

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 151 of 2010**

- Bariklal Kurre, S/o Kejauram, R/o Village Bijai, Police Station Pipariya, Kabirdham (CG)

**---- Appellant**

**Versus**

- State Of Chhattisgarh, through Police Station Pipariya, District Kabirdham (CG)

**---- Respondent**

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| For Appellant  | : | Shri U.K.S. Chandel, Advocate      |
| For Respondent | : | Shri V.A. Goverdhan, Panel Lawyer. |

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

**Judgement**

**Per P. Diwaker, J**

**19/09/2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 11.2.2010 passed by the Sessions Judge, Kabirdham (Kawardha) in S.T. No.12/09 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life & fine of Rs.3,000/-, in default to undergo RI for 1 year.
2. In the present case, name of deceased is Chandrakali Bai, daughter of accused/appellant from his first wife.
3. The prosecution story, in brief, is that deceased Chandrakali Bai was the daughter of accused/appellant from his deserted first wife and she was residing with her father (appellant). Accused/appellant had performed

second marriage with one Ganeshiya Bai from whom he had three sons. Initially deceased Chandrakali used to reside with her mother and later on accused/appellant took her along with him by saying that he will take care of her. It is further case of the prosecution that as the appellant does not want to give share in his property to the deceased, therefore, in the night intervening 29<sup>th</sup> & 30<sup>th</sup> December, 2010 accused/appellant had administered poison (zinc phosphate) with some sweet to the deceased by saying that the same would immediately heal her wound and after eating said sweet, the deceased died in the night itself. Merg Intimation (Ex.P-8) was lodged on 30.12.2008 at 10.30 a.m. by the appellant informing that the deceased died unnatural death. Inquest on the body of deceased was conducted on 30.12.202008 vide Ex.P-9. Body was sent for post-mortem examination which was conducted by Dr. Santosh Luniya (PW-11) vide Ex.P-2. In the opinion of autopsy surgeon, no definite opinion regarding cause of death could be given and therefore he preserved the viscera to find out the cause of death. Viscera of the deceased and the sweet was sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-14 was received in which poisonous substance (Zinc Phosphide) was found in Articles-A, B, D & E i.e. viscera and sweet eaten by the deceased. After merg enquiry, Dehati Nalishi (Ex.P-12) was registered on 7.1.2009. Memorandum of accused/appellant was recorded vide Ex.P-6 and on the basis of disclosure statement made by accused/appellant, a polythene containing sweet mixed with poisonous substance and wrapper of rat killing medicine, in five pieces, were seized vide seizure memo Ex.P-7. On 7.1.2009 FIR (Ex.P-12A) was registered against the appellant under Sections 302 & 201 of IPC.

4. On completion of investigation, charge sheet for the offence punishable

under Sections 302 & 201 IPC was filed against the accused/appellant, however, the trial Court only framed the charge under Section 302 IPC against the appellant. The prosecution in order to bring home the charge levelled against the accused/appellant examined 11 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.

5. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.

6. Counsel for accused/appellant submits that;

- the evidence as accepted by the trial Judge does not lead to the conclusion that the appellant has committed the offence, particularly, because the prosecution has miserably failed to establish that the appellant had the poison in his possession. The shop-keeper from whom the poison is said to have been purchased by the appellant did not support the prosecution case and turned hostile and in the absence of this material circumstance, the accused/appellant is entitled to acquittal.
- there is absolutely no motive proved by the prosecution as against the appellant and therefore the entire case of prosecution falls to the ground.
- out of two witnesses of memorandum, one has not been examined by the prosecution and another has not fully supported the prosecution case.
- the insecticide (poison) recovered at the instance of appellant is commonly available in the village in every house being required for the agricultural purposes.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Mahasingh (PW-1) is the vendor from whom the accused/appellant had purchased the poisonous substance, but, this witness did not support the prosecution case and turned hostile.
10. Dr. Santosh Lunia (PW-2) is the person who had performed post-mortem examination over the body of deceased and gave his report vide Ex.P-2. He has stated that in the course of post-mortem examination the cause of death of the deceased could not be ascertained and therefore he advised for sending viscera of the deceased for chemical examination.
11. Smt. Mongra Bai (PW-3) is the person from whom the accused/appellant is said to have purchased the sweets, but this witness had also not supported the prosecution case and turned hostile.
12. Kunjram (PW-4) is the witness of seizure of Rs.15,000/- vide seizure memo Ex.P-5. Muneer Khan (PW-5) is the Patwari who prepared the spot map vide Ex.P-5.
13. Rajbai (PW-6) is the first wife of the accused/appellant and mother of the deceased. She has not stated anything incriminating against the accused/appellant.
14. Sukhdeo (PW-7) is the witness of memorandum (Ex.P-6) and seizure memo (Ex.P-7). He has stated that the accused/appellant had admitted before him that he along with his second wife administered poison to the deceased.

15. Laxman Khunte (PW-8) is the person who assisted in the investigation. Virendra Kumbhkar (PW-9) is the Photographer who took the photographs of the deceased. Sanjay Pundhir (PW-10) is the investigating officer who has duly supported the prosecution case. Dhanesh Das (PW-11) is the witness of the fact that after 3-4 days of the incident an amount Rs.15000/- was given by the appellant to his wife for giving the same to the doctor. However, this witness did not support the prosecution case and turned hostile.
16. In the case in hand, the accused/appellant is alleged to have administered poison to his daughter (deceased). Admittedly, this is a case where no direct evidence is available for administering poison. In other words, this is a case where only we have various pieces of circumstantial evidence. It is well settled that circumstantial evidence, in order to sustain the conviction, must satisfy that the circumstances from which the inference of guilt is sought to be drawn must be cogently and firmly established. These circumstances should be of a definite tendency and unerringly pointing towards guilt of the accused. In other words, circumstances taken cumulatively should form a complete chain so that there is no escape from the conclusion that in all human probability, the crime was committed, by the accused and none else and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.
17. In the cases of murder by administering poison, the Court must carefully scan the evidence and determine four important circumstances which alone can justify the conviction;-
- there is a clear motive for an accused to administer poison to deceased;
  - that the deceased died of poison said to have been administered;

- that the accused had the poison in his possession; and
- that he had an opportunity to administer poison to the deceased.

18. We propose to examine the oral evidence adduced by the prosecution in the light of above principles to ascertain whether in the present case the four important circumstances have been established or not?

19. From the evidence available on record the prosecution has not been able to establish that the accused had any motive to commit murder of by administering her poison. Though it has come in the statements of prosecution witnesses that the accused had committed murder of the deceased as he does not want to give her share in the property, but there is nothing to show that the deceased ever demanded share in the property and the same was refused by accused/appellant. On the contrary, it has come in the evidence of Rajbai (PW-3), first wife of accused/appellant, that on share being demanded by her, the accused/appellant did not refuse to give. Even, it has come in the statements of the witnesses that the daughters do not get share in the property in their community. Therefore, allegation of motive though is there but there is nothing to substantiate the same. Thus, from the evidence available on record, we are of the considered opinion that the prosecution has failed to prove that the accused had any motive to administer poison to the deceased with an intention to cause her death.

20. To prove the circumstance that the accused/appellant had the poison in his possession, the prosecution has relied upon the evidence of Maha Singh (PW-1), vendor and Smt. Mongra Bai (PW-3), sweet seller. According to the prosecution, the accused/appellant had purchased the poison and sweet from these witnesses. However, these witnesses, as has already been noticed, did not support the prosecution case while deposing during trial and they resiled from their statements made

before the Police. This apart, the place wherefrom the sweet mixed with poison was recovered was not only open and accessible to others but also ordinarily visible. Said packet containing sweet was not concealed nor hidden. Therefore, it cannot be said that the accused/appellant had the exclusive knowledge as to where the said packet of sweet was hidden or kept. When the weapon of offence etc. was ordinarily visible and had not been concealed rather lying on the ground in an open place accessible to all, the recovery in such circumstance, to our mind, would be inadmissible under Section 27 of the Evidence Act. Therefore, we are of the considered opinion that the prosecution has not been able to establish even this circumstance by adducing reliable and cogent evidence that the appellant was in possession of the poison before the same given to the deceased and subsequent thereto.

21. As regards the other two conditions i.e. the deceased died due to poisoning and the accused/appellants had an opportunity to administer the poison to the deceased, true it is that the prosecution has been able to prove the fact of presence of the appellant with his daughter at the relevant time and that the deceased died of poison, as is evident from the report of Forensic Science Laboratory (Ex.P-14) that zinc phosphate poison was found in the viscera of the deceased. But, in absence of any evidence establishing that the accused/appellant had any motive to administer poison to her own daughter and that he had secured the poison from a particular source, only presence of accused/appellant with the deceased alone is not sufficient to lead to the conclusion that it is the accused/appellant who is perpetrator of crime in question. Needless to say, it was absolutely natural that accused/appellant was present with the deceased at the relevant time,

as he being her father.

22. True, it has come in the statements of PW-7 Sukhdev that the accused/appellant had admitted before them that he with the help of his wife had administered poison to her daughter, but at the same time this witness had admitted that such confessional statement was made by accused/appellant in the presence of the police. It is settled position that if the confession was made in the presence of the police, then such a confession is hit by Sections 25 & 26 of the Indian Evidence Act. Therefore, such a confession, in our considered opinion, is devoid of any legal merit nor the same can be acted upon.

23. From the facts and circumstances of the case, it comes out that there is no evidence connecting the appellant with the crime or at least for drawing an inference that he administered poison or whether he purchased the poison & sweet from any shop or that he mixed the poison with sweet and then administered to his daughter. In other words the main link in the chain of circumstances is completely broken and there is no connecting evidence whatsoever worth mentioning incriminating the appellant with the crime in question.

24. In the result, the appeal is allowed. Impugned judgment convicting and sentencing the appellant under Section 302 of IPC is hereby set aside. Accused/appellant is acquitted of the offence charged with by extending him benefit of doubt. The appellant is reported to be on bail. His bail bonds stand cancelled.

Sd/-  
(P. Diwaker)  
Judge

Sd/-  
(RP Sharma)  
Judge