

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 325 of 2011

- Satyendra, S/o Ramayan Kashyap, aged about 25 years, resident of village Madanpur, Police Station – Pamgarh, District – Janjgir-Champa (C.G.)

---- Appellant (In Jail)

Versus

- State of Chhattisgarh, Through Police Station – Pamgarh, District – Janjgir-Champa (C.G.)

---- Respondent

For Appellant	:	Mr. Rakesh Pandey, Advocate.
For Respondent/State	:	Mr. Ajit Singh, Panel Lawyer.

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

CAV JUDGMENT

Delivered on : 14/10/2015

Per, I.S. Uboweja, J.

1. The sole appellant/accused challenges the judgment dated 25.03.2011 passed by the Sessions Judge, Janjgir-Champa in Sessions Trial No. 109/2010, by which conviction and sentence has been awarded.
2. As many as three co-accused persons being Ramayan (father-in-law of deceased), Khikh Bai (mother-in-law of deceased), Hira Bai (sister-in-law of deceased) along with appellant - Satyendra were tried for offences punishable under Sections 302, 306, 304B, 498A and 201/34 of the IPC. The allegation against the present appellant including three co-accused persons was that they had committed murder of Manjari Bai, wife of appellant Satyendra for demand of dowry and subjected her to cruelty in connection with demand of

dowry and death of the deceased was in unnatural condition and she died within seven years of her marriage. The trial Court acquitted Ramayan, Khikh Bai and Hira Bai, but convicted appellant Satyendra of the substantive offences under Sections 498A, 304B and 302 of the IPC.

3. The marriage of deceased - Manjari Bai was solemnized with appellant Satyendra on 9th April, 2010. After their marriage, appellant started demanding money from his wife and was scolding, harassing and complaining that she had brought inadequate dowry. It was claimed that the deceased always used to complain about this to her parents. He was also having illicit relation with his sister-in-law (bhabhi) which was also a reason for quarrel in their married life. In the intervening night of 11th and 12th April, 2010, deceased was sleeping along with accused/appellant in a room at about 12.00 mid night after taking her food and at morning 5 to 6 a.m. she was found dead in burnt condition in front of the house of the appellant.
4. Appellant had intimated to Police Station, Pamgarh about the death of the deceased, which was registered as merg vide Ex.P-12. FIR (Ex.P-16) was registered against co-accused persons and the appellant for the offence punishable under Sections 498A, 302, 201/34 of the IPC. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P-1, inquest over the dead body of the deceased was prepared vide

Ex.P-2. Spot map was prepared vide Ex.P-15. Dead body of the deceased was sent for autopsy to Primary Health Centre, Pamgarh vide Ex.P-13, where Dr. K.K. Dahire (PW-9) conducted autopsy on the dead body of the deceased vide Ex.P-11 and found following injuries and symptoms :

- (i) The body is in pugilistic attitude, smell of kerosene coming from the body. Ante-mortem blisters were found all over the body.
- (ii) Face, back, neck, both upper hands, chest, abdomen, thighs, feet and perineum were burnt.
- (iii) Tongue protruded, bleeding with tongue bite and per nostrils and also bleeding from both eyes. Swollen over lower region of abdomen.
- (iv) Both palm and soles are spared.
- (v) Thumb print over the left side of neck of 5 x 2 cm diagonally.
- (vi) No other external deep injury was seen over the body. Bangles of glass and metals were found over both wrists.
- (vii) Body was in 90% burnt condition.

Mode of death was asphyxia and shock due to ante-mortem kerosene burn and it was homicidal in nature.

5. During the course of investigation, appellant was taken into custody, he made disclosure statement of a pillow, which was used for pressing the neck of deceased, vide Ex.P-7, same was recovered at his instance vide Ex.P-5. A five litres jerry-cane containing half litre kerosene was seized from the spot vide Ex.P-3. Broken bangles were seized from the bedroom of the deceased vide Ex.P-4. Patwari prepared spot map vide Ex.P-6.
6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Janjgir, who in turn committed the case to the Court of Sessions, Janjgir.
7. In order to bring home the charges of the accused/appellant, the prosecution examined as many as twelve witnesses. Accused persons were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.
8. After providing opportunity of hearing to the parties, learned Sessions Judge has acquitted Ramayan, Khikh Bai and Hira Bai, but convicted and sentenced appellant Satyendra as aforementioned.
9. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.

10. Learned counsel for the appellant has submitted that he is not disputing homicidal death of the deceased, he is also not disputing that dead body of the deceased was found in burnt condition outside the house of the appellant. He further submitted that prosecution has failed to prove the fact that appellant has caused homicidal death of the deceased. Prosecution also failed to prove the fact that appellant had caused death of deceased by smothering or by burn injuries, possibility of causing death by some other person cannot be ruled out.
11. Learned counsel for the appellant placed reliance in the matter of **Arun Kumar Sharma v. State of Bihar**¹ in which Hon'ble Supreme Court has observed as follows :

“A. Penal Code, 1860 – Ss. 302, 304-B and 498-A – Murder trial – Benefit of doubt – Appellant-accused husband alleged to have strangled the deceased while her in-laws held her, for non-fulfilment of dowry demand – Demand for dowry not proved – Testimonies of PWs neither inspiring confidence, nor corroborating each other – Incident alleged to have occurred at about 6 a.m. But fardbeyan recorded only after 9.30 p.m. when IO visited place of occurrence, despite fact that PWs (father and brother of deceased, and one acquaintance) were with dead body for entire day – Moreover, FIR reached Magistrate only after five days which was extremely suspicious since court and police station were in same city – Though medical evidence suggesting that

¹ (2010) 1 SCC 108

there were multiple bruises which could be due to forcible pressure of fingers, and even if it were assumed that deceased died due to throttling, there was no convincing evidence that it was the accused alone who had throttled deceased to death – Further, there were many lacunae in investigation – Furthermore, DWs had stated that deceased was alive after 6 a.m., and one of them even stated that she had offered breakfast to her husband at about 11 a.m. - Held, in such circumstances, benefit of doubt must go to appellant”.

12. He further placed reliance in the matter of **State of Karnataka v. M.V. Manjunathgowda and another**² in which Hon'ble Supreme Court has held in para 23 as under :

“23. If the prosecution is able to prove the aforesaid circumstances then the presumption under Section 113-B of the Evidence Act will operate. It is the rebuttable presumption and the onus to rebut shifts on the accused.”

13. He also placed reliance in the matter of **Arvind Singh v. State of Bihar**³ in which Hon'ble Supreme Court has held that while it is true that the husband being the companion in the bedroom ought to be able to explain as to the circumstances but there exists an obligation on the part of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Further reliance has been placed in the matter of **Dr. (Capt.) Akhour Ramesh Chandra Sinha v. State of Bihar and others**⁴ in which Hon'ble Supreme

² (2003) 2 SCC 188

³ (2006) 6 SCC 407

⁴ AIR 1996 SC 2867

Court has held that if an alive person is burned there is bound to be blister formation. Further reliance has been placed in the matter of **Dhan Raj alias Dhand v. State of Haryana**⁵ in which Hon'ble Supreme Court has held in para 17 as under :

“17. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance or surmise or conjecture and must also be consistent with the guilt of the accused. None of the circumstances relied upon by the prosecution and accepted by the High Court can be said to be the probability of the appellants' guilt or involvement in the commission of the crime.”

14. On the other hand, learned State counsel opposes the appeal and supported the judgment of conviction and order of sentence passed by the trial Court.
15. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
16. In the present case, Badrika Bai (PW-1), mother of the deceased, Vishwanath (PW-3), brother of the deceased, Santoshi Bai (PW-2), daughter-in-law of Badrika Bai (PW-1) and Govind Ram (PW-4), uncle of the deceased stated in their statements that after marriage, whenever deceased used to come to Amora, she had always made complaint against her husband that she was

⁵ 2014 CRI. L.J. 2778

subjected to cruelty for demand of motorcycle and rupees one lakh for getting job and also that appellant used to beat her frequently. These witnesses have been cross-examined at length, but nothing could be elicited which could shake their credibility. Thus, it is proved by the aforesaid evidence that accused is guilty for subjecting the deceased to cruelty and harassment in connection with demand of dowry, but there is not a single evidence to show that accused/appellant has committed cruelty in connection with demand of dowry just before the incident and also no evidence to show that the death of deceased was due to demand of dowry. Thus, it is not proved that it is a case of dowry death.

17. In the present case, homicidal death of deceased Manjari Bai as a result of ante-mortem kerosene burn injuries found over her body has not been substantially disputed on behalf of the appellant, it has also not been disputed that dead body of the deceased was found near the house of the appellant in full burnt condition. Even otherwise, it is also established from the evidence of Badrika Bai (PW-1), Santoshi Bai (PW-2), Vishwanath (PW-3), Govind Kashyap (PW-4), Merg (Ex.P-12), FIR (Ex.P-16), Dr. K.K. Dahire (PW-9) and autopsy report (Ex.P-11) that the death of deceased Manjari Bai was homicidal in nature and death was due to ante-mortem kerosene burn.

18. As regards the complicity of the appellant in crime in question, the appellant is the husband of the deceased and he has been convicted on the basis of circumstantial evidence. In order to convict an accused on the basis of circumstantial evidence as held by the Supreme Court in **Bodh Raj alias Bodha and other vs. State of Jammu and Kashmir (AIR 2002 SC 3164)** the conditions precedent before conviction could be based on circumstantial evidence must be fully established. They are as follows :-

- (i) the circumstances from which the conclusion of the 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 the accused is guilty;
- (iii) the circumstances should be of 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.

19. In the present case, it is not disputed that deceased and appellant were sleeping in the bed room prior to her dead body was found lying outside the house near a small pond. Accused/appellant has given his explanation under Section 313 of the Cr.P.C., that in the night at 10-11 p.m. after taking meal both husband (he himself) and wife (deceased) were asleep. At morning, when he wakeup, he saw that his wife was not in the room, he searched her and then found her dead in burnt condition near the pond. He has not given any evidence in support of his version.
20. Anil Sharma (PW-8) is the Patwari who has prepared Spot Map (Ex.P-6) and Spot Panchanama (Ex.P-10). Paharuram (PW-6) and Fulsai (PW-10) are the witnesses of Spot Map (Ex.P-6), which shows that dead body of deceased was found 150 feet away from the house of the appellant and nearby National Highway passes at a distance of about 50 feet.
21. Investigating Officer, Girjashankar (PW-12) has stated that he has seized 5 litres jerry-cane containing half litre kerosene and one match box from near the dead body of the deceased vide Ex.P-3, broken bangles were seized from the bedroom of the deceased vide Ex.P-4. These documents have been proved by independent witnesses Paharuram (PW-6) and Fulsai (PW-10). Investigating Officer has also stated that accused was taken into custody, he made disclosure statement of a pillow, which was used for pressing the neck of deceased, vide Ex.P-7 and the same was

recovered at the instance of the appellant vide Ex.P-5 and marked as Article -A3. Witnesses Paharuram (PW-6) and Fulsai (PW-10) have not supported the version of Girjashankar (PW-12), but these witnesses have admitted their signatures on those documents, but no explanation has been given about that, which shows that they are wilfully avoiding and intentionally not supporting, however, only statement of Investigating Officer, Girjashankar (PW-12) is enough for proving the documents Exs.P-5 and P-7. His testimony is intact on this point, therefore, we relied upon him.

22. In the present case, the relationship between the parties as husband and wife is not disputed. Likewise that death occurred inside the house where both resided together has also not been disputed. The death was homicidal in nature and not in normal course, it is clear by the prosecution evidence. The appellant offers no defence as to how the death has taken place or that it was attributable to others or to any intruder. Once the prosecution has established these facts, the onus shifts to the appellant under Section 106 of the Evidence Act as it is a fact within his especial knowledge exclusively how his wife has died, when death has taken place inside the house within the four corners of a room, it is for the husband to explain as to how his wife died in unnatural circumstances. In this case appellant offers

no explanation in his statement recorded under Section 313 of the Cr.P.C. and also not presented any defence evidence.

23. Considering the evidence adduced by the prosecution it reveals that in the night of incident deceased was sleeping with the accused/appellant and thereafter her dead body was found in the morning at about 6.00 a.m. outside the house near a small pond at the distance of 150 feet in burnt condition. Medical evidence also shows that on the dead body there were several injuries including marks of thumb on neck. By the medical evidence, it is also proved that the deceased tongue was protruded and blood was oozing from eyes, it is not possible that any third person might have entered the bedroom and without notice of the accused/appellant he would have brought his wife outside the room, killed and burnt her in front of his house. Seized broken bangles show that prior to death of the deceased, she was subjected to cruelty and after smothering of her neck she was brought outside the house and burnt by kerosene. It cannot be ruled out that when deceased - Manari Bai was brought outside of the house she could be unconscious, thereafter she was burnt because some blister formation was present over her body. Explanation offered by the accused/ appellant that he came to know about the death of the deceased in the morning is not plausible and acceptable. Circumstances and evidence collected by the prosecution is sufficient to prove that accused/appellant

was the author of crime and none else, it also excludes the possibility of innocence of the appellant.

24. In the instant case, the trial Court has erred in law in resting the conviction of the appellant under Section 304B of the IPC, therefore the accused/appellant is acquitted from that charge.
25. We are of the view that learned Sessions Judge was fully justified in resting conviction of the appellant under Sections 302 and 498A of the IPC on the basis of circumstantial evidence led by the prosecution. Hence, conviction and sentences awarded to the appellant by the trial Court under Sections 302 and 498A is upheld.
26. In the result, the appeal is partly allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE