

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.940 of 2001**

Jawahar Lal alias Mullu son of Shri Bal Krishna Dubey, aged about 31 years, R/o Sonseri, Police Station, Pamgarh, District Janjgir-Champa, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh Through Police Station Pamgarh, District Janjgir-Champa (Chhattisgarh)

--- Respondent

For Appellant	:	Shri Sumit Singh, Advocate.
For Respondent	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****C A V JUDGEMENT****Per P. Sam Koshy, J.****Delivered on 08 /09/2015**

1. The appellant in the instant case stands convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs.200/-. The appellant has also been convicted for offence under Section 201 IPC and sentenced RI for seven years with fine of Rs.200/-with a direction to run both the sentences concurrently vide judgment dated 21.09.2001 passed by the Additional Sessions Judge, Janjgir, in Sessions Trial No.459 of 2000.

2. The brief facts necessary for adjudication of this appeal are that, on 01.08.2000 since 11 a.m. the deceased Sunita, wife of the Appellant, was missing from the house. The family members of Appellant called at the parental home of deceased and enquired her whereabouts and intimated the fact that she is missing from 11 a.m. Thereafter the family members from the parental side also reached the house of Appellant and started searching the deceased-Sunita. It was only at around 7 to 7:30 p.m. she was found dead in the Well situated behind the house of the Appellant. The matter was immediately reported to the concerned police station vide Ex. P/11 on the same day i.e. 01.08.2000 by Ashok Kumar, PW-9 (elder brother of the Appellant). The Police came and fished out the body from the Well and sent it for postmortem. On 02.08.2000, Dr. N.P. Gond, PW-16 conducted the postmortem and gave his opinion that the cause of death was due to asphyxia because of compression over the neck and chest and doubted that it was a case of homicidal death. Death was said to have taken place between 24 to 48 hours earlier.
3. After postmortem, FIR (Ex. P/13) was lodged at the instance of the police on 09.08.2000 at around 9:30 am which was registered as crime No.145 of 2000 for offence under Sections 302 and 201 IPC. The FIR was registered against the unknown persons and after completion of investigation while submitting the final report, the prosecution filed the charge-sheet against six persons which included the present Appellant, his father, mother, two brothers and one sister-in-law (elder brother's wife) for the offence under Section

302 IPC, in alternative, Section 302/34 IPC or 304-B, 498-A and 201 IPC.

4. The trial court reached the conclusion that the prosecution had not been able to collect sufficient material to implicate the other persons in respect to the death of deceased-Sunita and found only the Appellant to be guilty of the offence punishable under Sections 302 and 201 IPC. Since the chain of circumstances surrounding the other accused persons leading to the death of deceased-Sunita was not complete, the other accused persons have been acquitted from the charges so levelled against them.
5. Learned counsel appearing for the appellant submitted that the court below has committed an error of law and fact to the extent of that on the same facts and circumstances the other accused persons have been acquitted yet the present Appellant has been convicted. He would further submit that there is no direct evidence whatsoever made available by the prosecution witnesses by which the present Appellant could have been held guilty of committing offence. It was next submitted that the conduct of Appellant immediately before the incident and also after the incident was as normal as that of any other human being and there was no abnormality in his conduct so as to doubt upon him for the death of deceased. According to Appellant's counsel, the Appellant immediately coming to know about the fact that his wife is missing, he enquired her whereabouts at the parental house of the deceased. His behaviour when the search was being conducted and his conduct immediately after the dead body was found also does not reflect any material to doubt

him for the death of deceased. It is contended that the prosecution has failed to establish the fact that death of deceased was homicidal in nature and that the entire prosecution story is based on conjectures and surmises. The prosecution has failed to conclusively establish before the court that the death of deceased was homicidal. He refers to the evidence of Doctor holding that death of deceased could be by way of drowning.

6. It is further contended by the Appellant's counsel that trial Court failed to appreciate that the dead body did not show any external or internal injuries so as to make out a case under Section 302 IPC. Likewise, the bangles on either hand of the deceased were also intact which suggest the fact that there was no sign of protest or resistance on the part of deceased or it was a case of murder and subsequently it has been given a picture of a case of drowning. It is further argued that prosecution did not find any broken piece of bangle from the house of Appellant to the Well where the body was lying. For all these reasons, the findings of trial court deserves to be interfered with and the order of conviction is liable to be set aside.
7. Per contra, learned State counsel opposing the appeal submitted that the case of prosecution stands established from the witnesses that have been examined which reflects that Appellant and his family members were not happy with the deceased as regards insufficient dowry being given to the deceased at the time of marriage. By referring FIR as well as deposition of prosecution witnesses, it is further submitted that in fact it is a case where joint reading of the prosecution witnesses and the available documents brought during

the course of trial would establish the fact that the chain of circumstances lead us to the conclusion that it is the Appellant who would be responsible for the death of deceased and subsequently given it a colour of suicide by dumping the body of deceased in to the Well.

8. Counsel for the State also referred to the opinion of Dr. N.P. Gond, PW-16, who conducted the postmortem upon the deceased found that there was a thyroid cartilage fracture and has opined that the cause of death could be homicidal. It is also pointed out that three bangles on the left hand of deceased were missing when compared to the total number of bangles that were found on the hands of the deceased. Thus, taking into consideration all these facts and circumstances, the State counsel prays for rejection of Appeal.
9. State counsel further submits that when the body of the deceased was fished out from the well, she was wearing only a blouse and an underwear and that there was no petticoat or Sari on her body which leads us to infer that she would not have come from her house to the well wearing only a blouse and an underwear. In addition, the petticoat which was recovered from the well also did not have a lace which also leads us to infer that these two items i.e. Sari and Petticoat subsequently were put in the well.
10. We have considered the submissions on behalf of parties and perused the evidence available on record.
11. Dr. N.P. Gond, PW-16, who conducted postmortem upon the deceased-Sunita found the following injuries :
“External examination- a dead body of woman lying supine position

in the ground body wearing black colour Chaddi and black colour blouse Rt hand wearing 10 bangles in wrist left wrist wearing 13 bangles. No seen any external injury, both eyes are closed, teeth clinched, tongue inside oral cavity, face cyanosed, abdomen distended, nail cyanosed, stool pass out. After compression of chest blood come from the nostril.

Internal examination- on dissection of the neck extravagation of blood into the subcutaneous tissue trachea congested fracture of thyroid cartilage lein of liver spleen kidney congested heart right empty left are full of blood stomach contain full amount of undigested food matter gases and malt I. Certain digested food malt long I contain faecal matter accumulated. Brain are congested.”

Cause of death was opined asphyxia due to compression over the Neck and Chest. It may be homicidal in nature. Time elapsed from death was 24-48 hours.

12. Now, considering the submissions which have been raised by the counsel for the Appellant we feel it proper to deal with the issue whether the death of the deceased was of homicidal in nature or not. We consider it proper that foremost unless the cause of death is conclusively proved and established to be homicidal in nature, the question of convicting the Appellant for the offence under Sections 302 and 201 IPC would not arise. If the said issue itself is decided in favour of the Appellant, the need for venturing into the decision making on the other issues would not be of any further relevance.
13. For ascertaining the cause of death whether it was homicidal in nature or not, foremost, we would have to refer to the deposition of PW-16, Dr. N. P. Gond who conducted the postmortem. PW-16, in paragraph 4 of his evidence has opined the cause of death was asphyxia due to compression over chest and neck and the death could have been homicidal in nature. At the same time, the doctor

in paragraph-5 of his cross-examination has said that asphyxia could be caused by suffocation, choking, drowning, strangulation, hanging and other traumatic reasons. Likewise, the doctor has further deposed that the fracture of thyroid cartilage which was detected in the course of postmortem could be caused because of sudden strong and heavy stiffness of laryngeal spasm. According to the doctor, there can be a possibility that a few drops of water entered into the laryngeal causing block on account of which the process of breathing stopped and therefore water could not enter into the body. The doctor in his cross-examination has further said that in this case there is a possibility that because of laryngeal spasm causing breathlessness and increase in blood pressure before death causing bleeding in the blood vessels and capillary tubes by which extravagation of blood can come on the subcutaneous tissue. So far as the case of water and blood oozing from the nostril of the deceased is concerned, the doctor has categorically accepted that it is a symptom in a case of drowning wherein pressure being put on the chest of the deceased, blood mixed froth was oozing from the nostrils of the deceased and which was coming out from the air passage. The doctor has proved postmortem report Exhibit P-9 and his signature on it.

14. On studying the deposition of the doctor PW-16 when compared to the Modi's textbook of medical jurisprudence and toxicology, it reveals that as per the medical jurisprudence, in a few cases, death may occur on account of obstructive asphyxia also known as dry drowning caused by the laryngeal spasm set up by a small amount

of water entering the larynx. According to the medical jurisprudence, in such a case, water does not enter the lungs and the classical signs of drowning will be absent. It further states that spasmodic closure of the vocal cord is not detectable in postmortem examination. Modi's medical jurisprudence further while referring to a case of postmortem of a body where the death has caused due to asphyxia holds that a fine, white, lathery tenacious froth and foam rarely tinged with blood is seen at the mouth and the nostrils which may appear on compression of the chest. This is regarded as a diagnostic sign of drowning. When we compare the deposition of PW-16, the doctor who conducted the postmortem with Modi's medical jurisprudence, it clearly reveals that the deceased had all the symptoms as has been suggested under the text of medical jurisprudence in a case of asphyxia caused as a result of dry drowning.

15. This medical evidence itself creates a great element of doubt as to whether it is a case where the deceased was first murdered and thereafter thrown into the well or it was a case of simple drowning. From the evidences which have come on record along with the medical evidence it is clearly established that the medical evidence does not support the ocular evidence in as much as the prosecution has not been able to establish its case beyond all reasonable doubt. The doubt in respect of whether there is a homicidal death of the deceased also gets increased on account of the fact that during the postmortem the doctor could not find any external or internal injury by which it could be said that the deceased must have been killed

before throwing into the well.

16. A perusal of the evidence of PW-1 and PW-6 would reveal that when the deceased occasionally visited her parental house, she used to complain about her being victimized by her in-laws and being tortured and forced to do the entire household works. Similarly, the evidence of PW-2, PW-3 and PW-5 also shows that the deceased had occasionally complained against the accused persons particularly her husband and father-in-law for demand of dowry and money which can give rise to the theory of the deceased might have committed suicide. The theory of suicide gets further strengthened on account of the fact that PW-11 has categorically deposed that he had seen the deceased putting clothes in the sun for drying in the morning which establishes the fact that she was out of her house in the morning and thereafter was found missing which also indicates that when PW-11 had seen the deceased, she was all alone and the in-laws were not near her. This fact creates doubt about the case of the prosecution whether the deceased was in fact murdered or for that matter the death was homicidal in nature. There was no charge for abatement to suicide.
17. If we look into some of the decisions of Supreme Court in case of the State of Punjab v. Bhajan Singh and Others, reported in 1975 (4)-SCC-472, wherein, after considering the medical evidence finding that there were no marks of ligature on the dead body, it was found not possible to hold that the death of deceased was homicidal. It was further held in the later part of the said judgment that the accused person cannot be made to suffer on the basis of

insufficient evidence holding that death of deceased was homicidal.

- 18.** Further, in case of Madho Singh Vs. State of Rajasthan, reported in 2003(1)Supreme-473, the Supreme Court has held that in absence of proof of homicidal death, the accused cannot be convicted merely on suspicion howsoever strong it may be.
- 19.** So far as the doubt created by the Appellant in as much as whether the death of the deceased was homicidal in nature is concerned, the medical evidence holding that there is a possibility of the death of the deceased was caused by drowning and the fracture of thyroid cartilage could also occur in a case of dry drowning leading to asphyxia, it is by now established that the prosecution has not been able to conclusively prove the fact that the death of the deceased was homicidal in nature. The benefit of which would go in favour of the Appellant and for this doubt so created itself is sufficient for setting aside the conviction of the Appellant.
- 20.** As regards the contention of the State counsel that the body of the deceased was only a blouse and an underwear when it was fished out, the evidence of PW-10 shows that when the body was seen in the well, it had clothes. Further, the evidence of PW-18 shows that while the body was being fished out from the well, many times it fallen back in the water as the body could not be properly hooked and in the process, the possibility of Sari and Petticoat might have detached from the body cannot be ruled out.
- 21.** Since the issue of homicidal death stands decided in favour of the Appellant, we are of the opinion that the other grounds raised by the Appellant become inconsequential and the Appeal on this

ground alone deserves to be allowed.

- 22.** For the foregoing reasons, the conviction of the Appellant for the offence under Sections 302 and 201 of IPC is set aside giving the benefit of doubt and he stands acquitted of the charges levelled against him. The bail bonds of the Appellant shall remain in operation for a period of six months from today in view of provision contained in Section 437-A Cr.P.C.
- 23.** The Appeal accordingly stands allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

NAFR

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C A V JUDGEMENT

JUDGE
.09.2015

For consideration

Hon'ble Shri Justice Navin Sinha

CHIEF JUSTICE
.09.2015

Post for pronouncement of the judgment on .09.2015.

JUDGE
.09.2015