

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2410 of 1998

Judgment reserved on: 09/08/2016

Judgment delivered on: 29/08/2016

Gopal Bharti (Dead), Through Kaushalya Bharti, Wd./o late Gopal Bharti, aged about 45 years, R/o Sweeper Colony, Siddharth Chowk, Tikrapara, Raipur, Tehsil & District Raipur (C.G.)

---- Appellant

Versus

The State of M.P. (now the State of C.G.), through Officer Incharge, P.S. Kotwali, District Raipur (M.P.) (now C.G.)

---- Respondent

For LR of Appellant: Mr. Adil Minhaj, Advocate.

For State/Respondent: Mrs. Madhunisha Singh, Panel Lawyer.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment (*Curia Advisari Vult*)

The Judgment of the Court was delivered by Sanjay K. Agrawal, J: -

1. Appellant Gopal Bharti was tried by the trial Court for offence punishable under Section 302 of the IPC and after full trial, he was convicted and sentenced for said offence with imprisonment for life and fine of Rs.1,000/-, and in the event of not making payment of fine to further undergo RI for two months, by the Sessions Judge, Raipur in S.T.No.169/1998 vide judgment of conviction and order of sentence dated 18-9-1998, against which the appellant had preferred appeal under Section 374(2) of the CrPC. During the pendency of appeal, he died on 29-8-2010

and Smt. Kaushalya Bharti filed an application under Section 394(2) of the CrPC claiming to be the wife of Gopal Bharti which was allowed and she was permitted to prosecute the appeal. This is how the appeal is before us.

2. Case of the prosecution, in brief, is that on 5-3-1998 at about 6 p.m., the appellant came to his house in drunken state and thereafter, at 7.30 p.m. he again drank and asked his wife – deceased Jamuna Bai about Rs.150/- which was kept in his pocket to which deceased Jamuna Bai expressed her ignorance by which accused Gopal Bharti became unhappy and assaulted deceased Jamuna Bai by hands and fists and thereafter, Gopal Bharti poured kerosene oil on her body and set her ablaze. It is further case of the prosecution that on hearing the sounds of Jamuna Bai, her son Sagar (PW-6) and the appellant himself tried to extinguish the fire by putting blanket upon her and by pouring water on her body but she suffered 95% burn injuries. She was taken to the hospital. Son of the deceased and the appellant – Sagar (PW-6) informed about the incident to Sirpati (PW-7), his grand-father (dada), and they went to Police Station Kotwali, Raipur and lodged FIR Ex.P-8. Jamuna Bai was admitted in Medical College Hospital, Raipur on 5-3-1998 and she was found to have sustained 95% burn injuries vide Ex.P-10. Jamuna Bai died in Medical College Hospital, Raipur on 8-3-1998. Information about death was given to the police by Ward-boy Damu Kumar (PW-12). Upon said information, merg was

registered vide Ex.P-4 by Police Station Moudhapara. Panchnama of dead body was thereafter, prepared vide Ex.P-2 and offence punishable under Section 302 of the IPC was registered against the appellant. Postmortem was conducted by Dr. Sanjay Kumar Dadu (PW-5) vide his postmortem report Ex.P-7. The jurisdictional police after investigation, filed charge-sheet before the jurisdictional criminal court. The case was thereafter, committed to the Court of Sessions and the appellant was tried for the offence punishable under Section 302 of the IPC.

3. The prosecution examined 14 witnesses in support of its case and exhibited documents Exs.P-1 to P-12 to bring home the offence. The appellant abjured the guilt and entered into defence by stating that he has not committed any offence and he has been falsely implicated and proved document Ex.D-1 but no witness was examined. The incriminating evidence brought by the prosecution was put to the appellant which he denied.
4. The trial Court by its impugned judgment of conviction recorded and sentence awarded upon appreciating the oral and documentary evidence on record, sentenced the appellant to undergo imprisonment for life and also with fine sentence as mentioned in the opening paragraph of this judgment.
5. Mr. Adil Minhaj, learned counsel appearing on behalf of the applicant claiming to be legal representative of the deceased

appellant, would submit that the prosecution has failed to bring home the offence and there is no substantive evidence in shape of ocular and circumstantial evidence to bring home the offence against the appellant particularly, when his own son Sagar (PW-6) and Sirpati (PW-7) have been declared hostile and they have not supported the case of the prosecution. In fact, it is a case of no evidence and therefore, the trial Court has committed grave legal error in convicting the appellant on the basis of aforesaid piece of evidence available on record.

6. On the other hand, Mrs. Madhunisha Singh, learned Panel Lawyer appearing on behalf of the State/respondent, would submit that the prosecution has clearly brought legal evidence of clinching nature to bring home the offence under Section 302 of the IPC and which cannot be contended successfully that the prosecution has not brought sufficient evidence in shape of oral, circumstantial and medical evidence to warrant conviction as such, the appeal deserves to be dismissed and conviction and sentences awarded deserve to be confirmed.
7. We have heard learned counsel for the parties, given thoughtful consideration to the submissions made herein-above and also gone through the record with utmost circumspection.
8. It is not in dispute that Jamuna Bai was wife of deceased appellant Gopal Bharti and on the date of incident 5-3-1998, the accused came intoxicated and again drank and asked about

Rs.150/- kept in his pocket, and when she expressed ignorance, he assaulted her and thereafter, poured kerosene oil and set her ablaze by which she is said to have suffered 95% burn injuries.

9. The question for consideration would be whether the death of Jamuna Bai is homicidal in nature and secondly, whether murder of the deceased was caused by the appellant.
10. Immediately after the incident, Abdul Samsher Khan (PW-14) – investigating officer reached the spot and in presence of Hemraj (PW-8) and Shankar (PW-9), prepared panchnama and on 5-3-1998, on the report of Sagar (PW-6) and his grand-father Sirpati (PW-7), the deceased was taken to hospital and she was examined by Dr. Ravindra Kumar Tiwari (PW-10) at 9.30 p.m..
11. The case is mainly based on ocular evidence as well as circumstantial evidence. FIR was lodged by Sagar (PW-6), son of deceased Jamuna Bai. He made report Ex.P-8 on 5-3-1998 at 9.30 p.m. in the police station. In the FIR, he stated that on the date of incident, his father drank liquor and asked about Rs.150/- kept in his pocket, when his mother expressed ignorance then he assaulted his mother by hands and fists, thereafter, poured kerosene oil kept in the kitchen and also set fire on her by which immediately, his mother started shouting then he and his father tried to extinguish the fire by enveloping blanket and pouring water but his mother was seriously burnt and she was taken to hospital by his father, and he immediately,

called his grand-father Sirpati (PW-7). Whereas, in the statement before the Court Sagar (PW-6) gave a different version and said that his father had sent him to call his grand-father Sirpati and when he and his grand-father Sirpati (PW-7) reached home then he found his mother deceased Jamuna Bai in burnt condition and on being asked his mother said indicating by finger that the accused / appellant has burnt her.

12. Sagar (PW-6) and Sirpati (PW-7) – son and grand-father, both, have not supported the case of the prosecution giving a complete contrary statement to what has been made in the FIR and what has been stated before the Court. The trial Court is absolutely justified in holding their testimonies to be unreliable and thereby not accepting the ocular evidence adduced in this behalf by the prosecution.

13. This would bring us to the cause of death of deceased Jamuna Bai. She was examined on 5-3-1998 by the emergency doctor posted in the hospital namely Dr. Ravindra Kumar Tiwari (PW-10) and he has stated that when she was brought in the hospital, she had suffered 95% burn injuries and the body of Jamuna Bai was smelling kerosene oil and he referred her to the Surgical Department where she died on 8-3-1998. His report is Ex.P-10.

14. Postmortem of the dead body was conducted by Dr. Sanjay Kumar Dadu (PW-5) and his report is Ex.P-7. Dr. Sanjay Kumar Dadu (PW-5) conducted autopsy on the body of the deceased

and noticed following external and internal injuries over the body of the deceased: -

1. Eyes closed, cornea was open.
2. Mouth closed, lips approximated, tongue inside.
3. All extremities straight, fists open.
4. Rigor mortis present in approaching phase. Hypothesis not appreciated.
5. V.S. mark present on right ankle.

Cause of death was due to cardio respiratory failure as a result of burn and its complication and duration of death is within 4 hours since postmortem examination. The injuries suffered and finding recorded by the autopsy Surgeon clearly indicate that death was homicidal in nature on account of burn injuries.

15. Now, this would bring us to consider the circumstantial evidence available against the appellant.

16. In a case based on circumstantial evidence, the prosecution has to prove all the circumstances and then has to link the circumstances to form a chain which leads to only one conclusion that is the guilt of the accused. If there is any chance of the accused having not committed the offence or there be any chance of any other person committing such an offence then the accused has to be given benefit of doubt.

17. In the case in hand, on 6-3-1998, the Investigating Officer Abdul Samsher Khan (PW-14) in presence of prosecution witnesses Hemraj (PW-8) and Shankar (PW-9), prepared panchnama and

envisaged Ex.P-8 bed sheet with smell of kerosene oil, old stove, part of terlin sari, kerosene oil in a plastic jerry-can, pieces of bangles, match box and Rs.10/- and some coins and sent for chemical examination vide Ex.P-2. The place of incident is house of the appellant. By this, it is established that on 5-3-1998, deceased Jamuna Bai suffered injury in the house of the appellant and her death was homicidal in nature as held herein-above. The appellant was her husband and he was required to explain as to how the deceased – his wife, has suffered serious burn injuries, as he was the only person in his house at the time of incident, which he has not explained.

18. In the matter of **Harijan Bhala Teja v. State of Gujarat**¹, the Supreme Court has held that where the postmortem report establishes homicidal nature of death and since the accused only was staying with his wife at time of her death, it is for the accused to show as to in what manner she died and relying upon Section 106 of the Indian Evidence Act in paragraph 19 of the report it was held as under: -

“19. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death.”

19. Likewise, in the matter of **Gajanan Dashrath Kharate v. State**

1 AIR 2016 SC 2065

of Maharashtra², where the accused (Gajanan Dashrath Kharate) alleged to have killed his father and accused has not offered any explanation for homicidal death of his father, conviction was affirmed by the Supreme Court by holding as under in paragraph 14: -

“14. Upon appreciation of oral evidence and the circumstance of the recovery of blood stained clothes of the accused and the conduct of the accused in not offering any explanation for the homicidal death of his father, by concurrent findings, the trial court and the High Court rightly convicted the appellant-accused under Section 302 IPC and we do not find any reason to interfere with the impugned judgment.”

20. Similarly, in the matter of State of Andhra Pradesh v.

Patchimala Vigneswarudu alias Vigganna alias Ganapathi³,

the Supreme Court having found that there is an evidence of last seen and where the motive and homicidal death are proved by medical evidence, restored the conviction.

21. In the present case, in our opinion, the prosecution has proved the homicidal nature of death and it has also been proved by circumstantial evidence that the deceased was wife of the accused / appellant and they were staying together on 5-3-1998, the appellant came to house having been intoxicated and after taking some more liquor, he assaulted his wife by hands and fists and thereafter, she suffered grievous burn injuries in the house of the appellant and the appellant took her to hospital where she died on 8-3-1998. The deceased has died homicidal

2 AIR 2016 SC 1255

3 (2016) 4 SCC 611

death and cause of death was cardio respiratory failure. In our opinion, the above chain of circumstances is complete and leads only to one conclusion that it was the accused / appellant who caused the death of the deceased and he alone committed the murder of the deceased. The view taken by the learned Court of Sessions that the chain of circumstances is complete is correct and he has properly analyzed medical evidence and circumstantial evidence to come to the conclusion that death of deceased Jamuna Bai was homicidal in nature and it was the appellant who alone had committed the murder of deceased Jamuna Bai. We are of the opinion that in the present case, the only view possible was the one taken by the trial Court.

22. On the basis of above-stated discussion, we are of the view that the appeal deserves to be dismissed. Therefore, the appeal is dismissed.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge