

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 522 of 2003**

- Samliya

---- Appellant

Versus

- State of Chhattisgarh

---- Respondent

And**CRA No. 546 of 2003**

- Vijay Yadav

---- Appellant

Vs

- State of Chhattisgarh

---- Respondent

For Appellants in both appeals	:	Mr. A.K. Prasad, Advocate
For Respondent/State	:	Mr. Rama Kant Pandey, P.L.

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

Judgement on Board by T.P.Sharma, J.**01/05/2015**

Criminal Appeals No. 522 and 546 of 2003 filed by the appellants against the common judgment dated 21.04.2003 passed in Sessions Trial No.111/2002 by 2nd Additional Sessions Judge (F.T.C.), Surajpur, Dist. Surguja, are being disposed of by this common judgment.

2. By filing Criminal Appeals No. 522 and 546 of 2003, appellants challenged the

legality, validity and propriety of the judgment dated 21.04.2003 passed in Sessions Trial No.111/2002 by 2nd Additional Sessions Judge (F.T.C.), Surajpur, Dist. Surguja, whereby the trial Court, after holding the appellants guilty for causing homicidal death amounting to murder of Pramila and for concealing evidence, convicted the appellant – Vijay Yadav under Section 302 and 201 of the I.P.C. and sentenced him to imprisonment for life and to undergo RI for five years with fine of Rs.1000/- under each count and in default of payment of fine amount, to undergo additional RI for six months each under the above Sections. Likewise, the trial Court also convicted the appellant – Samliya under Section 201 of the I.P.C. and sentenced him to undergo RI for five years with fine of Rs.1000/- and in default to further undergo RI for six months.

3. Conviction is impugned on the ground that without there being any iota of evidence against the appellants, the Court below convicted and sentenced the appellants as aforementioned and thereby committed illegality.

4. As per case of the prosecution, deceased – Pramila, wife of Vijay Yadav and daughter-in-law of the appellant Samliya, was residing with the appellants. On 27.12.2001, between 10.00 am – 12.30 noon, on account of some dispute appellant Vijay administered poison to Pramila which effected her body, resulting into, she was crying in pain, whereupon, appellant Vijay called P.W.10 Amulya Chandra Chadsa, who examined her and advised the appellant to take her to Hospital for immediate treatment. Thereafter, deceased died, then appellant Vijay sent P.W.2 Rajpal to the parents of the deceased, namely, P.W.5 Hiralal, who came to village Kaskela where dead body was kept upon the place of burning the dead for cremation (चिता). P.W.5 Hiralal noticed the swelling on the neck of the deceased and objected for cremation, but, finally body was cremated. Thereafter, he collected ashes and bones. P.W.5 Hiralal made a complaint against the appellants to Police Outpost Bhatgaon vide Ex.P.4. Merg was recorded vide Ex.P.6 and F.I.R. was lodged at Pratappur vide Ex.P.5.

5. Investigating Officer seized the burnt bones of the deceased vide Ex.P.1. One steel glass used for administering white medicated substance and dried vomited part were seized from the spot vide Ex.P.2. Inquest paper was prepared vide Ex.P.5. Spot map was prepared vide Ex.P.11. Finally, F.I.R. was registered vide Ex.P.12. Seized articles were sent for chemical examination to F.S.L. Ex.P.10.

6. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. After completion of investigation, charge sheet was filed before the Court of Additional Chief Judicial Magistrate, Surapur, who in turn committed the case to the Court of Sessions Surguja, Ambikapur. The learned Additional Sessions Judge received the case on transfer for its trial.

8. In order to prove the guilt of the appellants, prosecution examined as many as ten witnesses. Accused persons were examined under Section 313 of the Code wherein they denied the circumstances appearing against them and innocence and false implication in crime in question was claimed.

9. After providing an opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.

10. We have heard learned counsel for the parties and perused the record of Court below including judgment impugned.

11. Mr. A.K.Prasad, learned counsel for the appellants, vehemently argued that the conviction is substantially based on the circumstantial evidence that deceased died in the house of appellants at village Bhatgaon, they cremated the dead body at village Kaskela, they did not report the matter to the Police, they did not properly inform the parents of deceased about her death and appellants did not stop cremation when it was specifically objected by the father of deceased. These are not complete chain of circumstances sufficient to prove the guilt of the appellants.

The evidence adduced on behalf of the prosecution may be sufficient for drawing suspicion but not sufficient for proving the guilt of the appellants. Therefore, the conviction of the appellants is not sustainable in law.

12. On the other hand, Mr. Rama Kant Pandey, learned counsel for the State, opposed the appeal while submitting that the evidence adduced on behalf of the prosecution is sufficient for proving the guilt of the appellants.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, as per case of both the parties, deceased died on 27.12.2001 between 10.00 pm – 12.30 noon. As per case of the appellants, she died as a result of abdomen pain whereas as per case of the prosecution death of deceased was suspicion in nature. Material witness P.W.5 Hiralal, father of deceased, has deposed that he was informed through P.W.2 Rajpal, then he came to village Kaskela where dead body was kept upon the place of burning the dead for cremation (बिना). He noticed a swelling upon the neck of deceased, then he objected the cremation, but, the appellants have cremated the dead body. Thereafter, P.W.5 Hiralal lodged the report on third day, i.e., 29.12.2001 at Police Outpost. Defence has cross-examined this witness at length. In para 9, he admitted the presence of 50-60 persons at the time of cremation. In para 4, he further admitted that he participated in funeral programme and on second day he collected the ashes and bones. Burnt bones were seized by the Investigating Officer. All seized articles including ashes and burnt bones were sent for chemical examination to F.S.L. vide Ex.P.10, but, report of F.S.L. has not been filed by the prosecution to ensure whether the glass contained poisonous substance and whether the burnt bones were effected by poisonous content. Other witnesses have not deposed in favour of prosecution. Evidence of P.W.5 Hiralal revealed that he was having suspicion upon the appellants that the appellants have committed murder of his daughter, but, only suspicion is not sufficient for proving the guilt of the appellants.

14. In case cause of death was on account of administering poison, prosecution is required to prove that 1) the appellant was having motive, 2) the appellant was in possession of poisonous substance and 3) the appellant has administered the poison, but, in the present case, the prosecution has failed to prove any of the ingredients. Evidence of P.W.5 Hiralal may be sufficient for suspicion but not sufficient for proving the guilt of the appellants. In absence of evidence of clinching in nature, conviction of the appellant – Vijay Yadav under Section 302 and 201 of the I.P.C. and conviction of the appellant – Samliya under Section 201 of the I.P.C. and the sentence awarded thereunder are not sustainable in law.

15. Consequently, Criminal Appeals No. 522/2003 and 546/2003 deserve to be and are hereby allowed. Conviction of the appellant – Vijay Yadav under Section 302 and 201 of the I.P.C. and conviction of the appellant – Samliya under Section 201 of the I.P.C. and the sentence awarded thereunder, being not sustainable in law, are hereby set aside. They be set at liberty at once.

(T.P.Sharma)
Judge

(I.S.Uboweja)
Judge