

CHIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 515 of 2012

Gajanand @ Gajni S/o. Nakram Thawait, aged about 38 years, R/o. Village Katgi, P.S. Kasdol, Distt Raipur (CG) **---- Appellant**

Versus

State of Chhattisgarh, through P.S. Kasdol, Distt. Raipur (CG)

---- Respondent

For appellant	:	Mr. Uttam Pandey, Adv.
For Respondent/State	:	Mr. Gari Mukhopadhyay, Dy. GA.

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

C A V Judgment

Per Chandra Bhushan Bajpai, J

17/02/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 14-5-2012 passed by the 2nd Additional Sessions Judge, Balauda Bajar, Distt. Raipur in S.T. No. 03/12 convicting the appellant under Section 302 and Section 201 of IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo additional RI for 6 months under Section 302, IPC and to undergo R.I. for three years and to pay a fine of Rs. 200/-, in default of payment of fine to further undergo additional RI for 1 month under Section 201, IPC. Both the substantive jail sentences are directed to run concurrently.
2. As per case of the prosecution, deceased Arti and the appellant were husband and wife living together. On 12-1-2010 at about 11.10 am, Ashish Jaiswal along with P.W. 13 Anil Thawait reached to Police Station Kasdol and lodged merg intimation Ex. P-15. As per merg, the informant was informed by P.W. 13 Anil Thawait at about 9.30 am that when he noticed crowd at the house of the appellant at about 9.00 am he also went there and saw the dead body of deceased Arti Mahobia in the courtyard. On being asked from the appellant, he stated that she had committed suicide by jumping into the well. Informant Ashish Jaiswal noticed injuries over face, leg and hands of the deceased. After recording merg intimation EX. P-15, Kasdol police reached to the

spot and after giving notice to witnesses vide Ex. P-5, conducted inquest Ex. P-6 and thereafter the body was sent for autopsy. P.W. 10 Dr. R.S. Joshi conducted post mortem and vide Ex. P-8 noticed following symptoms/injuries :-

- i. Contusion – 9 cm x 6 cm right thigh obliquely caused by hard and blunt object.
- ii. Contusion – 8 cm x 4 cm left anterior thigh, caused by hard and blunt object.
- iii. Contusion – 13 x 12 cm at thigh obliquely placed caused by hard and blunt object.
- iv. Contusion 13 x 6 cm right leg medio post aspect caused by hard and blunt object.
- v. Contusion – 10 x 4 cm at right leg below knee caused by hard and blunt object.
- vi. Multiple abrasions obliquely 12 x 11 cm from left to right and 4 cm x 3 cm from right to left on mid back.
- vii. Multiple abrasions at both forearms.

Injuries No. 1 to 7 are ante mortem in nature.

- viii. Lacerated wound 1 cm x ½ cm below left ear caused by pointed object, ante mortem.
 - ix. Lacerated wound 1 ½ cm x 1 cm skin deep present on back of left ear caused by hard and blunt object, ante mortem.
3. The autopsy surgeon also noticed laceration present on both sides of inner surface of labia minora, clotted blood present. As per opinion of the doctor, mode of death was shock, cause of death was due to hemorrhage with multiple injuries over body and injuries inside the private part, duration of death approximately within 24 hours. The doctor also preserved tibia bone and gave it to concerned constable.
 4. After merge, FIR Ex. P-26 was lodged on 17-1-2010 against the appellant under Sections 302/201, IPC by P.W. 14 B.R. Mandavi, inspector of Police. During investigation, the appellant gave disclosure statement Ex. P-1, on the basis of which police seized a bamboo stick

from the tiled roof of the house of the appellant vide Ex. P-2. Stained cloths were also seized from the appellant vide Ex. P-3, from the spot broken bangle, hand made woolen cap, water of the well, one letter making suspicion on the character of the deceased were seized vide Ex. P-4. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Kasdol, who in turn committed the case to the court of Session from where learned Additional Sessions Judge received the case on transfer for trial.

5. In order to prove the guilt of the appellant, prosecution has examined as many as 22 witnesses. The accused/appellant was examined under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
6. D.W. 1 Dhansai and D.W.2 Rajesh were also examined as defence witnesses. Accused also examined himself as D.W. 3.
7. After providing opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.
8. We have heard learned counsel for the parties and perused the judgment impugned and record of the Court below.
9. Learned counsel for the appellant contended that at the time of incident, the accused / appellant was at Raipur on account of treatment of his near relative. He reached to his house only after the incident i.e. the dead body was recovered from the well. The deceased was in illicit relationship with one Kamlesh. There is no eye-witness to the incident. No evidence of dispute and quarrel between the appellant and the deceased is there. The burden lies on the prosecution to prove that the deceased was murdered by the appellant. There is no reason or motive proved regarding killing of the deceased. There is no circumstance available and proved by the prosecution to hold the appellant guilty. It is a case of suicide. The appellant cannot be convicted on the basis of entire evidence available on record. The judgment of conviction and sentence requires interference . Hence the appeal may be allowed and the appellant be

acquitted of the charges.

10. Per contra, learned counsel for the State supported the impugned judgment and submitted that the judgment of the trial Court is well founded and there is no scope for interference in it. It is a case of house murder. As per autopsy surgeon, the death is on account of ante mortem injuries. There were injuries over her private part. Looking to the injuries over the body of the deceased, it cannot be said that she sustained all the injuries due to jump into the well. Plea of alibi is not proved, on the other hand, presence of the appellant at the spot at about 6.00 am is established, thereby the plea of alibi is of no help to the appellant. Presence of one Kamlesh is not supported by the witnesses. The appellant gave answer to question No. 108 in his statement under Section 313, Cr.P.C. that his brother-in-law Kamlesh has committed murder but the same is not supported by any witness. The doctor has opined that the death is on account of ante mortem injury. It was the appellant who had suspicion over the character of the deceased. Thereby motive is shown in the prosecution case. The appellant has failed to prove that he was not present at the spot at the time of incident. As per spot map Ex. P-7, only after 4 ½ arm length from ground level there was water in the well and there was about 20 arm length water in the well. Therefore, the distance from ground level to the level of water was not so much that the deceased may sustain such injuries due to dash with the wall while jumping into the well. Even for the sake of argument, if it is presumed that the deceased during jump came into the contact of the wall and received injuries but the medical report shows that the deceased sustained number of injuries including injuries on private part of the body which is not possible looking to the short distance of only 4 ½ arm length. It is a case of house murder and in absence of any explanation under Section 106 of the Evidence Act and looking to the nature of the injuries, the burden lies on the appellant to explain the circumstances in which the deceased died. Therefore, it can be held that it is he who killed the deceased and thereafter threw her body into the well to give a colour of suicide thereby he concealed the evidence of the crime. Letter Ex. D-3 allegedly written by the deceased to her sister

Bharti and adduced in the evidence by the appellant itself may not be treated to be in the hand writing of the deceased in absence of report of hand writing expert particularly looking to the contents of the letter. The said letter was sent to her sister then it is not explained as to how the appellant got it. Signature of the deceased on each and every page also makes the letter suspicious. Learned counsel for the State further submitted that as the appellant failed to offer any explanation regarding death of the deceased, as per medical report the deceased died due to ante mortem injuries and not on account of drowning, the alibi is not established, hence the appeal has no substance and the same may be dismissed.

11. As per P.W. 1 Mahesh Ram, on the date of incident at about 8.30 am when he returned from society, he saw the appellant standing near his house and he requested him to bring wheat and sugar from the society then he informed that Ration card holder will only get the ration. After this Rajesh informed him that Arti had jumped into the well. This witness had helped the appellant in taking out the deceased from the well. He is also a witness of memorandum and seizure. He has turned hostile but has admitted his signature on the documents. P.W. 2 Ramkumar is a witness of seizure Ex. P-4, has admitted his signature on the document but has turned hostile. P.W. 3 Santosh is a witness of inquest Ex. P-6, has supported memo Ex. P-1, seizure memo Ex. P-2 and 3. P.W. 4 Lachchhiram Dewangan has admitted his signature on seizure memo Ex. P-4. P.W. 5 Rajesh is a witness of spot map Ex. P-7. P.W. 6 Ishwari Sahu is brother of the appellant. As per this witness, he was at Raipur, Medical College Hospital for treatment of his wife. The appellant informed him regarding the death of Arti. He has turned hostile and has not said anything more. P.W. 7 Gangaram Dewangan has stated that when he was going for agricultural work, he heard the noise. He reached near the well of the appellant thereafter appellant also jumped into the well. He also stepped down into the well. Since there was 20 to 25 ft of water therefore, no one was found in search. P.W. 8 Babulal has also turned hostile and has not said anything specific. P.W. 9 Chhotelel has not said anything. P.W. 10 Dr. R.S. Joshi conducted autopsy and gave his

report Ex. P-8. He also answered to the query vide Ex. P-9 and opined that the injuries over the body of the deceased including the injuries on her private part were ante mortem and were sufficient to cause death and the death was on account of injuries and shock and the cause of death appears to be homicidal in nature.

12. P.W. 11 Arun Kumar Sharma conducted inquest Ex. P-6. P.W. 12 Bhupendra Nath Sahu has prepared spot map Ex. P-14. P.W. 13 Anil Kumar Thawait has stated that he was informed by some Dasu Dewangan regarding the death of the deceased. Then he reached to the house of the appellant and saw the dead body of the deceased in a covered condition in the courtyard and also noticed the appellant present there. P.W. 14 B.R. Mandavi is the investigating officer and has duly supported the prosecution case. P.W. 15 Bundram is a witness of inquest Ex. P-6 and spot map P-14. P.W. 16 Laxminarayan has turned hostile and has not said anything specific. P.W. 17 Morit Ram has stated that at about 6 pm when he heard the sound of fall in the well then he told the appellant that something had fallen down in the well. Thereafter accused came near him and said that his wife Arti had fallen down in the well. Thereafter accused also jumped into the well and took out the body of the deceased from the well. He was also present during preparation of spot map Ex. P-14. P.W. 18 Ramesh Kumar has stated that P.W. 17 Morit Ram made a cry that in the well wife of accused had fallen down then he along with others stepped down into the well, though did not see anything. Later with the help of others they took out the body of Arti. This witness was also present during inquest Ex. P-6, spot map Ex. P-17. P.W. 19 Sudha Bai is mother of the deceased. As per this witness, deceased Arti used to inform her that accused appellant assaults her and demand dowry and two wheeler. As per this witness, their marriage was solemnized on 26th May, 2003. P.W. 20 Munnalal Tamboli, father of the deceased was informed on telephone regarding death of deceased Arti. He was also present at the time of inquest Ex. P-6. P.W. 21 Shankarlal is a witness of Ex. P-16, seizure of tibia bone. P.W. 22 is police constable and has helped in investigation.
13. D.W. 1 Dhansai has not said anything specific regarding the incident.

Statement of D.W. 2 Rajesh is also of no help to the appellant. Appellant also has examined himself as D.W. 3. He has stated that her wife was Shiksha Karmi Class II. He also proved her joining report and one letter D-3. As per this witness, the deceased wrote the letter to her sister Bharti but handwriting of the deceased was not proved for the same.

14. Minute examination of the evidence makes it clear that there is no eye-witness to the incident. Deceased Arti and the appellant were husband and wife. Their marriage was solemnized on 26th May, 2003. Both were residing together along with their 3 children. At about 6 PM P.W. 17 Morit Ram informed the appellant that something had fallen down in the well and then the appellant informed him that his wife Arti had fallen down in the well. The well is situated in the kitchen garden of the appellant. The explanation offered by the appellant that he was not present at the time of incident stands falsified as per statement of P.W. 17 Morit Ram and also P.W. 1 Mahesh Ram. Even the conduct of the appellant was suspicious as after the incident at about 8.30 he was asking P.W. 1 Mahesh Ram to bring wheat and sugar from society. As per medical evidence, injuries were ante mortem. As per spot map Ex. P-7 water level of the well was just 4 ½ hands below and it is not possible that the deceased would have sustained such injuries found all over the body of the deceased while falling down from such a short distance of 4 ½ hands. Also as per medical report, the death was not on account of drowning rather the death was on account of ante mortem injury, shock and also the doctor noticed laceration present on both side of inner surface of labia minora which goes to show that she was subjected to assault, also on her private part. Prior to her death on account of shock and multiple injury over the body and inside private part death occurred. As per entire post mortem report Ex. P-8 and query report Ex. P-9, it is established that death was not on account of drowning rather it was on account of injuries received which were homicidal in nature. The appellant has taken the plea of alibi but he has failed to prove it, on the other hand, on the basis of statement of P.W. P-17 Morit Ram and P.W. 1 Mahesh and other it is clear that he was present at the time of incident.

Duration of death also supports prosecution case. The appellant had doubt over the character of his wife. Letter Ex. D-3 cannot be held to be in the hand writing of the deceased in absence of any expert report. On the other hand, looking to the contents of letter it is clear that it was fabricated one and also the appellant failed to prove as to how he got this letter because the letter was addressed to her sister. The overall conduct of the appellant is suspicious.

15. On perusal of entire evidence, in the considered opinion of this Court, the prosecution has proved the circumstances against the appellant and the appellant has failed to offer any explanation regarding death of the deceased and the medical evidence corroborates the case of the prosecution. Plea of alibi is not proved. Conduct of the appellant is suspicious. In a case of house murder, the appellant is duty bound to offer explanation regarding his innocence but he has failed to do it under Section 106 of the Evidence Act. Therefore looking to the evidence brought on record, the trial Court has rightly convicted and sentenced the appellant. We do not see any reason to interfere with the same.
16. Consequently, the appeal fails and is dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge