

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.292 of 2011

Pal Singh, S/o Charan Singh, aged about 30 years, R/o Pani Tanki Colony,
Bankimongra, Katghora, Distt. Korba (C.G.)

---- Appellant

Versus

State of Chhattisgarh: through District Magistrate, Katghora, Distt. Korba (C.G.)

---- Respondent

For Appellant: Mr. Hemant Kesharwani, Advocate.
For Respondent: Miss Pushpa Dwivedi, Panel Lawyer.

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

Judgment On Board

03/03/2015

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 9-3-2011 passed by the Additional Sessions Judge, Katghora, in Sessions Trial No.47/2010, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Gurmit Kaur while acquitting the appellant for offence punishable under Section 304B of the IPC and acquitting other co-accused, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment of life & pay fine of Rs.1,000/-, in default of payment of fine to further undergo SI for six months.
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, unfortunate deceased Gurmit Kaur was married to the appellant on 22-11-2004, she was residing in the house of the appellant, the appellant and his relatives committed torture and cruelty upon her, and the appellant also assaulted her many times. On 1-12-2009, the deceased died in the house of the appellant. As per morgue Ex.P-25

lodged by Charan Singh, father of the appellant (initially co-accused), room of the deceased was closed from inside, they had broken the door and saw that the deceased was hanging, they got her down and by that time, the deceased died.

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 panchnamas were prepared vide Exs.P-5 to P-10. Search was made vide Ex.P-11. Spot map was prepared vide Ex.P-20.
5. Dead body of the deceased was sent for autopsy to Community Health Centre, Katghora vide Ex.P-19A. Dr. (Mrs.) Shakuntala Bhagat (PW-10) conducted autopsy vide Ex.P-20A and found following injuries and symptoms: -
 - Eyes semi-opened, mouth closed.
 - Two ligature marks around neck interrupted at below left ear.
 - One ligature mark transversely towards right side, second ligature mark slightly upwards.
 - Lower ligature mark is deep whose left side present over (above) lower border of mandible.
 - Faint congestion around neck.
 - One abrasion below left ear seems to be nail abrasion curved upward, one inch below left ear, size ½ c.m. x ½ c.m.
 - Deep ligature mark – breadth 1 c.m., length 9.5” in brown blackish colour, on ejection white hard glistening tissue present beneath ligature mark.

Mode of death was asphyxia due to strangulation and death was homicidal in nature.

6. One chunri used in hanging was seized vide Ex.P-18. 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 Judicial Magistrate First Class, Katghora, who committed the case to the Court of Sessions, Korba, from where the Additional Sessions Judge, Katghora, received the case on transfer for trial.
8. In order to prove the guilt of the accused persons, the prosecution has examined as many as 13 witnesses. The accused were examined under Section 313 of the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. They have also examined defence witness Phool Singh who has

deposed that the deceased has committed suicide by hanging.

9. After providing opportunity of hearing to the parties, learned Additional Sessions Judge while acquitting other co-accused namely Charan Singh, Darshan Kaur and Balbir Singh, i.e. father, mother and brother of the appellant, respectively, of the charges under Sections 304B & 302 read with Section 34 of the IPC and also acquitting the appellant of the charge under Section 304B of the IPC, 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 the evidence of Indrajeet Kaur (PW-1) – mother, Amarjeet Kaur (PW-2) – sister of the deceased, Dr. (Mrs.) Shakuntala Bhagat (PW-10), autopsy report Ex.P-20A and serology report Ex.P-21, but their evidence do not inspire confidence and are not trustworthy. Evidence of Dr. (Mrs.) Shakuntala Bhagat (PW-10) is ambiguous and does not reveal that death was only by strangulation and not by hanging. Evidence adduced on behalf of the prosecution clearly reveals that it was a case of hanging and at the time of hanging, the appellant was not present, therefore, he is not liable for causing homicidal death or death of the deceased.
12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Indrajeet Kaur (PW-1), Amarjeet Kaur (PW-2) and Dr. (Mrs.) Shakuntala Bhagat (PW-10) are sufficient to prove the guilt of the appellant that death of the deceased was homicidal by strangulation in the house of the appellant and that earlier, the appellant has committed torture and cruelty upon the deceased. This entire evidence is sufficient to connect the appellant with the crime in question that the appellant has committed homicidal death amounting to murder of deceased Gurmit Kaur.
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, abnormal death of deceased Gurmit Kaur has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Indrajeet Kaur (PW-1), Amarjeet Kaur (PW-2), Dr. (Mrs.) Shakuntala Bhagat (PW-10), autopsy report Ex.P-20A, serology report Ex.P-21, FIR Ex.P-27 and morgue Ex.P-25, that death of deceased

Gurmit Kaur was abnormal.

15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Indrajeet Kaur (PW-1) and Amarjeet Kaur (PW-2),
16. As per evidence of Indrajeet Kaur (PW-1), mother of the deceased, initially, relation between the appellant and the deceased was normal, but after arrest of the appellant in a Ganja case, the appellant started committing torture and cruelty upon the deceased. The appellant used to assault her and also demand dowry. The appellant has also caused head injury to the deceased, even she was not agreed to go to the house of the appellant. On 1st of December, 2009, this witness was informed by neighbour of the appellant that the deceased died in the house of the appellant.
17. Amarjeet Kaur (PW-2), sister of the deceased, has substantially corroborated the evidence of Indrajeet Kaur (PW-1). Other witnesses of the vicinity of the appellant's house have not supported the case of the prosecution and the prosecution has declared them hostile.
18. Dr. (Mrs.) Shakuntala Bhagat (PW-10) has clearly deposed that it was a case of strangulation. In her detailed evidence, she has deposed in detail the symptoms of strangulation. In para 8 of her cross-examination, she has admitted that she did not notice any mark of struggle. As per para 3, two ligature marks were complete around the neck. As per case of the deceased, the deceased used chunri for hanging. Her evidence reveals that there were two ligature marks over neck and ligature marks were complete. In case of two rounds of chunri, ligature marks as noticed were possible.
19. As per evidence of other witnesses, room where the deceased was found dead, was closed from inside and the room was broke open. As per Ex.P-7, door was opened with the help of iron rod. Spot panchnama reveals that gate was closed from inside.
20. Closing of room from inside, mode of death of the deceased as asphyxia, presence of ligature marks, alleged use to chunri for ligature and ligature all around the neck show that it was a case of suicide and not the case of homicide, because inside the room, presence of the appellant was not possible. Door was removed from outside. The deceased was not insane, otherwise, there was no cause for ending her life.
21. Evidence of Indrajeet Kaur (PW-1) and Amarjeet Kaur (PW-2) clearly reveal

that after his arrest in a criminal case, the appellant was in the habit of committing torture and cruelty upon the deceased and he used to cause injury to her. This shows that on account of such regular torture and cruelty, the deceased has committed suicide i.e. the appellant has abetted, instigated and compelled the death of the deceased by committing regular torture and cruelty upon her. The act attributed to the appellant is offence punishable under Section 306 of the IPC and the appellant can be safely convicted under Section 306 of the IPC.

22. In the present case, the appellant was charged for the offence punishable under Sections 304B & 302 of the IPC, while acquitting the appellant under Section 304B of the IPC, he has been convicted under Section 302 of the IPC.
23. While dealing with the question of conviction of accused under Section 306 of the IPC without framing charge of the said offence instead of his conviction under Section 302 of the IPC, the Supreme Court in the matter of **Dalbir Singh v. State of U.P.**¹ has held that in appropriate cases accused can be convicted under Section 306 of the IPC instead of Section 302 of the IPC without framing charge with the help of Section 464 of the CrPC if failure of justice has not occasioned. The Supreme Court has observed in para 17 as follows: -

“17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464, Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that *Sangaraboina Sreenu v. State of A.P.*² was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302, IPC, he cannot be convicted for the offence under Section 306, IPC.”

24. In **Dalbir Singh** (supra), originally the accused was charged for the offence under Sections 304B, 498A & 302 of the IPC and finally, he was convicted

1 AIR 2004 SC 1990

2 AIR 1997 SC 3233 : 1997 AIR SCW 3290 : 1997 Cri LJ 3955

under Sections 302 & 498A of the IPC, but while maintaining conviction & sentence under Section 498A of the IPC, the Supreme Court has held that he may safely convicted under Section 306 of the IPC instead of Section 302 of the IPC even without framing charge.

25. In the present case, complete opportunity of defence has been provided to the appellant. Virtually, he was charged for the offence punishable under Section 304B of the IPC. Offence punishable under Section 304B of the IPC is murder punishable under Section 302 of the IPC or attempt of suicide punishable under Section 306 of the IPC. Commission of torture and cruelty, circumstances in which the deceased died and complete opportunity to defend the appellant have been proved by the prosecution before the trial Court. This shows that failure of justice would not be occasioned in the present case.
26. Consequently, the appeal is partly allowed. As held in **Dalbair Singh** (supra), conviction of the appellant under Section 302 of the IPC is altered to Section 306 of the IPC. Instead of imprisonment for life and fine of Rs.1,000/-, he is hereby sentenced to undergo RI for six years and pay fine of Rs.1,000/-, in default, additional SI for six months. He is in custody since 17-12-2009. He is entitled for set off of the period already undergone by him.

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