

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 139 of 2007

Judgment Reserved on 18/11/2016

Judgment Delivered on 15/12/2016

Narmada Prasad Thakur son of Late Shri Jagdish Prasad Thakur, aged about 37 years, Resident of Deviganj Road, Near Deo Hotel Ambikapur, District Surguja (C.G.)

---- Applicant

Versus

1. Rajkumar Son of Sudama Thakur, aged about 25 years;
2. Dinesh Kumar Son of Sudama Thakur, aged about 22 years,
3. Smt. Leelawati Wife of Sudama Thakur, aged about 48 years,

All are residents of V.T.C. Colony Charcha, Police Station Charcha, District Koriya (C.G.)

4. State of Chhattisgarh, Through : The Police Station Charcha, District Koriya (C.G.)

---- Respondents

For Applicant :	Shri V.K. Pandey, Advocate
For Respondents No.1 to 3	Shri A.K. Prasad, Advocate
For Respondent/State :	Shri Vaibhav Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV JUDGMENT

Per R.C.S. Samant

1. This revision is directed against the judgment passed by Sessions Court Koriya, (Baikunthpur), in S.T. No.51/2006

dated 28/12/2006, whereby the respondents No. 1,2 and 3 have been acquitted by the trial Court of the charge under Section 302, 201/34 of Indian Penal Code.

2. The facts of prosecution case are, that deceased Sangeeta is wife of respondent No. 1, sister-in-law of respondent No.2 and daughter-in-law of respondent No. 3, they all resided in the same household at V.T.C. Colony, Charcha, District Koriya. On 25/11/2005, at 23.30 hours in the night the respondent No. 1 gave information to Police Station, Charcha, that on the same day at about 4 p.m. in the evening his wife deceased and mother respondent No. 3 had dispute between them, due to which the respondent No. 3 suffered high blood pressure and she was taken for treatment to doctor. Further he went to market for some purchases and came back to his residence at 8 p.m. His brother Rahul told him that deceased was inside the room, her door was bolted from inside and she was not opening the door. The respondent No. 1 could not get the door open then he peeped from the ventilator and saw, that deceased was hanging with the rod of ceiling fan. After informing respondents No. 2 & 3 he broke open the door and brought down the deceased from the noose. They carried the deceased to doctor, who after doing the checkup informed that she was dead. Merg intimation (Ex.P/18) was recorded. Inquest was conducted as per (Ex.P/17) on 26/11/2005. On

the advice of inquest witnesses postmortem was conducted by Dr. (Smt.) Kalawati Patel (PW-19) vide postmortem report (Ex.P/15), in which it was opined that cause of death was asphyxia, due to strangulation, hence the death of homicidal in nature. On the basis of inquest and postmortem report, FIR (Ex.P/21) was lodged on 01/12/2005 registering the offence under Sections 302, 201, 203, 34 of Indian Penal Code against the unknown persons. During investigation Panchnama statement was recorded vide (Ex.P/2) of respondent No. 2 and (Ex.P/3) of respondent No. 1 which was a confessional statement given by the respondents No. 1 & 2. Further in the investigation the cloth used for hanging was seized vide (Ex.P/1). The scratched paint from the rod of the fan was collected and preserved for Forensic Science Laboratory Examination vide (Ex.P/7) on the spot. Crime Unit (Mobile) District Surguja inspected vide (Ex.P/11) the spot. Spot map was further prepared vide (Ex.P/13) by Patwari Shyam Lal Mishra (PW-12). Further a query report was obtained (Ex.P/16) from the Dr. Rameshwar Sharma (PW-16). Seized articles the traces of paint found on the hanging cloth were examined by FSL and report was given vide (Ex.P/25), that the sample of paint from fan rod and on the hanging cloth did not match. On completion of investigation respondents No. 1,2, and 3 were charge-sheeted.

3. Respondent No. 1, 2 and 3 were charged under Section

302 and 201/34 of IPC. They denied the charge and pleaded innocence. Prosecution examined 20 witnesses. Defence has not examined any witness in their support. It was pleaded that the respondent-accused persons were falsely implicated it was them who tried to get treatment and save the life of the deceased when they found her hanging. After completion of trial, impugned judgment was passed, whereby the respondents-accused persons were given benefit of doubt and acquitted from all the charges against them.

4. Applicant is father of deceased. The grounds in this revision are, that impugned judgment is contrary to the facts and evidence available on the record. The prosecution brought evidence on this point that the death was homicidal in nature, there had been extra judicial confession and that the death of deceased took place within seven years of marriage. Hence the trial court erred by not properly appreciating evidence on record and thereby caused miscarriage of justice and therefore, interference is prayed for.

5. Counsel for the applicant has submitted that prosecution had successfully established, that the dead body of the deceased was found in suspicious circumstances. The statement and information of respondent No. 1 that deceased hanged herself was falsified by the investigation, on the

basis of autopsy report and also on the basis of report given by scene of Crime Unit District Surguja. The trial Court has though given this finding in the impugned judgment, that the death of deceased was homicidal but has utterly failed to appreciate that the burden of proof shifted on the respondents-accused persons, to show that under what circumstances homicidal death of deceased occurred in the privacy of their residence.

6. On behalf of the respondents it has been argued that prosecution evidence were not reliable and beyond reasonable doubt. Though it was opined by the doctor that the death was homicidal, but the same Dr. Kalawati Patel (PW-19) admitted in cross-examination, that the symptom of death due to strangulation and due to hanging, both happen to be same. The opinion given by doctor was not worthy of acceptance, despite the finding that there had been no injuries on the body of the deceased and the ligature mark was evidently present on the neck of the deceased. Death of deceased is definitely a suicide. The household was shared by all the family members, hence this is not a case where the respondents-accused needed to give explanation regarding the circumstances of death of deceased. It is submitted that respondent-accused persons have been rightly acquitted by the trial Court.

7. This Court has a limited scope while exercising the revisional jurisdiction. In **Bindeshwari Prasad Singh @ B.P. Singh and Others v. State of Bihar and Another, (2002) 6 SCC 650** it was held by the Apex Court that “it is well settled by catena of decisions that High Court will ordinarily not interfere in revision with an order of acquittal, except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. It was also held that Court exercises only limited jurisdiction, which should not constitute itself into an appellate Court.”

8. As per the guidelines laid-down by the Apex Court and within the limits of jurisdiction of this Court, the evidence before the trial court is examined for the purpose of finding out, whether any gross miscarriage of justice has occurred in this case by the passing of the impugned judgment?

9. Rakesh Sharma (PW-3) is a hostile witness who has stated only that, he came to know that deceased Sangeeta had hanged herself. Sanjay Kumar Rai (PW-4), Meghlal (PW-5), Pradeep Tiwari (PW-8) and Bhaso Thakur (PW-10) have stated similarly. Rampravesh (PW-9) stated that after the incident respondents brought the deceased for treatment to the hospital of Dr. Sharma in Baikunthpur. Sarvjit Kumar Sarkar (PW-14) has stated, that he was contacted by some

unknown persons and on their request he examined one patient who was in unconscious condition. He advised them to take her to the clinic of Dr. Sharma. Chain Sai (PW-15) was present in the hospital of Dr. Sharma when the lady brought to the clinic was declared dead. Dr. Rakesh Sharma (PW-17) is the same person who declared the deceased was brought dead.

10. Executive Magistrate S.R. Sidar (PW-18) conducted the inquest procedure vide (Ex.P/17), in cross-examination he has stated that no injury was found on the body of the deceased and admitted that the ligature mark was present on the neck of the deceased. As per the information given by respondent No. 1, one dhoti was found on the spot, it was allegedly used for hanging by the deceased. No definite opinion came as the outcome of this inquest procedure. Dr. Rameshwar Sharma (PW-16) along with Dr. (Smt.) Kalawati Patel (PW-19) conducted postmortem of the deceased vide report (Ex.P/15), the finding has been recorded that circular ligature mark was present around the neck, (slightly oblique on left side) beaded marks on the neck present. Ligature mark was at thyroid cartilage level. Color of ligature mark Reddish. Rigor mortis was present all over body. Dried saliva was present on both sides of mouth. As per the opinion the cause of death was asphyxia and these doctors opined that death was homicidal in nature.

11. Further vide report (Ex.P/16) answering to the query of investigation officer it was opined that there is possibility of death due to strangulation. In cross-examination Dr. Rameshwar Sharma PW-16) has admitted, that except the ligature mark other symptoms are similar in case of hanging and in case of strangulation. Dr. Kalawati Patel (PW-19) has admitted in her cross-examination, that symptoms in death by strangulation and death by hanging are found similar.

12. On what basis these medical experts have opined, that death was due to strangulation has not been made clear in their evidence, because the finding of ligature mark on the neck of the deceased is suggestive of this fact, that some object like rope or a cloth has been used to cause obstruction to the respiratory system of the deceased because of which the ligature mark has resulted, which is a mark around the neck in continuity, had there been use of hands to strangle her, the marks would have been found differently on the neck of the deceased. Hence on the basis of finding of ligature mark on the neck of the deceased, it is clear that the strangulation resulted due to use of rope or a cloth, as a dhoti (cloth) was found on the incident spot, hence it can be assumed that it was the same dhoti which was used for causing strangulation which resulted in ligature mark. After this finding without support or proper evidence, it was not possible to opine that the death was homicidal.

There had been possibilities of two views in this case, that either deceased hanged herself or she was strangled with the help of the cloth seized from the spot, by some other persons. Had it been a case by strangulation by some other persons there would have been possibility of struggle before death, which would have resulted in the form of injuries on the body of deceased, regarding which the finding in postmortem report is negative.

13. Had it been a case of strangulation by some other person the scene of crime would have been different showing the sign of struggle. The witnesses of scene of crime Dr. Kuldeep Kujur (PW-11) has stated that on inspecting the spot he measured the height of place of alleged hanging and also inspected the other things present in the same room, where the body of deceased was found, but he did not find any disturbance of things in the same room, on the basis of report (Ex.P/12) he has opined that the alleged theory of hanging did not appear to be a probable theory, which is just an opinion and not enough to rule out the theory of hanging, as he is neither the witness of hanging nor the witness when the body of the deceased was untied from the noose.

14. In **Chimanbhai Ukabhai v. State of Gujrat, AIR 1983 SC 484** the Supreme Court held "Ordinarily, the value of medical evidence is only corroborative. It proves that the

injuries could have been caused in the manner alleged and nothing more". The medical evidence is usually opinion evidence as held in **Duraipandi Thevar v. State of Tamil Nadu, AIR 1973 SC 659** the medical opinion by itself, however, does not prove or disprove the prosecution case, it is merely of advisory character. In **Mayur v. State of Gujrat, AIR 1983 SC 5** the Supreme Court observed, "Even where a doctor has deposed in Court, his evidence has got to be appreciated like the evidence of any other witness and there is no irrebuttable presumption that a doctor is always witness of truth." In the matter of **Awadhesh v. State of M.P., AIR 1988 SC 1158** in para 10 Supreme Court has held "Medical expert's opinion is not always final and binding." In an appropriate case on a consideration of the nature of the injuries and other relevant evidence, the Court can come to its own conclusion, if the medical evidence is deficient. If direct evidence is of the witnesses to the occurrence is satisfactory and reliable, it cannot be rejected on hypothetical medical evidence (*Solanki Chimanbhai Ukabhi supra*).

15. Hence on the basis of these findings, and the settled view at present the report given by Dr. Rameshwar Sharma (PW-16) and Dr. Kalawati Patel (PW-19) by which they have opined that death of deceased was homicidal is not an acceptable opinion. The Court has every right to come to its

own conclusion on the basis of facts and evidence on record, hence the ground urged in this revision that the death was homicidal is not acceptable, on the contrary it is found that two views were possible regarding death of the deceased, that it was either suicidal or homicidal. In such state of things the view favourable to accused persons only can be followed in principle.

16. The ground urged in this revision regarding extra-judicial confession is totally unacceptable ground, which has been discussed at length in the impugned judgment. Town Inspector Pramod Pandey (PW-20) stated that on 03/12/2005 respondent Dinesh Thakur was arrested and interrogated which was recorded vide (Ex.P/2), similarly respondent No.1 was apprehended, interrogated and his statement recorded vide (Ex.P/3) in presence of witnesses. The witnesses to these panchnama statements namely Rakesh Sharma (PW-3), Sanjay Kumar Rai (PW-4) and Pradeep Tiwari (PW-8) have not supported the investigation officer and have been declared hostile. Ramcharitra Thakur (PW-7) who is related to deceased from her maternal side has supported the recording of these statements. On going through the so called panchnama vide (Ex.P/2 and P/3), it is very clear that these statements given by the respondents No. 1 and 2 are confessional statement in presence of Police Officer which is not permissible under Section 25 and 26 of the Indian

Evidence Act, 1872, hence inadmissible, which has been rightly rejected by the trial Court.

17. Other witnesses who have been examined by the prosecution are formal in nature supporting the investigative procedures, the grounds on which the revision has been brought have failed. It is not a case of miscarriage of justice neither any evidence was shut out while arriving at the finding of acquittal in favour of the respondents-accused persons, hence this revision has no substance which is dismissed accordingly.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge