to the test laid down by the Hon'ble Apex Court and there is no other evidence which connects the accused with the murder of Geeta Bai. Accordingly, we are of the considered opinion that the finding of the trial Court is not based on any legal and clinching evidence, as such same cannot be sustained.

12. In the result, the appeal is allowed. The conviction and sentence passed against the accused are set aside. He is acquitted of the charge under Section 302 of the I.P.C.. He be set at liberty forthwith if not required in any other case.

Sd/-  
L.C.BHADOO  
Judge

28/10-10-2005

Sd/-  
V.K. Shrivatava  
Judge

28/10-10-2005

Barve