

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 380 of 2007**

(Arising out of judgment/order dated 24.04.2007 in S.T. No. 150/2006 of the learned 2nd Additional Sessions Judge (F.T.C.), Ramanujganj, District Surguja)

- Nandjit Prazapati S/o Ramchandra Prajapati, aged about - 25 years, Occupation - Agriculturist & Resident of village - Bhanwarmal, P.S. - Ramanujganj, District - Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : P.S. Ramanujganj, District - Surguja (C.G.)

---- Respondent

For Appellant : Shri N.K. Mehta, Advocate.
For Respondent/State: Shri Arvind K. Mishra, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****11/09/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 24.04.2007 passed by 2nd Additional Sessions Judge (F.T.C.), Ramanujganj, District Surguja, in S.T. No.150/2006 convicting the accused/appellant under Sections 302, 201 Part-I IPC and sentencing him to undergo imprisonment for life with fine of Rs.2,000/-, R.I. for three years with fine of Rs.500/- respectively, plus default stipulation.

02. In the present case, name of the deceased is Sushma Devi, wife of the accused/appellant. It is alleged that on 12.07.2005, the accused/appellant and the deceased had some hot talk over non cooking of meal by the deceased. After quarrel, the deceased left the house of the accused/appellant, she was extensively searched by the appellant and villagers and on 14.07.2005 her dead body was found in the well of one Dev Kumar. Thereafter, on 14.07.2005 at 1.30 pm, merg intimation (Ex.P/18) was recorded at the instance of the accused/appellant. On same day, inquest on the body of deceased was prepared vide Ex.P/4 and body was sent for postmortem examination to Community Health Center, Ramanujganj where Dr. Ajay Kumar Tirkey (PW/10) conducted postmortem on the body of deceased and gave his report Ex.P/10 opining the cause of death to be asphyxia due to manual strangulation and death of deceased was homicidal in nature. The autopsy surgeon has further opined that it may be a case of rape. After receiving the postmortem report, merg inquiry was conducted and offence under Sections 302 and 201 IPC was registered against an unknown person. After filing of the charge sheet, the trial Court framed charges under Sections 302 and 201 Part-I IPC against the accused/appellant.

03. So as to hold the accused/appellant, the prosecution examined as many as 19 witnesses. Statement of the accused/appellant was also recorded under Section 313 of

Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits:

- That the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for his conviction. It has been argued that as per the autopsy report (Ex.P/10), it may be a case of rape and thus possibility of some third person committing the murder of the deceased cannot be ruled out.
- That present is not a case where the accused/appellant alone was residing in the house in question but his parents were also residing with him and, therefore, the accused/appellant cannot be said to be the only inmate of the house.
- That after the quarrel, on 12.07.2005, the deceased left the house of the accused/appellant and then after two days her body was found. It has been argued that the time gap between leaving the house and recovery of body is so long and thus possibility of third person killing the deceased cannot

also be ruled out.

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

07. We have heard learned counsel for the parties and perused the material available on record.

08. Ramchandra Prajapati (PW/1) is father of the appellant. He has stated that he was residing in the same house in which the accused/appellant and the deceased were residing. On the date of incident at about 8.00 pm, he saw the deceased leaving his house and thereafter she did not return. He has further stated that he was informed by the appellant that some quarrel had taken place between them (appellant and the deceased) over non cooking of food. This witness has also stated that the deceased was extensively searched by everyone and ultimately on 14.07.2005 her dead body was found in the well.

09. Gyanmati (PW/2) - mother of the appellant, has made almost similar statement as has been made by PW/1.

10. Manoj Kumar Prajapati (PW/3) and Pratima (PW/4) brother-in-law and sister of the deceased respectively have turned hostile.

11. Naresh (PW/5), Shiv Charan (PW/7) and Fulchand (PW/8) are the witnesses to inquest (Ex.P/4).

12. Vijay Kumar (PW/6) is friend of the deceased who along with the accused/appellant searched the deceased. He has stated that he and the accused/appellant with help of villagers had searched the deceased but they could not get her and ultimately her dead body was found in the well.

13. Dr. Ajay Kumar Tirkey (PW/10) along with Dr. Sudhir Kumar Sinha (PW/11) conducted postmortem examination on the body of deceased vide Ex.P/10 and found following injuries/symptoms:-

- (i) Whole body was swollen and blisters all over the body.
- (ii) Both eye and tongue protruded. Lips and mouth were opened. Eggs of flies over head. Dark froth was coming from her nose.
- (iii) Glistening skin on right side of neck, large haematoma present at the base of the neck upto upper sternum which covered both clavicle medial.

Doctor PW/10, in para 14, has stated that the deceased died as a result of asphyxia due to manual strangulation and death was homicidal in nature. The doctor has further stated that present could be a case of rape also and for confirmation vaginal smear were prepared and advised for its chemical examination.

14. Devlal Singh Armo (PW/12)- S.D.O.P., D.C. Tiwari (PW/13)- S.H.O., and Chandrahas Nayak (PW/14)-constable helped in the investigation. Ram Sai Painkra (PW/16) - Investigating

Officer has duly supported the prosecution case.

15. Manish Kumar Prajapati (PW/18) - brother of the deceased, has not stated anything specific against the accused/appellant.

16. Admittedly, there is no direct evidence against the appellant to show his complicity in the crime in question and his conviction rests upon circumstantial evidence, main being the evidence of autopsy surgeon PW/10, PW/11 and autopsy report Ex.P/10.

17. In the matter of **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210**, the Supreme Court while dealing with circumstantial evidence observed in paras 11, 12 & 13 as under:-

“11. In Hanumant Govind Nargundkar V. State of M.P. [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:

“10..... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave

any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

12. In *Padala Veera Reddy V. State of A.P.* [(1989) Supp (2) SCC 706], this Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. **In Sharad Birdhichand Sarda v. State of Maharashtra** [(1984) 4 SCC 116], it was held that the onus was on the prosecution to prove that the chain is

complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. There is no legally admissible evidence showing the involvement of the accused/appellant in the commission of

offence. The trial Court, based on the autopsy report (Ex.P/10), para 18 of the statement of accused/appellant recorded under Section 313 of Cr.P.C. and para 16 of the evidence of PW/1, inferred that a concocted story has been created and the accused/appellant, after strangulating the neck of the deceased, has committed her murder and threw her body into well. However, on close and careful scrutiny of the evidence on record, it is apparent that it is the prosecution case itself that the accused/appellant was not residing all alone in the house in question but was residing with his parents. The evidence further reflects that deceased left the house of the appellant on 12.07.2005 and her body was found in a well of Dev Kumar on 14.07.2005 i.e. after two days. Therefore, it cannot be said with certainty that it is the accused/appellant who has committed murder of the deceased. There is two days long gap between leaving the house and recovery of dead body, thus, the possibility of third person killing the deceased cannot be ruled out.

19. That apart, the postmortem report (Ex.P/10) of the deceased reveals that the death of deceased was as a result of asphyxia due to manual strangulation. The Doctor conducting autopsy on the body of deceased has noticed certain symptoms, injury on her neck and private part. The Doctor has further stated that it can be a case of rape and for confirmation, vaginal smear prepared, packed, sealed and handed over to police constable for FSL. It was the bounden

duty of the prosecution to get this vaginal smear chemically examined to substantiate its case. Looking to the nature of injuries (rapture of labia minora) sustained by the deceased, the possibility that the deceased had been first raped by someone else and thereafter murdered with intent to cause disappearance of offence of rape, cannot be ruled out.

20. From the discussion made above it is apparent that none of the circumstances relied upon by the prosecution have been established in this case beyond reasonable doubt. In fact, the chain of circumstantial evidence is so incomplete that it cannot justify the conviction of the appellant at all. Being so, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charges leveled against him.

21. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Sections 302 and 201 Part-I IPC by extending him benefit of doubt. The appellant is reported to on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE