

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.838 of 2010

Trilochan Kumar Dewangan @ Pappu, S/o Dulichand Dewangan, aged about 27 years, R/o Nim Chowk, Dewangan Para Champa, Tahsil & Distt. Janjgir-Champa (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Champa, Distt. Janjgir-Champa (C.G.)

---- Respondent

For Appellant: Mr. Pramod Kumar Verma, Senior Advocate with Mr. Sumit Verma and Mr. Virendra Verma, Advocates.

For Respondent/State: Mr. Mahesh Mishra, Panel Lawyer.

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board

20/04/2015

T.P. Sharma, J: -

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 2-11-2010 passed by the Sessions Judge, Janjgir, Distt. Janjgir-Champa in Sessions Trial No.82/2010, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Pushpa Dewangan, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.1,000/-, in default of payment of fine to further undergo RI for one month.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant, and thereby committed an illegality.
3. As per case of the prosecution, the appellant and deceased Pushpa Dewangan, wife of the appellant, were residing together under same roof. On 12-3-2010 at about 2 a.m., at odd night, the appellant caused homicidal death of deceased Pushpa by strangulation and went to Police Station Champa and lodged morgue vide Ex.P-8 that she herself has committed suicide by hanging.
4. The Investigating Officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-1, prepared inquest over the dead body of the deceased vide

Ex.P-2. Spot map was prepared vide Ex.P-20. Flat two pieces of rope one from neck of the deceased and one from room tied with स्यार was seized vide Ex.P-3.

5. Dead body was sent for autopsy to BDM Hospital, Champa vide Ex.P-9. Team of doctors consisting Dr. Anita Shrivastava (PW-13) and Dr. Manish Shrivastava conducted autopsy vide Ex.P-10 and found following injuries and symptoms: -

1. Legs are in flexion position from hip and knee joint.
2. Both eyes are closed pupils are semi-dilated. Petechial haemorrhage present in right eye and over face (cheek, forehead), whitish froth coming from mouth and nostrils.
3. Mouth is open. Tongue is bitten between teeth. Tip of tongue reddish.
4. Nails are cyanosed. Hands closed.
5. Right thumb is inside fist and left thumb outside fist.
6. Bleeding from private part and fecal matter passed.
7. Deep ligature mark over middle of neck below thyroid cartilage, mark is complete and slightly oblique, circumference of ligature mark is 30 c.m. x ½ c.m. x ½ c.m. deep. Base of ligature mark is red. Knot at back of neck.
8. Abrasion over both elbow 2 c.m. x 2 c.m. each.
9. Contusion over lateral side of both wrist 2 c.m. x 1 c.m.

Mode of death was asphyxia due to strangulation.

6. Query was made relating to rope vide Ex.P-13 which was replied by the doctor vide Ex.P-12. FIR was registered vide Ex.P-17. Further query was made vide Ex.P-19, same was replied vide Ex.P-11. Patwari prepared spot map vide Ex.P-4. Sealed clothes and articles of the deceased were seized vide Ex.P-7. Statements of the witnesses were recorded under Section 161 of the CrPC.
7. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Janjgir, who committed the case to the Court of Sessions, Janjgir where trial was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 17 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. He has examined Kiran Kumar Dewangan (DW-1), Gulab Chand (DW-2) and has also examined himself as defence witness (DW-3) and has taken defence that the deceased sleeping with the appellant was found hanging in another room, when the appellant noticed aforesaid fact, he shouted and called his uncle, thereafter, he brought down the dead body with a hope that the

deceased is alive, but he found that she was dead.

9. After providing opportunity of hearing to the parties, learned Sessions Judge convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is based on circumstantial evidence. In order to convict an accused on the basis of circumstantial evidence, as held by the Supreme Court in the matter of **Kusuma Ankama Rao v. State of A.P.**¹ in case of conviction based on circumstantial evidence, the prosecution is required to satisfy the following circumstances,
 1. 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;
 2. 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;
 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.

In the present case, the appellant himself has lodged morgue vide Ex.P-8 and has explained the circumstances of death of the deceased. He has examined himself as DW-3 whose evidence finds support from the evidence of Kiran Kumar Dewangan (DW-1) and Gulab Chand (DW-2) and further evidence that the appellant has noticed that the deceased was hanging in another room, then he got down her after cutting the rope, but she was dead. This explanation is not patently false. It is a plausible explanation. The accused was only under obligation to offer plausible explanation which he has offered. Learned counsel further argued that although Dr. Anita Shrivastava (PW-13) has deposed in detail that it was a case of strangulation, but her explanation Ex.P-11 reveals that she was not certain about mode of death. While answering the query vide Ex.P-12, she has further admitted that the injury found on the neck of the deceased may be caused by the rope sent for examination. This shows that the doctor herself is not certain about mode of death of the deceased and that the injury was caused with the rope sent for examination which was found around

1 2008 AIR SCW 4669

the neck of the deceased wife she was hanging. Learned counsel also argued that morgue Ex.P-8 has been lodged by the appellant himself which cannot be used against the appellant because FIR is only a corroborative statement and can be used on contradiction and omission, it cannot be used against the maker if he becomes accused. Learned counsel placed reliance in the matter of **Nisar Ali v. The State of Uttar Pradesh**².

12. On the other hand, learned State counsel opposed the appeal and submitted that evidence proved by the prosecution by itself is sufficient to prove the guilt of the appellant. The deceased died in the house of the appellant at night. Offence was committed in secrecy. The appellant was under obligation to offer explanation, but he has offered false explanation that the deceased committed suicide, though this was not the case of suicide. Evidence of the doctor is self-explanatory and is sufficient to prove that it was a case of strangulation and not the case of hanging.
13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.
14. In the present case, unnatural death of deceased Pushpa Dewangan as a result of asphyxia on account of injuries found upon her neck has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Ramlal Dewangan (PW-1), Narayan Prasad Dewangan (PW-2), Saroj Bai Dewangan (PW-3), morgue Ex.P-8, FIR Ex.P-17, evidence of Dr. Anita Shrivastava (PW-13) and autopsy report Ex.P-10, that death of deceased Pushpa Dewangan was unnatural and as a result of asphyxia.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on medical evidence and circumstantial evidence.
16. As held by the Supreme Court in **Nisar Ali** (supra), FIR lodged by accused cannot be used against him. While considering the same question in **Bheru Singh v. State of Rajasthan**³, the Supreme Court has explained the circumstances for using the FIR and part of FIR made by the accused against the accused. While dealing with same question, the Supreme Court has observed in para 16 that a confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. The Supreme Court has further observed in para 17 as follows: -

“17. Where the first information report is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. No part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by Section 27 of the Evidence Act. The first information report recorded under

2 AIR 1957 SC 366

3 (1994) 2 SCC 467

Section 154 CrPC is not a substantive piece of evidence. It may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Evidence Act in case the informant appears as a witness at the trial. Where the accused himself lodges the first information report, the fact of his giving the information to the police is admissible against him as evidence of his conduct under Section 8 of the Evidence Act and to the extent it is non-confessional in nature, it would also be relevant under Section 21 of the Evidence Act but the confessional part of the first information report by the accused to the police officer cannot be used at all against him in view of the ban of Section 25 of the Evidence Act.”

The Supreme Court has held that FIR lodged by the accused can be used against him as relevant facts under Section 8 of the Evidence Act as conduct of the accused and admission under Section 21 of the Evidence Act excluding the confessional part which is hit by Sections 24, 25, 26 & 27 of the Evidence Act.

17. In the light of aforesaid dictum of the Supreme Court in **Bheru Singh** (supra), non-confessional part of FIR can be used against the accused as admission and conduct of the accused in terms of Sections 8 and 21 of the Evidence Act.
18. As per evidence of the appellant himself (DW-3), on the fateful day, the deceased was sleeping with him, at late night he noticed that the deceased was not with him, then he saw the light of another room on, he went there and saw that his wife was hanging whereupon he shouted, then Kiran Kumar Dewangan (DW-1) came, he also called his uncle Gulab Chand (DW-2) who came after 5 minutes, till that time, the body was hanging, then he got down the body with a hope that she would survive, but she was dead. He has lodged morgue vide Ex.P-8. His evidence and non-confessional part of Ex.P-8 reveal that the deceased was with the appellant at the time of incident. The deceased was found dead in the house of the appellant. In these circumstances, duty to explain that how the deceased died was upon the appellant in terms of Section 106 of the Evidence Act. The appellant has offered explanation that she has committed suicide.
19. The prosecution has examined Dr. Anita Shrivastava (PW-13) who has conducted autopsy. As per her detailed evidence, white froth from mouth and nose, tongue protruded and beaten by teeth, clenching of palm, bleeding from private part, ligature mark between neck below thyroid cartilage, ligature mark complete in nature with impression of knot upon back of neck, fracture of thyroid cartilage and hyoid bone, haemotoma on eyes, cheeks and forehead. The doctor has opined aforesaid symptoms on the body of the deceased. These specific symptoms do not find in case of hanging and it was a peculiar case of strangulation.
20. Evidence of doctor could not be disbelieved only on the ground that she has mentioned in Ex.P-11 that mode of death could not be certain, when she has

specifically answered that it was a case of strangulation. Specific ligature mark with impression of knot upon back of neck and haemotoma on eyes, forehead and cheeks are sufficient to prove the fact that it was a case of strangulation and not the case of hanging.

21. The appellant has examined himself as DW-3, and also examined Kiran Kumar Dewangan (DW-1) and Gulab Chand (DW-2). Evidence of Kiran Kumar Dewangan (DW-1) and Gulab Chand (DW-2) reveal that the body was lying hanging for 5 minutes, they came after hearing the sound of the appellant, but they did not assist the appellant for getting down the deceased who was hanging. As per their evidence, the appellant has cut the rope but any injury by fall has not been noticed by the doctor. Their evidence do not reflect as to what was the object used for climbing to facilitate the process of hanging. All these facts clearly reveal that Kiran Kumar Dewangan (DW-1) and Gulab Chand (DW-2) are not the truthful witnesses and they have deposed only to support the appellant. These circumstances further reveal that by lodging morgue Ex.P-8, the appellant has tried to offer explanation which was not plausible per contra, it was patently false which is also a strong circumstance against the appellant.
22. Evidence of Dr. Anita Shrivastava (PW-13), false explanation offered by the appellant, act committed in secrecy where the appellant and the deceased with a small kid were present, the deceased died, and the appellant has offered false explanation, all these circumstances are sufficient to prove the fact that the appellant was author of the crime and none else which also excludes the possibility of innocence of the appellant or commission of offence by third person.
23. Considering aforesaid circumstances, the trial Court has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
24. Consequently, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
JUDGE
(T.P. Sharma)

Sd/-
JUDGE
(Inder Singh Uboweja)