

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.655 of 2010

Ram Lal, S/o Jeth Singh Satnami, Aged about 30 years, R/o Village Fulsari, P.S. Kartala, Distt. Korba (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Kartala, Distt. Korba (C.G.)

---- Respondent

For Appellant: Mr. Rajneesh Kumar Shrivastva, Advocate.

For Respondent/State: Mr. Mahesh Mishra, Panel Lawyer.

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

Judgment On Board

06/05/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 31-8-2010 passed by the Sessions Judge, Korba, in Sessions Trial No.71/2009, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Shyam Bai, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.1,000/-, in default of payment of fine to further undergo RI for one year.
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 Shyam Bai – wife of the appellant, was residing with the appellant under same roof, on 21-8-2008 the appellant and the deceased were present in their house, in the intervening night of 20-8-2008 and 21-8-2008 before 4.30 a.m., the appellant throttled the neck of the deceased and caused her homicidal death. He informed other persons and relatives of the deceased. Thereafter, Bandhan (PW-2) – father of the deceased went to Police Station Kartala and lodged morgue vide Ex.P-1.

4. The investigating officer left for the scene of occurrence. After summoning the witnesses vide Exs.P-2 & P-3, inquest over the dead body of the deceased was prepared vide Ex.P-4. Spot map was prepared vide Ex.P-6.
5. Dead body of the deceased was sent for autopsy to Community Health Centre, Kartala vide Ex.P-14. Dr. V.K. Singh (PW-4) conducted autopsy vide Ex.P-5 and found following injuries and symptoms: -
 - Whole face cyanosed, both eyes closed, mouth opened, tongue protruded out with bleeding from nose.
 - One thumb impression present on neck on right side and four finger impression present on neck on left side.
 - Rigor mortis pass off all over body foul smelling coming from body.Mode of death was asphyxia as a result of throttling and death was homicidal in nature.
6. Viscera and clothes of the deceased were sealed and seized vide Ex.P-8. Viscera was preserved and sent for chemical examination. As per report of the FSL Ex.P-16, no poison was found in the viscera. Finally, FIR was registered vide Ex.P-10. 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, Kartala, who committed the case to the Court of Sessions, Korba where the trial was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 10 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
9. After providing opportunity of hearing to the parties, learned Sessions Judge 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 substantially based on circumstantial evidence that the deceased was present in the house along with her husband – the appellant, she died in the house of the appellant / husband, death of the deceased was homicidal in nature and the appellant has failed to offer any explanation. Learned counsel further argued that witnesses of the vicinity

have clearly deposed in their evidence that the deceased was suffering from several diseases and on account of such diseases, she died which has not been considered by the trial Court while convicting the appellant. Learned counsel also argued that detailed evidence of Phool Bai (PW-1), Bandhan (PW-2), Abdul Aziz Khan (PW-3), Dr. V.K. Singh (PW-4) and Rameshwar (PW-5) clearly reveal that it was a case of death on account of diseases and not death on account of throttling.

12. On the other hand, learned State counsel opposed the appeal and submitted that the deceased died in the house of the appellant, death of the deceased was as a result of strangulation and the appellant was present in the house at the time of incident. The offence was committed in secrecy. The appellant was under obligation to offer explanation in terms of Section 106 of the Evidence Act, but he has failed to offer any explanation. These circumstances are sufficient to prove the fact that the appellant was the author of the crime and none else.
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.
14. In the present case, homicidal death as a result of fatal injury found over the neck of deceased Shyam Bai has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Phool Bai (PW-1), Bandhan (PW-2), Abdul Aziz Khan (PW-3), Rameshwar (PW-5), Lalita Bai (PW-7), FIR Ex.P-10, morgue Ex.P-1, evidence of Dr. V.K. Singh (PW-4) and autopsy report Ex.P-5, that death of deceased Shyam Bai was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on circumstantial evidence.
16. In order to convict an accused on the basis of circumstantial evidence, as held by the Supreme Court in the matter of **Kusuma Ankama Rao v. State of A.P.**¹ in case of conviction based on circumstantial evidence, the prosecution is required to satisfy the following circumstances,
 1. 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;
 2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not

¹ 2008 AIR SCW 4669

be explainable on any other hypothesis except that the accused is guilty;

3. the circumstances should be of a conclusive nature and tendency;
4. they should exclude every possible hypothesis except the one to be proved; and
5. 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.

17. In the present case, the prosecution has tried to prove the following chain of circumstances: -

1. The deceased and the appellant were residing under same roof.
2. The deceased died as a result of strangulation and death was homicidal in nature.
3. Incident took place during the course of night where except the deceased and the appellant. other persons were not present.
4. Offence was committed in secrecy.
5. The appellant was under obligation to offer an explanation in terms of Section 106 of the Evidence Act that who has caused homicidal death of the deceased, but he has failed to offer any explanation.

18. In the present case, presence of the appellant at the time of incident is not in dispute. Even Rameshwar (PW-5) has admitted presence of the appellant at the time of incident in paras 4 and 7 of his evidence. The appellant has not offered any explanation relating to his absence. As per the autopsy report, death of the deceased was homicidal in nature. Incident took place in the intervening night of 20-8-2008 and 21-8-2008 in the house of the appellant. The act was committed in secrecy. The appellant was under obligation to offer explanation that who has caused homicidal death of the deceased, in terms of Section 106 of the Evidence Act, but the appellant has failed to offer any explanation.

19. If aforesaid circumstances are considered together then the only inference would be possible that the appellant was the author of the crime and none else. The prosecution has satisfied the aforesaid tests as held by the Supreme Court in **Kusuma Ankama Rao** (supra) and has proved the fact that the appellant was the author of the crime and none else.

20. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.

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

JUDGE

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