

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 989 of 2011

1. Sadik Khan @ Jugnu, S/o Late Mohd. Sarfuddin Khan, Age 31 years.

2. Manjur Khan S/o Lt. Mohd. Sarfuddin Khan, Age 35 years.

Both R/o Ginjaipara Chando, Thana Chando, Distt.-Sarguja, C.G.

**---- Appellants
(In Jail)**

Versus

State of Chhattisgarh, through Aarakshi Kendra Chando, Distt. Sarguja
(CG)

---- Respondent

For the appellants:
For the respondent:

Mr. Neeraj Mehta, Advocate
Mr. Adil Minhaj, Advocate

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

Judgment on Board

Per P. Diwaker, J

24/07/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 22.11.2011 passed by the 1st Additional Sessions Judge, Ambikapur, District Sarguja (CG) in S.T. No.318/2010 convicting the accused/appellants under Section 302/34 & 201/34 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for Life & fine of Rs.1,000/-, in default to undergo additional R.I. for 04 months and R.I. for 03 years & fine of Rs.500/-, in default to undergo additional R.I. for 02 months.
2. In the present case name of deceased is Amina Bibi, wife of accused/ appellant No.1-Sadik Khan. The deceased was residing in her

matrimonial home situate at village Chando, District Sarguja along with her husband (appellant No.1), brother-in-law (appellant No.2) and three other absconding accused persons namely Munna Khan @ Naaj Ahmed (brother of appellants), Tawaida Bibi (wife of Munna Khan) & Samrunnisha (wife of appellant No.2). It is alleged that on or about 11.4.2010 the accused/appellants along with absconding accused persons committed murder of the deceased by pressing her neck with the help of nylon rope and thereafter when they were taking the body of deceased to village Gadhwa (Jharkhand) in the vehicle of Farid (PW-2) hired by them, on the way Abdul Hannan (PW-5), brother of deceased, and Gyasuddin (PW-6), uncle of deceased, intercepted the vehicle, brought it to Police Station Gadhwa (Jharkhand) and it was noticed that deceased had already died. A written complaint (Ex.P-4) was made by Abdul Hannan (PW-5) in the Police Station Gadhwa based on which inquest report was prepared on 11.4.2010 at 5.30 p.m. and thereafter post-mortem on the body of deceased was conducted by Dr. Jwala Prasad Singh (PW-12) vide Ex.P-16 who noticed bruises on the body of deceased and opined that cause of death is asphyxia due to strangulation and duration of death was 24 to 36 hours from the post-mortem examination. FIR (Ex.P-9) was registered and the accused/appellants were arrested vide Ex.P-10 at Gadhwa. As the incident was found to have occurred at Chando, District Sarguja, the case was transferred to Police Station Chando where Merg was recorded vide Ex.P-13 on 15.4.2010 and thereafter FIR (Ex.P-11) was registered against all the accused persons. During the course of investigation, accused/appellant No.1 made disclosure statement of nylon rope vide Ex.P-2 and the same was recovered at his instance vide Ex.P-3.

Absconsion memo (farari panchnama) in respect of three absconding accused persons was prepared vide Ex.P-5.

3. After completion of investigation, charge sheet was filed against the accused/appellants on 10.7.2010 under Sections 498A/34, 304B/34, 302/34 & 201/34 of the IPC showing three co-accused persons absconding and accordingly the charges were framed against them.
4. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statements of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. They have taken a defence that the deceased had committed suicide.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, while acquitting the accused/appellants from the charges under Section 498A/34 & 304B/34 of the IPC, convicted & sentenced them as mentioned in para-1 of this judgment.
6. Learned counsel for the accused/appellants submits as under:
 - (i) the accused/appellants have been convicted solely on the basis of circumstantial evidence but the circumstantial evidence is not such which can be made basis for conviction of the accused/appellants. The deceased was happily living with the appellants and this fact has been admitted by Abdul Hanan (PW-5), brother of deceased, and Gyasuddin (PW-6), uncle of deceased.
 - (ii) Even assuming that the factum of death of deceased was suppressed by accused/appellants by carrying dead body to village Gadhwa (Jharkhand) but that itself would not automatically

involve them for committing murder of the deceased.

- (iii) that there is no legally admissible evidence against the accused/appellant showing their involvement in commission of murder of the deceased.
- (iv) that the autopsy surgeon (PW-12) has not conclusively opined that the death was homicidal in nature
- (v) that, in the statements recorded under Section 313 of Cr.P.C. the accused/appellants have categorically stated that the deceased had committed suicide and the autopsy surgeon (PW-12) has also stated in Para-12 of his statement that considering the symptoms of dead body the possibility of suicide by hanging appears to be more compared to strangulation.
- (vi) that, the prosecution failed to prove the motive behind commission of offence.
- (vii) that, ligature mark found on the body was oblique in nature and as per Modi's Medical Jurisprudence, such symptom comes in the case of hanging.
- (ix) that, seizure of rope has no consequence because the prosecution has utterly failed to prove that the said rope was used by the accused/appellants in committing the offence.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that if the defence of the accused/appellants is that it was the case of suicide then in all fairness they should have informed this fact to the police at Chando itself and should not have proceeded for Gadhwā (Jharkhand) with the

dead body that too on the pretext of informing the driver that the deceased was sick. Bruises over the dead body were noticed by the doctor which indicates that the deceased must have been first beaten and thereafter killed by the accused persons. The doctor conducting autopsy has categorically stated that cause of death was asphyxia due to strangulation and the duration of death is 24 to 36 hours prior to post-mortem examination. The deceased died in the house of accused persons and heavy burden was upon them to explain as to how the deceased died but they failed to offer any explanation in their statements recorded under Section 313 of Cr.P.C. The entire conduct of the accused/appellants is suspicious and indicates that it is they who committed murder of the deceased.

8. We have heard learned counsel for the parties and perused the material available on record.
9. Pannu Sao (PW-1) is the witness before whom certain investigation was done by police of Police Station Chando, however, he has turned hostile and not supported the prosecution case. In the cross-examination by the prosecution this witness has stated that the accused/appellants have their house at village Chando and also at village Gadhwa and all the accused persons were living separately. He has further stated that at times the accused persons used to reside at Chando and at times in village Gadhwa.
10. Harid Khan (PW-2) is the driver of vehicle in which the deceased was being taken to village Gadhwa (Jharkhand). He has stated that on reaching Gadhwa when the deceased was put on the cot, she was already dead but he has not seen any injury mark on her body and he does not know as to how the deceased died. This witness has also been

declared hostile, however, in the cross-examination he has admitted that when the deceased was boarded in his vehicle at that time she was alive.

11. Shyam Sunder Singh (PW-3) is the witness of spot map (Ex.P-1), memorandum statement (Ex.P-2) of accused/appellant No.1, and seizure memo (Ex.P-3) by which nylon rope was seized. Though this witness has been declared hostile by the prosecution but he has admitted his signatures over the aforesaid documents. Vinay Kumar Gupta (PW-4) is also a witness of memorandum statement (Ex.P-2) and seizure memo (Ex.P-3) and this witness has also been declared hostile by the prosecution but he has admitted his signatures over the aforesaid documents.

12. Abdul Hanan (PW-5) is the brother of deceased and he has stated that on the date of incident he received telephone from someone that his sister had expired and the accused persons were taking her dead body to Pathantoli Gadhwa, therefore, instead of going to Chando they came to Pathantoli Gadhwa and saw the body of deceased. He has further stated that dead body of deceased was taken to the police station Gadhwa where her post-mortem was done and thereafter body was handed over for last rites. On the basis of his written complaint (Ex.P-4), FIR (Ex.P-9) was registered by the Police Station Gadhwa. In Para-7 this witness has stated that his sister was living happily in her in-laws house, she never made any complaint against the accused/appellants. According to him, he was utterly surprised on coming to know about the sudden death of her sister. He has further stated that after seeing mark in the neck of deceased, he felt that she was murdered by tightening the noose around the neck, but he did not suspect anyone behind the death of his sister being suicidal or homicidal. In Para-19 he has stated that after seeing

the body of his sister, he got perturbed and started raising voice out of anger. He has admitted that he himself did not see ligature mark on the neck of deceased and on the basis of information received from others, he is saying so. In Para-10 he has reiterated that he did not suspect the accused persons to have killed his sister as she was living with them quite happily.

13. Gyasuddin (PW-6) is uncle of deceased and this witness has been declared hostile. However, in the cross-examination he has stated that the accused persons used to perform all their social and family functions like marriage, last rites etc. in village Gadhwa (Jharkhand) so that their relatives could attend the same. He has further stated that the deceased never made any complaint against the accused persons or other family members and that she was living happily with them. He has further stated that he did not suspect the accused persons to be murderers of the deceased.

14. Girdhari Ram (PW-7) is the witness of absconsion memo (Ex.P-5). Dhansai Nagesh (PW-8) is the witness of spot map (Ex.P-6), inquest (Ex.P-7) and report (Ex.P-8) submitted to the police. Rajbali Choudhary (PW-9) is the police officer who registered FIR (Ex.P-9) at Police Station Gadhwa (Jharkhand). Vijay Kumar Singh (PW-10) did part of investigation at Gadhwa and prepared arrest memo of Ex.P-10. N. Khess (PW-11) is the investigating officer and has duly supported the prosecution case.

15. Dr. Jwala Prasad Singh (PW-12) has conducted post-mortem on the body of the deceased and noticed following symptoms & injuries:-

- Bruise of 4 ½ x 7.5" on the left side of back.
- Bruise on the back of neck of 1 x ½"

- Ligature mark was present around the neck.
- Small ligature mark of 1½” just above the Injury No.3.
- Brain, trachea, liver, spleen, kidney & lungs were congested.

As per opinion of the doctor, cause of death was asphyxia due to strangulation and death had taken place 24 to 36 hours prior to post-mortem. In the cross-examination he has stated that ligature mark found on the neck was oblique and irregular. On being asked by the Court, he has stated that death could be because of strangulation or hanging. Thereafter he has clarified that considering the symptoms of the body, case appears to be more of hanging than strangulation.

16. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
17. Close scrutiny of evidence makes it clear that the deceased died in suspicious circumstances at village Chando and when her dead body was being taken to village Gadhwa (Jharkhand), PW-5 Abdul Hanan, brother of deceased, intercepted the vehicle, took the accused persons to the police station where FIR (Ex.P-9) was lodged against them on the basis of suspicion that the deceased was strangled to death by accused persons and the accused/appellants have been convicted on the ground that the death is homicidal i.e. due to asphyxia as a result of strangulation, and that though the accused/appellants and the deceased were living together yet they did not offer any reasonable explanation as to under what circumstances she died.
18. So as to prove the death being suicidal or homicidal in nature, the prosecution has examined Dr. Jwala Prasad Singh (PW-12) and according to him, cause of death was asphyxia due to strangulation and death had taken place 24 to 36 hours prior to post-mortem, but in the

cross-examination this witness has specifically stated that ligature mark found on the neck was oblique & irregular; no sign of oozing of bloody froth through the mouth & nostrils and fracture in the larynx & trachea were not found. In answer to the question put by the Court, he has specifically stated that considering the symptoms present in the dead body, case appears to be more of hanging than strangulation.

19. Normally, if the death is caused by asphyxia, the eyes become open and tongue gets protruded and there was every likelihood of the right side of heart be full of blood and the left side empty, the lungs also get affected and blood may ooze out through the mouth & nose and the face & head would also be found distended. In the present case the symptoms usually present in asphyxial death by strangulation are not present which creates reasonable doubt in regard to nature of death of deceased Amina Bibi and therefore it is not safe to rely upon the medical evidence solely for the purpose of coming to the conclusion that deceased Amina's death is proved by the prosecution to be homicidal. Fortifying this position, it has been held by the Hon'ble Apex Court in the matter of **Mohd. Zahid vs. State of Tamil Nadu** reported in **1999 AIR SCW 2556** as under;-

“24. We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has conducted the post-mortem, as compared to the statements found in the text books, but giving weightage does not *ipso facto* mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. This is one such case where we find that there is a reasonable doubt in regard to the cause of death of Jabeena and we find it not safe to rely upon the evidence of PW-8, solely, for the purpose of coming to the conclusion that Jabeena's death is proved by the prosecution to be homicidal.”

20. So as to convict an accused based on the circumstantial evidence, the Apex Court in the case of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** has held that :

“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.”

21. There may be some substance in the argument of the State Counsel that if the deceased committed suicide at village Chando, then in all fairness the accused persons should have either taken her nearest hospital or should have informed in the nearest police station instead of taking her body to village Gadhwa (Jharkhand), but in absence of any legally admissible evidence on record suggesting as to how the deceased died, the complicity of accused/appellants with her death cannot be established. May be the conduct of the accused persons in shifting the body of the deceased elsewhere raises a finger of doubt against the accused/person but merely on the basis of suspicion they cannot be held

guilty for the offence under Section 302/34 of the IPC. It is settled position of law that howsoever strong the suspicion is, it cannot take the place of proof and to establish a case against the culprits, the prosecution is required to give minute consideration to all the surrounding circumstances available against them. None of the witnesses has made even a whisper that it is the accused/appellants who were actively involved in the death of the deceased and rather the doctor conducting post-mortem examination on the body of deceased has also not been very conclusive regarding the nature of death being homicidal or suicidal. More importantly, he has expressed his view that looking to the state of the deceased the chances of death being suicidal were more than homicidal. Another important piece of evidence is that brother and uncle of the deceased i.e. Abdul Hanan (PW-5) & Gyasuddin (PW-6) respectively, have categorically stated that the deceased was living a happy life in her matrimonial home and they never came to know anything against the accused/appellants from the deceased. The cumulative effect of the evidence of witnesses is suggestive of the fact that the prosecution has utterly failed to establish that it is the accused/appellants who were behind the death of the deceased and the Court below also does not appear to be justified in basing its conviction on the evidence collected by the prosecution. 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.

22. Likewise, there is nothing on record to show that after the death of the deceased the accused persons had caused disappearance of the body and that way the conviction of accused/appellants under Section 201/34 of the IPC is also not sustainable in the eye of law and the

accused/appellants are entitled for acquittal of this offence also. Order accordingly.

23. Accordingly, this Court is of the considered opinion that the findings recorded by the Court below are not in accord with the material available on record and being so the conviction and sentence slapped on the accused/appellants by the Court below cannot be made to stand. It is accordingly set aside.

24. Appeal is thus allowed. The accused/appellants who are already reported to be inside be set free forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan