

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 513 of 2011

1. Neelkanth Verma, S/o Firanta Verma, aged about 23 years, resident of village Bundalikala, Thana Ghumka, District Rajnandgaon, Chhattisgarh.

---- Appellant (in jail)

Versus

1. State Of Chhattisgarh, through the Police Station Ghumka, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellant:
For Respondent:

Shri R.K. Jain, Advocate
Shri Adil Minhaj, Panel Lawyer.

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

CAV Judgment

Per Pritinker Diwaker, J

04/04/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.2.2011 passed by the Sessions Judge, Rajnandgaon (CG) in S.T. No.21/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life & fine of Rs.3,000/-, in default to undergo additional R.I. for 01 year.
2. In the present case name of deceased is Pushpa Bai, wife of accused/appellant. The prosecution story, in brief, is that accused/appellant had taken loan of Rs.20,000/- from his co-brother and as he was not returning the same, there used to be frequent quarrel between him and deceased. In the intervening night 31.1.2010 & 1.2.2010 also they had a quarrel on

the aforesaid issue and in that process the accused/appellant committed murder of the deceased by pressing her neck with the help of scarf (चुनरी). At the instance of Sevakram (PW-9), Merg Intimation (Ex.P-10) was recorded on 1.2.2010 at 10.30 a.m. Inquest (Ex.P-2) was prepared on the dead body by Smt. Madhu Harsh (PW-3). Body of the deceased was sent for post-mortem examination which was conducted jointly by Dr. R. Sadani & Dr. Sajida Alam (PW-4) vide Ex.P-3 on 1.2.2010 and they had noticed following injuries & symptoms:

- Rigor mortis was present.
- Ligature mark was seen in front & side of neck at upper part.
- Damage to skin and subcutaneous tissue underneath the ligature mark.
- Subcutaneous tissue was echhomoysed.
- Fracture of neck muscles, upper portion of thyroid cartilage & hyoid bone on right side.
- Thyroid cartilage was badly contused.
- Both the lungs were congested.
- Right chamber of heart is distended with blood while left was empty.
- Large intestine was full of blood and blood is very dark in colour.

They opined that cause of death was asphyxia due to homicidal strangulation. After the post-mortem examination, on 1.2.2010 FIR (Ex.P-12) was registered against the accused/appellant under Section 302 of IPC. After completion of investigation, challan under Section 302 of IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

3. So as to hold the accused/appellant guilty, the prosecution has examined as many as 11 witnesses. Statement of accused/appellant was 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. He has also taken a defence that the deceased had committed suicide.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant as mentioned in para-1 of this judgment.
5. Learned counsel for the accused/appellant submits that:
 - the nature of injuries sustained by the deceased corresponds with the symptoms of suicide and not of homicide.
 - there is no direct evidence to connect the accused/appellant with the crime in question.
 - Anita Verma (PW-8) & Sevak Ram (PW-9) have also supported the defence on the point that the deceased had committed suicide by hanging.
 - Even assuming that the accused/appellant pressed the neck of the deceased with the help of scarf (चुनरी), the present case falls under Section 304 Part-I or II IPC because it is the deceased who was quarrelling with the appellant and thereby provoked him to commit the offence and therefore he cannot be convicted under Section 302 of IPC as has been done by the trial Court.
 - Lastly, he submits that the appellant is in jail for the last more than six years, therefore, after converting his conviction under Section 304 Part-1 or II IPC, the sentence imposed upon him may be reduced to the period already undergone by him.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that the death of deceased occurs in suspicious

circumstances in the house and therefore heavy burden was upon him to explain as to how the deceased died but he failed to offer any explanation in his statement recorded under Section 313 of Cr.P.C. He further submits that if the defence of the accused/appellant is that it was the case of suicide then in all fairness he should have informed this fact to the villagers and the police at first point of time itself, but nothing like was done. Even at the time of inquest no such statement was made by him. According to the medical evidence, the cause of death was asphyxia due to strangulation and the duration of death is 12 to 18 hours prior to post-mortem examination. The entire conduct of accused/appellant is suspicious and indicates that it is he who committed murder of the deceased.

7. We have heard learned counsel for the parties and perused the material available on record.
8. Chetan Das (PW-2) is the village Kotwar and he is witness to the inquest (Ex.P-2).
9. Smt. Madhu Harsh (PW-3) is the person who prepared inquest (Ex.P-2).
10. Dr. Sajida Alam (PW-4) is the witness who along with Dr. R. Sadani (not examined) conducted post-mortem on the body of the deceased and opined that cause of death was asphyxia due to homicidal strangulation and death had taken place 12 to 18 hours prior to post-mortem. She has further stated that she noticed ligature mark in the front & both sides of neck. The queries as to whether death of any person could be caused by pressing the neck from the seized scarf (चुनरी) and as to whether the injury present on the neck of the deceased could be caused by the scarf (chunri) have been answered by this witness in the affirmative vide Ex.P-4. In the cross-examination this witness has stated that normally the death on account of strangulation may involve the characters of suicide and

homicide but many a time the symptoms may be different. She has further stated that in case of forcible pressing of neck if the protest is made by the deceased then the injury may come. She has further stated that in case of suicide by hanging there is possibility of fracture of neck. She has admitted in the cross-examination that she cannot tell as to whether the death of deceased was homicidal or suicidal in nature.

11. Bisoha Ram (PW-5) is the father of the deceased. He has stated that the accused/appellant had taken Rs.20,000/- from his elder son-in-law namely Sukhram and he failed to return the same. He has further stated that accused/appellant was not doing any work and used to roam here and there. He is also a witness to the inquest Ex.P-2.
12. Shyama Bai (PW-7) is the mother of the deceased and she has made almost similar statement as has been made by her husband Bisoharam (PW-5). However, she has denied that her daughter had committed suicide for the reason that the appellant failed to repay the amount taken by him from her elder son-in-law.
13. Anita Verma (PW-8) is the Sarpanch of village and she has stated that on the date of incident at about 6.00 a.m. her servant informed her that the deceased had expired. She has further stated that she saw a ligature mark on the neck of the deceased. She is witness to the memorandum statement (Ex.P-8) of accused/appellant and seizure memo (Ex.P-9). In the cross-examination she has stated that when the family members of accused informed her that the deceased had committed suicide, she said to them as to why they have not disclosed this fact earlier. She has further stated that they have further informed that they were advised to cut the rope and keep the body of deceased on cot, however, they did not disclose the name of the person who gave such advice to them.
14. Sevakram (PW-9) is the village Kotwar at whose instance merg intimation

(Ex.P-2) was recorded. He has stated that when he reached the house of accused, he saw the body of deceased lying in the courtyard with black mark in the neck. When he asked from the accused/appellant as to how the deceased died, he expressed his ignorance. The family members of the accused also spoke in the similar terms. He is also witness to the spot map (Ex.P-11), memorandum (Ex.P-8) & seizure memo (Ex.P-9).

15. Ajay Verma (PW-10) is the husband of Sunita Verma (PW-8), Sarpanch of village. He has stated that on coming to know about the death of deceased, he had gone to the house of accused/appellant and on being asked as to how the deceased died, the accused/appellant expressed his ignorance.
16. Anita Sagar (PW-11) is the investigating officer and she has duly supported the prosecution case.
17. Triveni Bai (DW-1) is the mother of appellant. She has stated that on the date of incident she along with her family members excluding the deceased had gone to the house of her sister-in-law Janki to listen Ramayan. She has further stated that they returned home at 2-2.30 a.m. and saw the deceased hanging in the room. Accused/appellant had been to the house just few minutes before their arrival. Thereafter they went to the house of Ranchhor and at his advice, they cut the scarf (चुनरी), brought down the body and put it on the cot. Said Ranchor has further told them to disclose the fact of death of deceased to the village Kotwar in the morning.
18. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
19. Minute examination of the evidence makes it clear that on 1.2.2010 dead body of the deceased was found on the cot at her room where admittedly the accused used to live with her. According to the evidence of Triveni Bai

(DW-1) - mother of accused/appellant, on the fateful night all the family members including the accused but excluding the deceased had gone to the house of one Janki for listening Ramayan, but accused/ appellant had been back to the house a little before them. In other words, may be for a while, accused/appellant and the deceased alone were there in the house and being so it was the accused/appellant alone who was supposed to know as to how the deceased died. The team of doctors conducting the post-mortem examination had specifically opined the death to be asphyxia due to homicidal strangulation. In these circumstances, when it is apparent that death of deceased was homicidal in nature and on the night of occurrence accused/appellant and deceased were alone in the house, may be for a while, it was the first and foremost duty of the accused/appellant to categorize as to how the deceased lost her life. While explaining the things in his statement recorded under Section 313 Cr.P.C. the accused/appellant has stated that on account of his inability to repay Rs.20,000/- to his co-brother, the deceased had committed suicide by hanging herself from her neck and on the advice of his uncle Ranchor, he with the help of family members just brought her down after cutting the scarf (chunri). This explanation offered by the accused/appellant does not appear to be very convincing for the reason that the scarf with which the deceased is said to be hanging and seized by the prosecution vide seizure memo (Ex.P-9), was found intact. This apart, said Ranchor on whose advice the body is said to have been brought down has also not been examined by the defence to establish that the deceased had hanged herself and it is he who advised the accused & his family members to bring down her body. Even assuming the story developed by the accused that the deceased committed suicide by hanging herself, it should have been his first and foremost duty to take her to the hospital or in the event

of death the information should have been given to the neighbourers etc. of the village or the police, but nothing like this has been done by him. Further, on being asked by some of the prosecution witnesses as to how the deceased died, accused/appellant expressed his ignorance for the same and likewise, the family members of the accused also spoke in the similar terms. Thus, the story putforth by the accused/appellant in his statement under Section 313 Cr.P.C., in the circumstances referred above, appears to be highly articulated and is of no help to him.

20. As regards the submission of counsel for the appellant that the deceased had committed suicide by hanging herself, Modi in his Medical Jurisprudence and Toxicology (Twenty First Edition) has catalogued the differences between hanging & strangulation and according to which, if the death is caused by strangulation, there would be no oozing or dribbling of saliva but presence of ligature mark round the neck, low down in the neck below the thyroid, subcutaneous tissues under the mark & ecchymosed, injuries to muscles of neck, rupture of carotid arteries and fracture of larynx & trachea etc.

In the present case, the doctors conducting autopsy have noticed that saliva was not dribbling or oozing from the mouth, ligature mark was present on front & both sides of neck, there was damage to the skin, subcutaneous was underneath the ligature mark & ecchymosed, there were injuries on the neck muscles & both the sides of carotid arteries and hyoid bone was fractured. Further, the doctors have given positive opinion after the post-mortem examination that the death was occurred due to asphyxia on account of strangulation.

From the symptoms, which have been pointed out by Modi in case of strangulation, it is clear that the symptoms found in the present case correspond to the symptoms of strangulation. Thus, there can be really no

escape from the conclusion that it was the accused/appellant, who had killed the deceased by strangulating her to death. Moreover there is nothing in the evidence on record to show that the deceased met with her death by hanging herself from her neck, therefore, the theory of suicide cannot be relied upon.

21. Further this Court does not see any substance in the argument of the counsel for the accused that the oblique ligature mark is present only in the case of hanging. This Court has taken support of the Modi's Medical Jurisprudence and Toxicology (Twenty Third Edition) to arrive at a conclusion as to the presence or absence of oblique ligature mark in the cases of hanging & strangulation which shows that apart from hanging such ligature marks placed obliquely may be present in the case of strangulation as well. Thus from the injuries noticed by the doctor and evidence collected by the prosecution this Court reaches the conclusion that it is a case of strangulation, not hanging.
22. We, therefore, hold that the prosecution has proved beyond all reasonable doubt that the deceased was strangled to death by the accused/appellant.
23. In the result and for the foregoing reasons, we find no merit in this appeal and the same is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge