

Division Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT

BILASPUR (C.G.)

Cr. A. No. 151 of 2011

APPELLANT

(In Jail)

: Ram Bharos, S/o Jagatram Manjhi,
aged about 50 years, Occupation-
Labour, R/o Village-Khokharoam,
Police Station-Gharghoda, District-
Raigarh (C.G.)

P.R. No. 1078/11
Presented by Shri. Manoj Gaisani
Dated 12/2/11
Jc 12/2/11
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VERSUS

RESPONDENT

: State of Chhattisgarh
Through the Station House Officer,
Arakshi Kendra, Gharghoda,
District-Raigarh (C.G.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL

PROCEDURE CODE 1973

Cr.A.No.151/11

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 151 of 2011

• RAM BHAROS

---- **Appellant**

In Jail

Versus

• STATE OF CHHATTISGARH

---- **Respondent**

Criminal Appeal Under Section 374 (2) of the Code of Criminal Procedure,
1973

For appellant : Mr. Manoj Jaiswal, Advocate
For Respondent/State : Ms. Pushpa Dwivedi, Panel Lawyer

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

JUDGMENT

Judgment dictated on Board by Hon'ble Mr. Justice T.P.Sharma

09.01.2015

Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.12.2010 passed by the 4th Additional Sessions Judge (F.T.C.), Raigarh, in Sessions Trial No.23/10 whereby and whereunder the Court below, after holding the appellant guilty for causing homicidal death amounting to murder of his wife – Smt. Sanvaro @ Saniro Bai, convicted the appellant under Section 302 of the I.P.C. and sentenced him to imprisonment for life with fine of Rs.1000/-, in default to further undergo RI for six months.

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2. Conviction is impugned on the ground that without there being any iota of evidence against the appellant, the Court below has convicted and sentenced the appellant as aforesaid and thereby committed illegality.

3. As per case of the prosecution, appellant and the unfortunate deceased – Sanvaro @ Saniro Bai were present in the house and were consuming liquor. In the intervening night of 11.12.2009 and 12.12.2009, Sanvaro Bai was found dead. The appellant informed the villagers that his wife has died as a result of consuming liquor. P.W.1 Bandhan Manjhi went to Police Station Gharghoda and lodged merg vide Ex.P.1 and F.I.R. vide Ex.P.2.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.7, inquest over the dead body was prepared vide Ex.P.8. Bloodstained and plain soils and also broken bangles were seized from the spot vide Ex.P.5. Spot map was prepared vide Ex.P.11. Dead body was sent for autopsy to Government Hospital, Gharghoda vide Ex.P.16. P.W.12 Dr. V.K. Lakda conducted the autopsy vide Ex.P.16A and found following injuries and symptoms:

- 1 Multiple contusions of different sizes over chest with abrasion.
- 2 Multiple abrasions over abdomen and lower part of abdomen
- 3 Multiple contusions and abrasions over both thighs, below the knees and backside.
- 4 Depressed injury over chest.
- 5 Fracture of 6th and 7th ribs of both sides and laceration of both lungs.

Mode of death was shock and death was homicidal in nature.



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5. A heavy wooden plank (arm of the cot) was seized from the appellant vide Ex.P.6.

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

7. After completion of investigation, charge sheet was filed before the J.M.F.C., Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh. Learned Additional Sessions Judge received the case on transfer for its trial.

8. In order to prove the guilt of the appellant, prosecution examined as many as 13 witnesses. The accused person was examined under Section 313 of the Code in which he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed.

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

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

11. Mr. Manoj Jaiswal, learned counsel for the appellant, vehemently argued that although conviction of the appellant is substantially based on circumstantial evidence, but the evidence adduced on behalf of the prosecution is not sufficient to prove the complete chain of circumstances

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to infer that the appellant was only author of the offence and also sufficient to exclude the possibility of his innocence.

12. On the other hand, Ms. Pushpa Dwivedi, P.L. for the State opposed the appeal and submissions while submitting that the evidence adduced on behalf of the prosecution is sufficient to prove the complete chain of circumstances and to prove the guilt of the appellant.

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, the homicidal death as a result of fatal injuries found over the body of deceased – Sanvaro @ Saniro Bai has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Bandhan Manjhi, P.W.2 Chhatra Kumar Sahu, merg Ex.P.1, F.I.R. Ex.P.2, P.W.12 Dr. V.K. Lakda and autopsy report Ex.P.16A. Death of Sanvaro @ Saniro Bai was homicidal in nature.

14. As regards complicity of the appellant in crime in question, the conviction is substantially based on the circumstantial evidence. As held in the case of **Kusuma Ankama Rao vs. State of A.P., 2008 AIR SCW 4669**, the prosecution is required to satisfy the following circumstances:

- i. 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;
- ii. 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;

- iii. the circumstances should be of a conclusive nature and tendency;
- iv. they should exclude every possible hypothesis except the one to be proved; and
- v. 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.

15. In the present case, the prosecution has proved the complete chain of circumstances, which are as under:

- i. the appellant and the deceased were present in the same house and are sleeping in one room;
- ii. deceased found dead in the house of the appellant;
- iii. death of deceased was homicidal in nature; and
- iv. appellant was under obligation to offer explanation in terms of Section 106 of the Evidence Act that who has caused homicidal death of deceased. Although he has offered explanation that deceased died of consuming liquor but that is patently false.

16. As per evidence of P.W.2, Chhatra Kumar, deceased and the appellant were present in their house. At morning at 7.00 am, the appellant came to him and informed that his wife has died. On being

asked, the appellant replied that she died after consuming liquor. P.W.12. Dr. V.K. Lakda has conducted autopsy vide Ex.P.16A as per autopsy report and evidence, he noticed the multiple injuries with fracture of four ribs of both sides and laceration of puncture of both the lungs, which shows that death was homicidal in nature. As per evidence of P.W.2 Chhatra Kumar, the appellant and the deceased were present in the house of the appellant, in the intervening night, the deceased was found dead and her death was homicidal. The act was committed in secrecy, therefore, the appellant was under obligation to offer explanation that who has caused homicidal death of deceased but the appellant has offered false explanation.

17. If the above circumstances are considered together, then only inference would be possible that the appellant was author of the crime and none else and also exclude the possibility of his innocence.

18. On the basis of aforesaid evidence and circumstances, the trial Court convicted and sentenced the appellant as aforementioned. On close scrutiny of the evidence and circumstances, we do not find any illegality and infirmity in the judgment of conviction and order of sentence.

19. Consequently, the appeal being devoid of merit and substance, is liable to be and is hereby dismissed.

**Sd/-
T.P. Sharma
Judge**

**Sd/-
Inder Singh Uboweja
Judge**