

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 139 of 2011

1. Lal Singh, S/o Sadhuram Halba, aged about 28 years, r/o village Borgaon, Police Station Doundi, District Durg (CG)

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh, through the Police Station Doundi, District Durg.

---- Respondent

For appellant.
For Respondent

Shri Rahul Mishra, Advocate
Shri Ajit Singh, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board

Per P. Diwaker, J

01.09.2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 23.10.2010 passed by the Additional Sessions Judge (FTC), Balod in S.T. No.2/10 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for Life & fine of Rs.200/- and R.I. for 06 years & fine of Rs.200/-, with usual default clauses.
2. In the present case name of deceased is Kumari Teejan, daughter of accused/appellant and at the time of incident she was aged about 09 years. It is alleged that on account of dispute between accused/appellant and his wife namely Dashoda Bai, wife of accused/appellant left her matrimonial home and started living in her parental home, but deceased Kumari Teejan was living with accused/appellant. On 8.10.2009 as the deceased was not traceable therefore a search was made to trace her and in that process her dead body was found lying in the kitchen garden situated back side of house

of accused/appellant. She died because of strangulation. Merg intimation (Ex.P-1) was recorded on 8.10.2009 at the instance of Sadhram (PW-1), father of accused/appellant & grandfather of deceased, and based on merg inquiry, FIR (Ex.P-16) was registered on 10.10.2009 against unknown person under Sections 302 & 201 of the IPC. Inquest over the body of deceased was prepared on 9.10.2009 vide Ex.P-3 and thereafter post mortem on the body of deceased was done vide Ex.P-11A by Dr. N.K. Thakur (PW-6) who noticed following symptoms and injuries;-

- Tongue swollen and tip of tongue is cyanosed and compressed between the teeth.
- Rigor mortis present in all four limbs.
- Ligature mark which is groove like depression mark over neck with multiple marginal abrasion and bruise marks.
- Multiple abrasion and bruise mark on the left side of neck.
- Shallow and only depression mark on the back side of neck.

The doctor has opined that mode of death is asphyxia due to strangulation and death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 302 & 201 of the IPC and accordingly the charges were framed against him.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted & sentenced him as described above.
5. Learned counsel for the accused/appellant submits that:
 - (i) present is a case of no evidence and merely on the basis of suspicion accused/appellant has been arrested and prosecuted.

(ii) vide Ex.P-7 one small rope was seized from the kitchen garden of accused/appellant i.e. an open place accessible to all, and according to the prosecution, it is this rope which was used by accused/appellant for commission of offence, but the prosecution has failed to adduce any legally admissible evidence which goes to show that it is the accused/appellant who with the help of this rope caused homicidal death of the deceased.

(iii) though the dead body of deceased was found in the kitchen garden of the house but the accused/appellant alone was not residing in said house and his father Sadharam (PW-1) and two brothers were also residing under the same roof.

(iv) dead body was seized from the open place accessible to anyone and near the body a cell phone of one Sudarshan was also seized but no investigation had been done in that respect.

(v) Shatrughan (PW-2) has categorically stated that when he returned from his work place, the accused/appellant had asked him about the deceased and thereafter they searched for the deceased and after about half-an hour it is the accused/appellant who brought dead body of the deceased from the kitchen garden. Therefore, the appellant is entitled for benefit of doubt.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
7. We have heard learned counsel for the parties and perused the material available on record.
8. Sadharam (PW-1) is the father of accused/appellant and grandfather of deceased. It is he who lodged merger intimation (Ex.P-1). He has stated that about a year prior to incident the accused/appellant had quarrelled with his wife Dashoda Bai and since then she was residing in her parental home.

Report was also lodged by her family members against accused/appellant. He has further stated that on the date of incident, accused/appellant had enquired about the deceased from him to which he replied that she might have gone somewhere to watch television. After some time, accused/appellant himself brought the deceased from the side of kitchen garden and at that time she was dead. He has further stated that accused/appellant did not explain him as to how she died. Inquest (Ex.P-3) & spot map (Ex.P-4) were prepared in his presence. He has further stated that according to him, accused/appellant might have committed murder of the deceased and that one cell phone was lying near the dead body. He has further stated that though the accused/appellant and his brothers were residing under the same roof but their rooms were separate. He has admitted that the courtyard of house of all the three brothers is same and their common kitchen garden is situated at the back side of courtyard. Since the kitchen garden is open from one side, any outsider can gain entry there. He has further stated that presently house & kitchen garden are recorded in his name. He has further stated that mobile seized from near the dead body was handed over to the police by accused/appellant. That mobile belongs to one Sudarshan of the village. He has further stated that the police had called the father of Sudarshan who informed that said mobile was missing for the last few days. He has further stated that neither he saw anybody killing the deceased nor did he see the body lying in the kitchen garden, however, his son i.e. accused/appellant, brought the dead body from the kitchen garden. In Para-11 he has categorically stated the accused/appellant would keep the deceased well and deceased Teejan Bai never made any complaint to him.

9. Shatrughan (PW-2) is the younger brother of accused/appellant. He has stated that at about 7.00 p.m. in the evening when he returned from his work place, accused/appellant inquired from him about the deceased then he said

that he has not seen her. Half-an hour thereafter accused/appellant had brought dead body of deceased from the kitchen garden side and being asked, accused/appellant informed that he found her sleeping in the kitchen garden. He has further stated that in his view, it is the accused/appellant who might have killed the deceased. He is also the witness of inquest (Ex.P-3), map (Ex.P-5) and seizure of rope (Ex.P-7). This witness has admitted that kitchen garden was in open place and anybody can gain entry in it. He admits that accused/appellant was keeping the deceased nicely. He has also stated about the recovery of one cell phone from near the body of deceased and that the same belonged to one villager namely Sudarshan. He has further stated that Sudarshan's father was called to identify said mobile which was duly identified by him. He has denied the fact that he had informed the police that accused/appellant used to harass the deceased.

10. Kuleshwar Yadav (PW-3) is the Head Constable who helped in the initial investigation.
11. Smt. Nutan (PW-4) is wife of Shatrughan (PW-2) & aunt of deceased. She has stated that on being informed by Savitri, sister-in-law, she came to know that accused/appellant brought the deceased from the kitchen garden in dead condition. She is not aware as to how she died. She has further stated that the deceased was living with accused/appellant and studying in Class-III. This witness has admitted that courtyard and kitchen-garden of her house and that of the accused/appellant is common and recorded in the name of her father-in-law Sadharam (PW-1). She too has admitted that a mobile phone was found near the dead body and she came to know that it was of one Sudarshan. She has also admitted the fact that accused/appellant was keeping the deceased nicely.
12. Savitri (PW-5) is daughter-in-law of accused/appellant and aunt of the deceased. This witness has made almost similar statement as has been

made by Smt. Nutan Bai (PW-4).

13. Dr. N.K. Thakur (PW-6) conducted post-mortem on the body of deceased and opined that mode of death is asphyxia due to strangulation, death is homicidal in nature and duration is between 18 to 36 hours.
14. Nirbhay Ram (PW-7) is hear-say witness who came to know about the incident after it had taken place. He has stated that when the incident occurred, he was not present in the village.
15. Rammilan Thakur (PW-9) prepared the spot map (Ex.P-4). He has admitted the fact that kitchen garden was an open place and anybody can gain entry from outside.
16. R.K. Mandlesh (PW-10) is the investigating officer and has duly supported the prosecution case.
17. It is accepted position that there are no eye-witness in the present case and the the prosecution case is completely based on the circumstantial evidence. The main circumstances which the learned Additional Sessions Judge appears to have taken note of, are that it is the accused/appellant who brought the dead body of deceased from the kitchen garden; rope was found lying near the body of the deceased in the kitchen garden; the deceased was last seen in the company of accused/appellant; and that the accused/appellant failed to offer explanation as to how the deceased died.
18. It is by now well settled that in a case relating to circumstantial evidence, the chain of circumstances has to be spelt out by the prosecution and even if one link in the chain is broken the accused must get the benefit thereof. In the matter of **Dhananjay Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** the Hon"ble Supreme Court has held thus:

“In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so

established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.”

19. Close scrutiny of the evidence of witnesses makes it clear that on the fateful day as the deceased was missing, she was being searched by accused/appellant & Shatruhan (PW-2) and during the course of search, she was found lying dead by accused/appellant in the common kitchen garden of the house where he was residing. It has also come in the evidence that kitchen-garden being open from one side is thus accessible to anyone. Evidence further goes to show that relation between the accused/appellant and the deceased were cordial and he used to keep her nicely even after separation from his wife. Thus, except that dead body of deceased was first discovered by accused/appellant in the kitchen garden, nothing incriminating evidence linking the accused/appellant in regard to commission of crime in question has been brought on record. Since it has not been proved by any evidence that the deceased was strangled to death by accused/appellant, it is difficult to draw an inference that accused/appellant has committed an offence. Even it is settled position that suspicion, howsoever strong, cannot take the place of proof.

As regards the rope allegedly used in commission of crime, the same was recovered from the kitchen garden, which was an open place and accessible by anyone, and it is not the accused/appellant at whose instance said rope

was seized and therefore it is difficult to connect it with him. Furthermore, there is no positive evidence that the deceased was last seen alive in the company of accused/appellant and immediately thereafter her dead body was recovered and thus, the prosecution has utterly failed to prove the circumstantial evidence of last seen also.

True it is that in case of house murder there is corresponding burden on the inmates of house to give a cogent explanation as to how the crime was committed, but in the present it is evident from the spot map (Ex.P-4) that accused/appellant was not the only inmate, other family members i.e. father & brothers of accused/appellant, were also residing under the same roof and therefore the possibility of commission of offence by some another person cannot be ruled out.

20. Thus the cumulative effect of the evidence adduced by the prosecution is that the prosecution has utterly failed to establish that it is the accused/appellant who was behind the death of the deceased and the Court below also does not appear to be justified in basing its conviction on the above circumstantial evidence. Since the prosecution has not been in a position to prove its case beyond reasonable doubts, the benefit of doubt has to go to the accused/appellants. It is held thus.

21. Likewise, there is nothing on record to show that after the death of the deceased the accused/appellant had in any manner caused disappearance of evidence of the offence with intent to screen the offender from legal punishment and being so his conviction under Section 201 of the IPC is also not sustainable in the eye of law and he is entitled for acquittal of this offence also. Order accordingly.

22. For the foregoing, the appeal succeeds. Conviction & sentence of the appellant under Sections 302 & 201 of the IPC are hereby set aside and he is acquitted of those charges by extending benefit of doubt. He be set at liberty forthwith unless required to be in custody in connection with any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-