

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL No. 497 of 2001

Ramabai Chouhan W/o of Atmaram Chouhan, aged about 40 years, R/o Medharmal, Police Station Lailunga, District Raigarh (C.G.)

... Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh), through : Police Station Lailunga, District Raigarh (C.G.)

... Respondent

For Appellant	:	Mr. Suryakant Mishra, Advocate.
For Respondent-State	:	Mr. Vaibhav Goverdhan, Panel Lawyer.

Hon'ble the Chief Justice

Hon'ble Shri Justice P. Sam Koshy

C A V JUDGMENT

Reserved on : 14/09/2016

Delivered on : 27/10/2016

Per, P. Sam Koshy, J.

1. The present appeal has been preferred by the Appellant assailing the judgment of conviction and sentence dated 8.9.2000 passed by the First Additional Sessions Judge, Raigarh in Sessions Trial No. 194 of 1996 convicting the Appellant for the offence under Section 302 of IPC and sentencing him to undergo rigorous imprisonment for life for the said offence.

2. As per the prosecution case, on 31.5.1996 the deceased, Parru Sidar was working in the house of the appellant-accused, however later in the afternoon the deceased was found dead on the verandah of the house of the appellant-accused. The stand of the appellant-accused was that the deceased has committed suicide by hanging in her house with the help of a blue terricot scarf (safi). It was also contended before the police authorities that when she reached to the spot in the afternoon she found

the deceased hanging and he was wiggling so she brought a ladder and untied the knot of the safi from the neck and brought down the deceased who later on died. It was also the case of the appellant-accused that after she had put the deceased on the ground she took aid of her niece, Bimla and laid the deceased on the cot. According to the Appellant, thereafter she informed other villagers about the incident and also to the police authorities, on the basis of which a Merg was lodged. Investigation was conducted and the body of the deceased was sent for postmortem.

3. PW-6, Dr. R. K. Upadhyay conducted the post-mortem in which he has found ligature mark on the neck of the deceased, horizontally placed below thyroid cartilage, and it was also found that the carotid artery was ruptured and blood had come out of muscle, air pipe was congested with froth and on the basis of the said examination, the Doctor reached to the conclusion that the deceased had died due to asphyxia on account of strangulation. During the course of the medical examination a terricot safi (Exhibit P-1) was produced before the Doctor for his opinion and who gave an opinion that it is possible that the neck of the deceased could be pressed and choked to death with the aid of the said safi. Thereafter, an FIR (Exhibit P-7) was lodged and later on a charge-sheet was also filed and finally the matter was put to trial before the First Additional Sessions Judge, Raigarh where the case was registered as Sessions Trial No. 194 of 1996.

4. During the course of the trial the prosecution examined as many as 20 witnesses and the appellant-accused in her defence examined one witness. After conclusion of the trial, the Court below vide impugned judgment reached to the conclusion that the circumstantial evidence prevailing in the case leads to the only conclusion that murder of the

deceased to have been caused by the Appellant alone and therefore holding the Appellant guilty of having committed murder of the deceased, convicting her for the offence under Section 302 of IPC and sentenced her to undergo rigorous imprisonment for life, leading to the filing of the present appeal.

5. Learned Counsel for the Appellant assailing the impugned judgment of conviction submits that the prosecution in fact has not been able to establish its case beyond all reasonable doubts calling for quashment of the said judgment. According to him there is no eye-witness to the incident. The entire conviction of the Appellant is based on circumstantial evidence. It was also contended that the circumstantial evidence has to be established so that the chain of links shall be so interconnected to each other, leading to the only conclusion that it could be the Appellant alone who could have committed the said act of murdering the deceased.

6. According to the Counsel for the Appellant, the Court below wrongly reached to the conclusion that the Appellant had motive to kill the deceased, when there was no strong motive and that the motive which was attributed also was not so strong a case to show that the Appellant could have killed the deceased for that reason. The Appellant further contended that the prosecution has failed to show any previous animosity with the deceased to strengthen motive as has been taken into consideration by the prosecution for connecting the chain of events in the circumstantial evidence against the Appellant.

7. According to the Counsel for the Appellant it is not a case of strangulation but is a case of suicide committed by hanging. The Court below as well as the prosecution witness the Doctor (PW-6) both have reached to a wrong finding that the deceased has died of strangulation and

not by hanging. It was also contended by the Counsel for the Appellant that it could not have been practically possible for the Appellant who is alleged to have strangled a young man all by her alone. The deceased was a young male who could have easily overpowered the Appellant, a lady, trying to strangle. Further, the Court below has erred in not appreciating the fact that it was the appellant-accused who has immediately reported the matter to the neighbors as well as the police authorities. Thus, there is a large number of missing links in the circumstantial evidence against the Appellant.

8. Opposing the appeal learned Counsel for the State submits that it is a case where there is no eye-witness but the entire case revolves around the circumstantial evidence available and that each of the circumstances are very intricately connected to each other that leads to only conclusion and inference that the Appellant alone has committed the offence. According to the State Counsel the medical evidence, place of incident, statement of the prosecution witnesses showing that there was a fight between the deceased and the appellant-accused on the same morning, the conduct of the appellant-accused after the incident and the fact that the appellant-accused offered a false story and linking the series of circumstances, leads to us to the conclusion that the offence to have been committed only by the Appellant alone and none other. Thus, prays for rejection of the appeal.

9. Having considered the rival contentions put forth on behalf of either side and on considering the submissions made what is reflected is the fact that on 31.5.1996 a Merg Intimation was received by the Police Station Lailunga, District Raigarh. The said intimation was provided by the Appellant wherein she had stated to the police authorities that on the date

of incident i.e., 31.5.1996, the deceased was working as a labour in the house which she was constructing. In the afternoon after lunch when she came to the site she found the door opened that she had left closed while going for lunch and when she entered through the door she found the deceased hanging on the roof with the aid of a safi and was wiggling. She immediately brought a ladder and opened the safi tied around the neck of the deceased and brought him down and gave him water and thereafter with the help of her niece, Bimla they had placed the deceased on a cot which was kept on the verandah but he later on succumbed. On the basis of the said Merg Intimation, the police authorities started investigation and the body of the deceased was sent for post-mortem and the Doctor (PW-6) conducting the post-mortem found the following injuries :

“Rigor mortis was present over both extremities, both feet and legs were slained, right upper extremity was flexed at elbow and lying over the chest, the hand was clinched, left upper extremity was extended and the hand was clinched, eyes were closed, conjunctival was congested, the pupils were dilated, the face was puffy and cynosed, signs of blood escape from mouth and nostril was seen, the tongue was inside the mouth, genital organs were congested.

Ligature mark was horizontal continuous low down in the neck below the thyroid. The base of the groove was reddish. Abrasions and ecchymosis round about the edges of ligature mark. On dissection – Injury to sternomastoid was seen. Carotid arteries were ruptured. Extra blood was seen over the muscles.”

On the basis of the finding in the post-mortem the Doctor found that the death was due to asphyxia as a result of strangulation and the duration of the death was within 24 hours from the time the post-mortem was conducted.

10. Now, what has to be seen in the instant case is that whether the charge under Section 302 of IPC for which the Appellant has been

convicted stands established or not and the judgment of conviction on the basis of circumstantial evidence is proper, legal and justified?

11. True it is that there is no eye-witness to the incident pertaining to the deceased, Parru Sidar and the entire case is based on circumstantial evidence so as to ascertain whether the prosecution has been able to establish the chain of links connecting circumstances. So as to reach to the conclusion that the offence has been committed by the Appellant alone, it would be relevant to refer to the evidence which has been led by the prosecution in this behalf. Few of the circumstances which have been relied upon by the Trial Court for convicting the Appellant are that at the first instance is the fact that the Merg Intimation at the Police Station was given by the appellant-accused herself. Thereafter, during the course of investigation and the trial, she took an entirely different stand. Further, from the finding given by the Doctor in the course of conducting the post-mortem wherein he has clearly suggested that the death of the deceased occurred due to strangulation and the nature of injuries found on the neck of the deceased do not match with the signs which are otherwise present in the case of the persons who dies due to hanging. Thirdly, the place of incident was the house of the appellant-accused and where only she had the access and no other person and in addition on the same day in the morning there have been witnesses who have deposed that there was a fight between the appellant and the deceased which establishes the motive on the part of the Appellant to commit the said offence.

12. Now, if we look into the evidence which has come on record, PW-1, Nripnath was one of the witnesses before whom the Panchnama of the body was prepared and he had categorically stated that the dead body had a bluish mark around the neck and he had also witnessed the recovery of

blue coloured scarf at the instance of the Appellant. In the cross-examination, PW-1 Nripnath has categorically made a deposition that he found the saliva of the deceased flowing towards left side of the mouth and he also found the mark below the throat in an oblique position and that the mark on the left side of the neck was broader than the mark which was found on the right side of the neck. He also proved the case of the prosecution to the extent of the body being found on the varandah of the house of the appellant-accused.

13. PW-2, Suniti Bai, who is the wife of the deceased, has only deposed to extent of alleging some illicit relationship between the appellant and the deceased. PW-3, Bhikhari, who is one of the neighbors to the place where the Appellant used to reside, has established the fact that he found that the Appellant with the help of her niece Bimla lifting the deceased from the floor and putting him on the cot in the verandah, and in the afternoon when he had gone to the house of the Appellant he found that there was a blackish mark on the neck of the deceased below the throat. The said witness also had established the fact that the saliva of the deceased was flowing towards left side of the mouth. In his cross-examination, he has categorically stated that the saliva was not flowing downwards.

14. PW-5, Hemlal Bhagat is the Patwari who had prepared the spot map. PW-8 Rajkumari, PW-14 Rajmati and PW-15 Chanchala have deposed before the Court below establishing the fact that there was a fight between the appellant and the deceased in the morning of the date of incident. PW-10 Baishakhu, PW-11 Sidar and PW-17 Bhogiram all three of them have deposed before the Court below stating that when they had reached the house of the Appellant and found the body of the deceased lying in the bed and upon inquiry, the Appellant answered of not knowing

as to how the deceased had died. This statement of these three witnesses is just contrary to the Merg Intimation that was given by the Appellant to the Police Station on the same morning, wherein she had stated that the deceased had committed suicide by hanging.

15. PW-6, Dr. R.K. Upadhyay, who conducted the postmortem, after discussing the nature of injuries and marks found on the body of the deceased reiterated that the cause of the death was asphyxia due to strangulation. The Doctor categorically deposed that the marks which were found clearly indicated strangulation and that was the reason he had not ordered for preserving the viscera.

16. Thus, from the deposition which has come before the Court below what is clearly reflected is the fact that Appellant was floating different stories at different times inasmuch as at the first instance she lodges a report with the police authorities immediately after the incident indicating that the deceased committed suicide and that she had loosened the scarf with which he had committed suicide and placed him on a cot; whereas, in the statement given by PW-10 Baishakhu, PW-11 Sidar and PW-17 Bhogiram they have stated that the Appellant told them that she does not know how the deceased had died and what had happened. Further, from the deposition of the Doctor (PW-6) and the finding given in the post-mortem (Exhibit P-5), when compared to the discussions given in the Modi's Medical Jurisprudence wherein comparing the case of hanging with that of strangulation, the indication that was found on the body of the deceased clearly supports the finding given by the Doctor who had conducted the post-mortem, which again goes against the Appellant and further establishes the fact that it was a homicidal death and it was not a case of a suicide committed by the deceased.

17. Another factor which cannot be brushed aside is the statement of PW-1 Nripnath and PW-3 Bhikhari who have deposed before the Court below indicating that the saliva of the deceased was flowing towards left side of the mouth, which again would occur only in case of strangulation while the person is in a lying position. If it would have been the case of hanging then the saliva would have flowed downwards and could not have flowed towards left side of the mouth. This again gives an indication of it to be a case of a homicidal death.

18. Thus, from the circumstantial evidence given in the preceding paragraphs what clearly reflects is that there was a suspicion on the conduct of the Appellant in floating different stories at different times so far as the death of the deceased is concerned. Secondly, the place of incident where the body of the deceased was found was the house of the Appellant where she was found present all along immediately after the incident by the prosecution witnesses. Further, there is no evidence of any third person having access to the house at the relevant point of time, which would suggest that it could only have been committed by the Appellant. Thirdly, the deposition of PW-8 Rajkumari, PW-14 Rajmati and PW-15 Chanchala of a fight that took place between the appellant and the deceased on the morning could be the motive behind for the Appellant to commit the said offence. Further, there is no strong explanation provided by the Appellant so far as the contradictory version that she has made initially at the time of lodging of the Merg Intimation and her subsequent conduct when the neighbours and other villagers reached her house and inquired as to how the deceased had died at her place. All these facts points out a strong inference to be drawn against the Appellant as the incriminating factors. For the foregoing reasons, we have no hesitation in

reaching to the conclusion that the Court below has rightly found the circumstantial evidence against the Appellant while holding her guilty of the offence under Section 302 of IPC.

19. The view of this Court stands fortified from the decision of the Supreme Court in the case of **State of Rajasthan Vs. Kashi Ram** [2006 (12) SCC 254], wherein it has been observed as under :

“23. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain.”

20. For the aforesaid reasons, we are of the opinion that the prosecution has in fact been able to prove the case beyond reasonable doubt in establishing the charge against the Appellant for the offence under Section 302 of IPC and therefore confirming and upholding the conviction the appeal being devoid of merits the same is dismissed.

21. The Appellant is stated to be on bail. Her bail-bonds are cancelled and she is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE