

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 461 of 2003**

1. Rup Lal S/o Bhudharu, aged 24 years, R/o Kurud P.S. Khamria,
District Durg (CG)

---- Appellant

Versus

1. State Of Chhattisgarh

---- Respondent

For Appellant. : Smt. Smriti Shrivastava, Advocate.
For Respondent. : Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By**Pritinker Diwaker, J****01/08/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 28.02.1997 passed by the IVth Additional Sessions Judge, Durg in S.T. No.279/1994 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.500/- plus default stipulations.

02. In the present case, name of the deceased is Deharin Bai - wife of appellant. On 16.08.1994 FIR (Ex.P/9) was lodged by the accused/appellant himself informing the police that Deharin Bai was living with him as his wife, two days prior to the incident he saw his wife in compromising position with a man, who after seeing him fled away from the spot. After dropping his father at Durg he returned his house

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and in the night he asked his wife Deharin Bai about the details of that person with whom he had seen her, on this his wife quarreled with him and thereafter they slept. He has further stated that at 10.00 pm he woke-up and throttled the neck of deceased with twisted thread. At about 4.00 am he locked the door of his hut from outside, went to his village and narrated the incident to his brother Roop Singh and thereafter report thereof was lodged. He has further stated that the dead body of deceased is lying there on cot. Based on this, FIR (Ex.P/9) for the offence punishable under Section 302 IPC was registered against the accused/appellant. Police party went along with accused/appellant to his hut, appellant handed over the key of house, which the police has seized vide Ex.P/1, lock was opened and dead body of deceased was found inside lying on the cot. Inquest on the dead body of deceased was conducted on 17.08.1994 vide Ex.P/3 and thereafter dead body was sent for postmortem to Primary Health Center, Dhamdha vide Ex.P/12. On same day postmortem examination on the body of deceased was conducted by Dr. P.D. Chandrawanshi (PW/10) who gave his report Ex.P/13 and found following injuries/symptoms:-

- (i) Body was in the stage of early decomposition. Eyes were closed, face was swollen and bluish. Tongue protruded through mouth.
- (ii) There was ligature by a sting situated lower down in the neck below thyroid cartilage and encircling the neck completely and horizontally, the knot was on the lower side of the neck.
- (iii) There was also a sting over the mouth covering both the angles of the mouth.
- (iv) The ligature mark was well defined and depressed.
- (v) Conjunctiva was congested.
- (vi) Bloody froth seen from the mouth, nose and ear.
- (vii) There was extra vessels of blood made the ligature mark.

(viii) No other injury was found on her body.

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The autopsy surgeon opined the cause of death to be asphyxia due to antemortem strangulation.

03. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits that :

(i) Accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction;

(ii) In absence of any eye-witness to the incident the accused/appellant cannot be convicted.

(iii) The accused/appellant has already remained in jail for about more than 11 years and, therefore, even he is convicted for any offence, he be set free considering the fact that incident occurred about 22 years back.

07. On the other hand, supporting the impugned judgment it has been

argued by learned counsel for the State that present is a case of house murder; at the instance of appellant key of lock was seized vide Ex.P/1; hut was opened in presence of Rikhi Ram (PW/2), Dwarika Prasad (PW/3), Santosh Kumar (PW/6) and Girdhar (PW/7) and body of deceased was recovered from inside the hut. He has further stated that accused/appellant was residing with his wife in the hut in question and no probable explanation has been offered by him in his statement recorded under Section 313 Cr.P.C. as to how deceased died. He has also submitted that even if the appellant has remained in jail for 11 years, it will not make any difference because once he is convicted under Section 302 IPC then life sentence as imposed upon him by the Court below is justified.

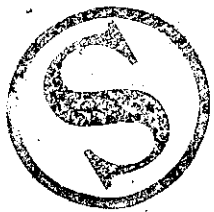
08. We have heard learned counsel for the parties and perused the material available on record.

09. Lakhan Das (PW/1) is witness of seizure memo Ex.P/1 by which key and bracelet were seized, however, he has not supported the prosecution case but admitted his signature on the document.

10. Rikhi Ram (PW/2) is father of deceased. He has stated that the house of appellant was opened in his presence and dead body of deceased was found inside the house lying on the cot. He is also a witness to inquest Ex.P/3.

11. Dwarika Prasad (PW/3) is also a witness to inquest Ex.P/3. He has also stated that in his presence the lock was opened and dead body of deceased was found inside the house on cot.

12. Megha Shyam (PW/4) is a witness to agreement (Ex.P/5)



demonstrating the fact that accused/appellant had performed marriage with deceased.

13. Santosh Kumar (PW/6) also states that the lock was opened in his presence and body was found inside the house. He is also a witness to inquest (Ex.P/3).

14. Girdhar (PW/7) – brother of deceased is a witness to seizure (Ex.P7) by which lock was seized. He is also a witness to inquest (Ex.P/3).

15. Roop Singh (PW/8) – brother of appellant has turned hostile.

16. Suresh Sen (PW/9) is Investigating Officer who has duly supported the prosecution case.

17. Dr. D.P. Chandrawanshi (PW/10) who conducted postmortem on the body of the deceased vide Ex.P/13, has opined that the cause of death of deceased was asphyxia due to antemortem strangulation.

18. Close scrutiny of the evidence makes it clear that two months prior to the incident, accused/appellant had performed marriage with deceased and they were living in a hut near the construction site. It also comes to the forefront that two days prior to the ill-fated day the accused/appellant had seen his wife deceased with third person in a compromising position and when deceased did not disclose the name of said person, on 15.08.1994 the accused/appellant committed her murder by stinging her neck with twisted thread. At the relevant point, it is the accused/appellant who alone was present in house with the deceased. After committing murder of the deceased, he locked the door of his hut from outside and lodged the report (Ex.P/9). According to postmortem report (Ex.P/13), injuries present on neck and face were ante-mortem in



nature and mode of death was asphyxia as a result of strangulation. According to autopsy surgeon, ligature mark seen on the neck of deceased was not as a result of hanging as there was mark of rope encircling the neck. True that merely on the basis of FIR (Ex.P/9) lodged by the appellant himself, he cannot be held guilty but present is a case where after committing murder of the deceased, he locked the door of his hut from outside and gave key of the lock to police which was seized vide Ex.P/1 in presence of number of witnesses, his hut was opened and body was found inside lying on the cot and thereafter inquest was prepared.

19. Thus from the material collected by the prosecution it is proved that the death of the deceased was homicidal in nature and the dead body was recovered from the house of accused/appellant in presence of Rikhi Ram (PW/2), Dwarika Prasad (PW/3) and Santosh Kumar (PW/6). Undisputedly, the house of the accused/appellant was in the occupation of the two only (deceased and the accused) but still no reasonably convincing explanation has been offered by him in his 313 Cr.P.C. statement as to how the dead body of deceased was found inside his hut. In the cases involving house murder, it has time and again been held by the Apex Court that it is the inmate(s) of the house who has to offer satisfactory explanation as to how the death occurred but in this case the accused/appellant remained mum. We found no substance in the argument advanced by counsel for the appellant that he has remained in jail for 11 years and he be set free.

20. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with

the material available on record and the Court below has not committed any error in passing the judgment impugned. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be on bail, he be arrested and sent back to jail for serving remaining sentence imposed upon him by the trial Court.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(C.B. Bajpai)
JUDGE

Vijay