

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1228 of 2002**

- Dokeswari W/o Sanat Kumar, aged about 29 year, R/o village Anda, Tehsil and District Durg.

---- Appellant**Versus**

- State of Chhattisgarh

---- Respondent

For Appellant	:	Shri Amiyakant Tiwari, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board by Pritinker Diwaker, J**16/08/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 21.11.2002 passed by the 6th Additional Sessions Judge, Durg (C.G.), in Sessions Trial No.52/2002 convicting the accused/appellant under Sections 302, 307 and 309 IPC & sentencing her to undergo imprisonment for life, R.I. for seven years and R.I. for six months respectively.

2. In the present case, name of deceased is Ku. Pooja, aged about 6 years, daughter of accused/appellant Dokeswari and Sanad Kumar (PW/4). It is alleged that Sanad Kumar (PW/4) - father of deceased used to suspect chastity of the accused/appellant and out of anger, on 29.06.2001 at about 11.00 am, the accused/appellant

gave some poisonous substance (Organo Phosphorous) to her daughter deceased Ku. Pooja, son Kuleshwar (PW/15) and Ku. Jyoti, aged about 6 years. After giving poison to her three children, appellant herself consumed said insecticides and became unconscious. Krishnalal (PW/1) - father-in-law of the accused/appellant when returned from his field, saw the appellant and her three children lying unconscious. On 29.06.2001 at 2.30 pm, he lodged merged intimation Ex.P/11 followed by FIR Ex.P/1 against the accused/appellant under Sections 307, 302 and 309 IPC. Inquest on the body of deceased was prepared on 30.06.2001 and the dead-body was sent for postmortem examination which was conducted by Dr. R.N. Pandey (PW/14) who vide report Ex.P/19 opined the mode of death to be asphyxia, however, cause of death could not be determined. Accused/appellant was also medically examined by Dr. A.K. Sahu (PW/17) vide Ex.P/22 whereas her son Kuleshwar Prasad and another daughter Ku. Jyoti were medically examined vide Ex.P/20 and P/21 respectively. After investigation the charge-sheet was filed and the trial Court framed the charge against the accused/appellant under Sections 302, 307 and 309 IPC.

3. In order to prove complicity of the accused/appellant in the crime in question, the prosecution has examined 17 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which she denied her guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence, this appeal.

5. Counsel for the accused/appellant submits as under:

(i) That all the important prosecution witnesses namely Krishnalal (PW/1), Sanad Kumar (PW/4) and Kuleshwar (PW/15) have not supported the prosecution case and turned hostile. It has been argued that in-fact present is a case of no evidence, yet the accused/appellant has been convicted.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

7. Heard the counsel for the parties and perused the material available on record.

8. Krishnalal (PW/1) who is father-in-law of the accused/appellant and lodger of FIR Ex.P/1 has not supported the prosecution case and turned hostile. In para 9, he has stated that husband of the accused/appellant had sowed some vegetable plants in his field and courtyard & insecticides (DUM) was kept in his house. Normally it is being kept by the villagers for killing vermin of plants and if it is diluted in water, it looks like a milk and accidentally also one may consume the same. Uday Shankar (PW/2) is a witness to seizure Ex.P/6 has turned hostile. Sanad Kumar (PW/4) - husband of the accused/appellant, Puranlal (PW/6), Manoj Kumar Chandrakar (PW/7) and Kuleshwar (PW/15) - son of the accused/appellant have turned hostile. Mannulal Dewangan (PW/5) is a Patwari who prepared spot map Ex.P/9. Dr. Ashutosh Verma (PW/10) is a witness who initially examined the injured and the accused/appellant when they were brought in the hospital. R.A. Singh (PW/12) is Investigating Officer who has duly supported the

prosecution case. Dr. R.N. Pandey (PW/14) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex.P/19 noticing following injuries/symptoms:-

- (i) Eyes and mouth closed, nasal froth and rigor mortis present.
- (ii) No marks of external injury were seen on her body.

The Doctor has opined the mode of death to be asphyxia, however, cause of death could not be elicited and viscera were preserved for chemical analysis.

9. Dr. S.K. Sharma (PW/16) and Dr. A.K. Sahu (PW/17) are the witnesses who medically treated the appellant.

10. Close scrutiny of the evidence makes it clear that there is no clinching and conclusive piece of evidence showing the involvement of the accused/appellant in commission of the offense. All the important prosecution witnesses (PW/1, PW/4 and PW/15) have not stated anything specific against the accused/appellant and turned hostile. Krishnalal (PW/1), father-in-law of the accused/appellant, who has been examined by the prosecution as important witness has not specifically stated that it is the accused/appellant who gave the poisonous substance to her children. In cross-examination, he has stated that normally the pesticide (DUM) is being kept by the villagers to kill vermin and if the same is diluted in water it looks like milk. Thus, the possibility of drinking the same considering it to be milk cannot be ruled out. That apart, the Doctor (PW/14) conducting autopsy on the body of deceased has not noticed any external injury on her body and cause of death could also not be determined. Though the facts involved in the case and the evidence on record give rise to the suspicion about the involvement of the accused/appellant in the

crime in question, in a series of cases it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of the evidence. One such judgment of the Apex Court dealing with this fact is **Commissioner of Police, Delhi & Others V. Jai Bhagwan**¹.

11. Thus, considering this factual and legal position and taking the cumulative effect of the evidence, we are of the view that there is no conclusive piece of evidence showing the guilt of the accused/appellant for commission of offence and the benefit of doubt, of course, has to go to the accused/appellant.

12. Accordingly, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted for the charges levelled against her. The appellant is reported to be on bail. Her bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge

vijay

1 2011 (6) SCC 376