

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 840 of 2010

- Om Prakash Singh alias Guddu, aged about 33 years, S/o – Jai Ram Suryavanshi, occupation – Cobbler, R/o – Camp – I, Pragati Nagar, P.S. Chhavani, Bhilai, District – Durg (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through : Police Station Chhavani, District – Durg (C.G.)

---- Respondent

For Appellant	:	Mr. Arvind Sinha , Advocate.
For Respondent / State	:	Mr. Avinash K. Mishra, Panel Lawyer

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

CAV JUDGMENT

Passed on : 10/07/2015

Per I.S. Uboweja, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 26.10.2010 passed by the Additional Sessions Judge, Durg in Sessions Trial No.52/2009, whereby and whereunder the trial Court after holding the appellant guilty for causing homicidal death amounting to murder of his wife Kusma alias Sushma convicted the appellant under Section 302 of the Indian Penal Code (for short, 'the IPC') and sentenced him to undergo imprisonment for life & fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for three months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. Case of the prosecution, in brief, is that deceased Kusma alias Sushma was married with appellant / accused Omprakash about 12 years prior to

the date of incident. Three children were blessed out of their wedlock. On the fateful day of 14.01.2009 at about 7.30 a.m., brother of deceased Sushma, Vinod Kumar (PW-7) resident of village Gwara, Mandla (M.P.) received a telephonic message, through his neighbour named Amit, who was informed by mother-in-law of the deceased that his sister Sushma has died. After receiving the message, Vinod Kumar (PW-7) told them to keep the dead body as it is until they reach there. Thereafter, Vinod Kumar (PW-7) came to Bhilai, place of incident, and found injuries on neck, back of body and eyes of the deceased. The neighbour of deceased told to Vinod Kumar (PW-7) about the quarrel by accused / appellant with deceased. Vinod Kumar (PW-7) gave in writing the information at police station, Chhavani, where Merg Intimation (Ex.P-1) was registered.

4. Investigating officer left for scene of occurrence and after summoning the witnesses vide Ex.P-3, inquest over the dead body of deceased was prepared vide Ex.P-4. Spot map was prepared vide Ex.P-9. Dead body of deceased Sushma was sent for autopsy to Government Hospital, Durg. Dr. B.P. Tiwari (PW-5) conducted autopsy vide Ex.P-8 and found following injuries :-

- i. One deep reddish brown contusion of 1 x 5 cm below lower part of mandible from slight right to chin extended towards left;
- ii. One faint contusion of 5 x 11 cm horizontal above thyroid bone at centre of neck.

Mode of death was cardio respiratory arrest as a result of strangulation.

5. Viscera and organs of the deceased were seized vide Ex.P-12. Accused was taken into custody, he made disclosure statement of wooden plank and container of poisonous substance, same were recovered at the instance of the appellant vide Ex.P-11. Seized articles were sent for chemical examination to FSL vide Ex.P-19, from where report (Ex.P-23) has been received.
6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.
7. During the trial, learned trial Court has framed charge under Section 302 of the IPC against the accused, which he denied and claimed for trial. Prosecution has examined as many as eight witnesses. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. Accused has not examined any defence witness.
8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
9. We have heard learned counsel for both the parties and perused the judgment impugned including the record of trial Court.
10. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on circumstantial evidence, but the

prosecution has failed to prove the complete chain of circumstances sufficient for drawing an inference that only the appellant was author of crime and none else and also sufficient to exclude the possibility of innocence of the appellant. He further submits that deceased has committed suicide and doctor has wrongly opined that it was a case of strangulation.

11. On the other hand, learned State counsel opposed the appeal and submits that evidence adduced on behalf of the prosecution clearly proved the circumstances leading to commission of aforesaid crime.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death of deceased Kusma @ Sushma as a result fatal injuries found over her body has not been substantially disputed on behalf of the appellant. It is also not substantially disputed that poisonous substance was found in the body of the deceased and dead body was found inside the room of the appellant. It is also not in dispute that injuries were seen over the body of the deceased. On the other hand, it is also established by the evidence of Vinod Kumar (PW-7), brother of deceased, Merg Intimation (Ex.P-1), FIR (Ex.P-2), Dr. B.P. Tiwari (PW-5), autopsy report (Ex.P-8) and FSL report (Ex.P-23).
14. As regards the complicity of appellant in crime in question, the conviction is based on circumstantial evidence. In case of conviction based on circumstantial evidence as held in the case of **Kusuma Ankama Rao v. State of A.P., 2008 AIR SCW 4669**, the prosecution is required to satisfy the following circumstances :-

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;
 - (ii) the facts so established should be consistent only with the 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;
 - (iii) the circumstances should be of a conclusive nature and tendency;
 - (iv) they should exclude every possible hypothesis except the one to be proved; and
 - (v) 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.
15. In the present case, the prosecution has proved the complete chain of circumstances by adducing the evidence, which are as under :-
- (i) the appellant and the deceased were present in the same house, under same roof and were sleeping in one room;
 - (ii) deceased found dead in the house of the appellant;
 - (iii) death of deceased was homicidal in nature; and
 - (iv) appellant was under obligation to offer explanation in terms of Section 106 of the Indian Evidence Act that who has caused death of deceased, although he has not offered any explanation that how deceased died inside his house. Appellant, who was a person having especial knowledge about how the deceased died, has not offered any explanation in this regard and also did not take any defence.
16. As per evidence of Subhash Bansod (PW-2) and Mukund Marathi (PW-3), they came to know about death of the deceased after hearing some scream. Vinod Kumar (PW-7), who is brother of deceased, stated that he came to know the death of deceased through telephonic

message from Amit, who has been informed by mother-in-law of deceased, but there is not a single piece of evidence showing that accused has tried to inform his brother-in-law or to local police station about death of the deceased. As per evidence of Dr. B.P. Tiwari (PW-5) autopsy report (Ex.P-8), he noticed multiple injuries over the body of deceased especially two marks were present over the neck and he found that mode of death was as a result of strangulation and he also suspected about poisoning. After receiving viscera report from FSL, it is clear that some poisonous substance was also found in the body of the deceased. No symptom of suicide was noticed by the doctor in his autopsy report.

17. As per above discussed circumstances, the only possible inference is that the appellant had caused homicidal death of the deceased and it excludes possibility of the appellant being innocent.
18. After appreciating the evidence available on record, the trial Court has rightly convicted and sentenced the appellant as aforementioned.
19. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment impugned passed by the trial Court.
20. Consequently, the appeal, being devoid of merit, is liable to be dismissed and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE