

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 751 of 2011

1. Baisakhu @ Devkaran Vishwakarma, S/o Dasruram, Caste-Lohar, aged about 40 years, R/o Dugdugiya, P.S. Kunkuri, Dist. Jashpur (CG)

---- Petitioner

Versus

1. The State Of Chhattisgarh, through P.S.Kunkuri, District Jashpur (CG)

---- Respondent

For Appellant:
For Respondent:

Shri A.K. Prasad, Advocate
Shri Adil Minhaj, Panel Lawyer.

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

Judgement

Per Pritinker Diwaker, J

31/03/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 17.8.2011 passed by the Additional Sessions Judge, Jashpur at Kunkuri in S.T. No.64/08 whereby the accused/appellant has been convicted under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for Life and fine of Rs.100/-, in default to undergo S.I. for 03 months.
2. Accused/appellant is the husband of deceased Reshma Khatoon. As per case of the prosecution, accused/appellant was living with his two wives namely Hiramani @ Darri and the deceased. At the instance of Mohd. Shahid (PW-4) merg intimation (Ex.P-6) was recorded on 17.5.2008 to the effect that on 16.5.2008 at about 3.00 p.m. having been informed about the death of deceased, he went to the house of accused/appellant

and found her in dead condition and that blood on her neck, mouth & ear was present. He showed his doubt that the deceased might have been killed. Inquest on the body of deceased was prepared on 17.5.2008. Dead body was sent for postmortem which was conducted on 17.5.2008 by Dr. (Smt.) K. Kujur vide Ex.P-7 who noticed following injuries & symptoms:-

- Eyes and mouth were open.
- Hands clenched
- Eyeballs prominent.
- Tongue protruded. Head tilted towards left side.
- There is no rope mark on the neck above the level of thyroid cartilage and knot mark at left side of neck below the right ear mark is too wide.

According to the doctor, the cause of death was asphyxia due to hanging and the death was homicidal in nature. After merged enquiry, FIR (Ex.P-15) under Section 302 of IPC was registered against accused/appellant on 20.5.2008. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

3. The prosecution in order to bring home the charge levelled against the appellant had examined 12 witnesses in all. Statement of appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for accused/appellant submits that;
 - it is a case of circumstantial evidence and no one has seen the

appellant committing the crime and the circumstances shown by the prosecution in the present case do not complete the chain and therefore the court below has erred in holding the appellant guilty of the charge of murder.

- Though the post-mortem report (Ex.P-11) states the nature of death to be homicidal but the autopsy surgeon in the cross-examination has admitted that death of the deceased could be suicidal also. Further, knot mark was noticed by the autopsy surgeon on the neck of deceased which is also suggestive of the fact that the deceased has committed suicide.
 - Though the body of deceased was found in the house but the accused/appellant alone was not residing in said house and his first wife Hiramati @ Darri was also residing under the same roof. The investigating officer has also admitted this fact.
 - Plea of alibi raised by the appellant has been duly supported by PW-3 & PW-4.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that the death has taken place inside the house and no reasonable explanation has been offered by accused/appellant regarding same and therefore his conviction under Section 302 IPC is fully justified. He further submits that on the basis of disclosure statement of accused/appellant, one muffler has been seized and possibility of appellant committed murder of the deceased with the said muffler cannot be ruled out.
7. We have heard counsel for the parties and perused the evidence available on record.

8. Khemraj (PW-1) is the person who had prepared the spot map (Ex.P-1).
9. Mangaldas (PW-2) is the witness of inquest (Ex.P-1).
10. Udairam (PW-3) is the neighbour of accused/appellant and deceased and runs the grocery shop. He has stated that on the date of incident the accused/appellant returned home at about 3-4.00 p.m. and after being informed by the villagers, he went to call the doctor.
11. Shahid (PW-4) is the cousin brother of the deceased who lodged the merger intimation. Though he has been declared hostile by the prosecution but in the cross-examination by the prosecution he has stated that when he reached the house at that time the accused/appellant was not there. He has further stated that he does not know as to who had brought down the body of deceased. He has further stated that he was not informed that the deceased was hanging and she was brought down subsequently. He has further stated that during enquiry by police he did not show suspicion on anyone.
12. Dr. (Smt.) K. Kujur (PW-6) is the person who conducted post-mortem on the body of deceased and noticed injuries as described above. The doctors have opined that cause of death was asphyxia due to hanging and the death was homicidal in nature. However, in the cross-examination she has stated that the death could be homicidal and suicidal as well. She has further stated that knot mark found on the body of deceased could be of rope but no rope was produced before her for examination.
13. Chandanram (PW-7) is the witness of memorandum (Ex.P-9) and seizure memo (Ex.P-10) but he has not supported the prosecution case and turned hostile.
14. Sukhpati (PW-8) & L.N. Tiwari (PW-9) have not supported the prosecution case and turned hostile.

15. Hariram (PW-10) is the witness of memorandum (Ex.P-9) and seizure memo (Ex.P-10) but he has not supported the prosecution case and turned hostile.
16. Karmu Sai Paikra (PW-12) is the Investigating Officer and he has duly supported the prosecution case. While supporting the prosecution case he has stated that he has stated that accused/appellant was residing in the house in question along with his legally wedded wife and the deceased.
17. Present is case of death of a wife inside the house and the prosecution case against the accused/appellant is based on the circumstantial evidence. The main circumstance on which the trial Court relied is the circumstance that the appellant did not give any explanation as to how his wife died. It is settled position that in a case of house murder it is absolutely essential to first consider whether the prosecution has led any unimpeachable evidence to show that the appellant was present in the house at the crucial point of time. If it is found that presence of appellant at the crucial time has not been established, all other circumstances would not complete the chain of circumstantial evidence to lead any irresistible conclusion consistent only with the hypothesis of guilt of the appellants and inconsistent with their innocence.
18. On close scrutiny of the entire evidence, we find that the prosecution has not led any evidence to show that the appellant was present in the house where the deceased died asphyxial death at the crucial time. Rather, evidence of Mohd. Shahid (PW-4) who lodged merger intimation, goes to show that having been informed about the death of deceased, when he reached house of accused/appellant, he found that accused was not there. Likewise, Udairam (PW-3), neighbour of accused/appellant, clearly deposed that accused/ appellant was not present in his house

and returned at 3-4.00 p.m. only. It is not a case in which the incident took place in the night. It was a day time incident, therefore, unless it is proved that the appellant was present in the house at the relevant time only finding the deceased in dead condition in the house of the appellant, in the present facts and circumstances, would not be incriminating against him. It is settled law that even if a doubt is raised in the mind of the Court that the accused may have been present or may not have been present at the time of the occurrence, then the accused is entitled to the benefit of doubt. Further, apart from the appellant, the other inmate of the house during the crucial period was his legally wedded wife who was not even suspected and charge sheeted, therefore, even drawing such presumption against one of the two alive was unjustified.

That apart, according to the doctor conducting post mortem examination, the cause of death is asphyxia due to hanging & death was homicidal in nature, but at the same time the doctor has admitted in the cross-examination that cause of death could be homicidal and suicidal as well. The inability of the doctor to opine positively about the cause of death cast a serious doubt on the nature of death as to whether it was murder or suicide.

As regards the recovery of articles like muffler & stick by the prosecution on the alleged disclosure statement of accused/appellant, the prosecution has not been in a position to prove that these articles were used in commission of crime in question. In the present case, recoveries on the basis of alleged disclosure statement of accused/appellant were sought to be proved from the statements of Chandanram (PW-7) & Hariram (PW-10), but both these witnesses have not supported the case of the prosecution and have been declared hostile. Chandan Ram (PW-7) has denied making of disclosure statement (Ex.P-9) of any

article in his presence and recovery thereof. He has further stated that at the instance of police, he has signed the documents. Hariram (PW-10) has also deposed in the similar fashion. Most importantly, the autopsy surgeon has opined that marks found on the neck of deceased could be of rope but no such rope has been seized and produced by the prosecution before the doctor for its examination. In such situation, the recovery based on disclosure statements does not inspire confidence and it is not safe and proper to hold that the circumstance of recovery of above articles was established by the prosecution beyond the shadow of reasonable doubt.

19. For the foregoing reasons, we are of the opinion that the prosecution could not be said to have established the accusations against the accused/appellant on the above set of circumstantial evidence beyond reasonable doubt and consequently he is entitled to be acquitted of the charge of murder by extending him benefit of doubt.
20. In the result, the appeal is allowed. Conviction and sentence of the appellant under Section 302 of the IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. The appellant is reported to be in custody, therefore, he be released forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-