

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 393 of 2005

1. Ram Kumar, S/o Dayaram Soni, aged about 32 years.
2. Smt. Sarita Soni, w/o Ram Kumar Soni, aged about 30 years.

Both R/o Kadam Chowk, Rani Road, Champa, Tahsil Champa, P.S. Champa, District Janjgir Champa (CG)

---- Appellants

Versus

- State Of Chhattisgarh, through P.S. Champa, District Janjgir Champa (CG)

---- Respondent

&

CRA No. 405 of 2005

Chandrasekhar, S/o Shri Dayaram Soni, aged about 32 years, R/o Kadam Chowk, Rani Road, Champa, Tahsil Champa, P.S. Champa, District Janjgir Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through SHO, P.S. Champa, District Janjgir Champa (CG)

---- Respondent

For Appellants	:	Miss Shiksha Verma & Mr. Neeraj Mehta
		Advocates for the appellants
For Respondent	:	Mr. Avinash K Mishra, Panel Lawyer.

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

JUDGEMENT

P. Diwaker J,

19/09/2017

1. Since the above two appeals have been filed against the judgment dated

21.4.2005 passed by the 3rd Additional Sessions Judge (FTC), Janjgir in S.T. No.224/2004, they are being disposed of by this common judgment.

2. By the impugned judgment the appellants in Criminal Appeal No.393/2005 have been convicted under Section 498A of IPC and sentenced to undergo RI for 1 year and fine of Rs.500/-, in default to undergo additional RI for 2 months. Whereas, the appellant in Criminal Appeal No.405/2005 has been convicted under Sections 302 & 498A of IPC and sentenced to undergo RI for life & fine of Rs.500/- and RI for 1 year & fine of Rs.500/-, with default stipulations, respectively.
3. In the present case name of deceased is Smt. Nawdha Soni wife of accused/appellant Chandrasekhar Soni.
4. The prosecution case, in brief, is that the marriage of deceased was solemnized with accused/appellant Chandrasekhar on 14.6.2003 as per Hindu rites and she committed suicide by hanging herself on 14.4.2004 in her matrimonial home. Merg Intimation (Ex.P-7) was lodged immediately on 14.4.2004 at 8.15 p.m. by her husband i.e. accused Chandrasekhar. Inquest (Ex.P-2) over the body was conducted on 15.4.2004. Body was sent for post-mortem examination to the Government BDM Hospital, Champa where the post-mortem was conducted by a team of doctors consists of Dr. R.K. Chandra (PW-15) & Dr. (Mrs). V. Chandra and they noticed following injuries and symptoms on the body of deceased;-
 - Rigor mortis passed away from body. Both eyes were opened. Tongue bitten between teeth. Several marks of ant bites over face, near eye & whole body.
 - Ligature around neck made up of saree.

- Knot on left side, face turned to right side. Mark of dribbled saliva from angle of mouth right side, face congested.
- Ligature cut, bloodstained at other end of saree.
- Ligature mark between larynx & chin, dark brown in coloured, edges ecchymosed, upward and posteriorly in direction, deficient posteriority at hari,
- Multiple external injuries over both knee & legs.

As per post-mortem report Ex.P-26, all the injuries were ante mortem in nature, abrasions were caused by hard and rough object and lacerations are caused by hard & blunt object. The cause of death of deceased was opined to be asphyxia due to ante mortem hanging. A specific query was put by the police, during the course of investigation, to the autopsy surgeon, whether the nature of death of the deceased was suicidal or homicidal. The following report was submitted by the doctor (PW-15) on 5.5.2004;-

“In our opinion the cause of death in this case was suicidal hanging.”

Meanwhile, on 15-16/04/04 a written report (Ex.P-25) was lodged by Sushil, brother of deceased, alleging therein that post-mortem report given by the doctor appears to be suspicious and in a case of murder the doctor has opined the same as suicidal. It has further been alleged that the deceased died by committing suicide on account of cruelty and harassment meted out to her by the accused persons due to non fulfilment of their demands for dowry. In these circumstances, the investigation should be conducted by an independent agency.

5. On 18.4.2004 FIR (Ex.P-23) was registered against the accused/appellants under Section 498A & 304B of IPC. After completion

of investigation, charge sheet was filed against the accused/appellants under Sections 498A & 304B of the IPC, however, the trial Court has framed the charges under Sections 498A, 304B & 302 of IPC against them.

6. So as to hold the accused/appellants guilty, the prosecution examined as many as 16 witnesses. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. They have examined seven witnesses in their defence.
7. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellants as described above.
8. Learned counsel for accused/appellants submits that:
 - there is not an iota of evidence to connect appellant Chandra Sekhar with the murder of the deceased and conviction of the appellant is based on conjecture and surmises.
 - the doctor who had conducted post mortem examination has categorically stated that cause of death was suicidal hanging.
 - Ingredients of Section 498A of IPC are also missing in the present case as there is no allegation in the complaint (Ex.P-25) lodged by the brother of deceased of demand for dowry or torture by the appellants.
 - At time of incident, appellants in Cr.A. No.393/2005 were residing separately from the deceased.
 - Appellant Chandra Sekhar is suffering from acute mental ailment and

this fact is evident from the report submitted by the Station House Officer, Police Station Champa, District Jangjir Champa.

9. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that there is no illegality or infirmity in the impugned judgment warranting interference by this Court in exercise of its appellate jurisdiction. However, he does not dispute the mental condition of accused/appellant Chandra Sekhar.
10. Suresh Kumar (PW-1), cousin of deceased, has stated that 15 days prior to the incident, the deceased had come to his house and told him during conversation that her father had given Rs.50,000/- in her marriage for opening the grocery shop. She has further informed that her in-laws are torturing her for bringing more money from her parents.
11. Janki (PW-2), sister-in-law of deceased, is the witness of inquest (Ex.P-2). She has stated that she noticed number of injuries on the body of deceased and blood was also present on the underwear of deceased.
12. Sushil (PW-3), brother of deceased, is the person who lodged the written complaint (Ex.P-25). He is also a witness to inquest (Ex.P-2). He has stated that kanyadaan of the deceased was performed by him and his wife. Sufficient articles were given in the marriage of deceased. He has further stated that the deceased used to inform him over telephone that her in-laws used to harass and taunt her. He has further stated that at the time of inquest, he noticed injury marks on the body of deceased.
13. Ramakant Soni (PW-4), brother-in-law of the deceased, has stated that at the time of marriage of the deceased sufficient articles were given to the accused persons including cash of Rs.50,000/-. He has further stated that the deceased had told her sister Sushila (wife of this witness) that the accused persons used to torture her for bringing inadequate dowry.

14. Sushila Soni (PW-5), sister of the deceased, has stated that sufficient dowry had been given at the time of marriage of deceased as per demands of the accused persons. This witness has further stated that the deceased on her second visit to her house after the marriage disclosed to her that she was being harassed by the accused persons in connection with demand for dowry.
15. Harish Pandey (PW-6) is a witness of panchnama (Ex.P-14).
16. Sunita (PW-7) is the elder sister of the deceased. She has also stated that it was disclosed before her by the deceased that she was being subjected to cruelty for not bringing Tata Sumo vehicle. In the cross-examination this witness has admitted that no report was lodged by them against the accused/appellants about their harassing and torturing the deceased in connection with demand for dowry.
17. Sonabai (PW-8) is the aunt of the deceased. She has also stated about the deceased being harassed and tortured by the accused/appellants in the name of dowry. However, in the cross-examination this witness has admitted that she never inquired from the deceased as to whether she is being harassed by her in-laws.
18. Laxmandas (PW-9) is the witness of seizure memo Ex.P-6 by which bloodstained clothing of the deceased, which she was wearing at the time of incident, were seized.
19. G.R. Suryavanshi (PW-10) is the police person who assisted in the investigation. Nagendra Gupta (PW-11) is the witness of seizure memo Ex.P-3 by which certain articles from the spot were seized. D.K. Tiwari(PW-12) is the Naib Tahsildar who conducted inquest. Dharmendra Uadasi (PW-13) is the Photographer who took the photographs of the spot.

20. Ramesh Pandey (PW-14) is the investigating officer who has duly supported the prosecution case.
21. Dr. R.K. Chadra (PW-15) is one of the doctors who conducted post-mortem examination over the body of deceased. He has noticed the injuries on the body of deceased as described above and on a specific query being put by the police with respect to cause of death, he replied vide Ex.P-27 that cause of death was suicidal hanging. In the cross-examination this witness has categorically stated that the saliva going in the right direction of the face of deceased and the mark of loop present in between trachea & chin are possible in the case of hanging only and these two symptoms noticed by him cannot be present if the neck is pressed by any other means. On the basis of aforesaid symptoms, this witness has thus opined that the death of the deceased suicidal.
22. J.S. Khakhra (PW-16) is the Deputy Superintendent of Police who had filed the charge sheet in the matter.
23. Bhiman Thawait (PW-1), neighbour of accused, has stated that Bhagwati, brother of accused/appellant Chandra Sekhar, came to him shouting that door of Chandra Sekhar is bolted from inside. Hearing this, he along with 2-3 other persons went to the room of Chandra Sekhar and after breaking open the door, they saw the deceased hanging with saree.
24. Dr. Pushpraj Dewangan (DW-2) has stated that on the date of incident accused/appellant Ram Kumar Soni was suffering from Malaria and he advised him to get admitted to hospital.
25. Champa Bai (DW-3) has stated that in-laws of the deceased were treating her nicely and on being asked, the deceased informed that she is happy in her matrimonial home.
26. Chandrika Bai (DW-4) has also stated that the deceased was happy in her

matrimonial home.

27. It is settled position that before seeking to prove that the accused is the perpetrator of the murder, it must be established that 'homicidal death' has been caused. Further, in a case where 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. In **Madho Singh vs. State of Rajasthan** reported in **2001 CriLJ 2159** the Apex Court in the facts and circumstances of that particular case observed that in the absence of proof of homicidal death the appellants cannot be convicted merely on the theory of last seen. Para 6 of the judgment is reproduced as under:-

“In the absence of proof of homicidal death the appellants cannot be convicted merely on the theory of last seen-they having gone with the deceased in the manner noticed herein before. The appellants' conviction cannot be maintained merely on suspicion, however strong it may be, or on their conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that all the three were good friends for over a decade.”

At the same time, it is also settled that it cannot be held as a general rule and broad proposition of law that where this aspect is not established, it would be fatal to the case of the prosecution and in all cases, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend upon the facts and circumstances of each case and a charge of murder may stand established against an accused even in absence of cause of death if there are other clinching evidence that proves that the deceased has been done to death.

28. In the light of above, now it is to be seen as to whether the prosecution, by

leading evidence, has succeeded in proving that the deceased died homicidal death.

29. Close scrutiny of the evidence available on record makes it clear that the evidence on record produced by the prosecution falls short of the proof of homicidal death of the deceased. Admittedly, the cause of death could not be ascribed by the autopsy surgeon in the post-mortem report, but on a specific query being raised by the police, in the course of investigation, the doctor (PW-15) has specifically opined that cause of death of the deceased was "suicidal hanging". Reasons were also given by the doctor in his cross-examination for arriving at such conclusion by stating that the *"saliva going in the right direction of the face of deceased and the mark of loop present in between trachea & chin are possible in the case of hanging only and these two symptoms noticed by him cannot be present if the neck is pressed by any other means"*. The prosecution has neither declared the doctor (PW-15) hostile nor has the prosecution placed any other evidence to show that the deceased died only a homicidal death. Beside this witness, there is no evidence, direct or indirect, to prove that it was a case of homicide and not suicide. Hence, the medical evidence clearly rules out homicidal death of the deceased.

As far as the finding of the trial Court that testimony of the doctor (PW-15), who conducted the autopsy, is not reliable because he, at the first instance, did not disclose cause of death in the post-mortem report which is indicative of the fact that he has deliberately not mentioned the correct facts in his report and that the opinion of the doctor is not binding on the Court. This finding of the trial Court cannot be accepted for the reason that the post-mortem report (Ex.P-26) speaks about the cause of death to be asphyxia due to ante mortem hanging. The report further

states states about the presence of ligature mark around the neck between larynx & chin going towards upward direction, which is a positive sign of death by suicide by hanging and not of death by strangulation etc. This opinion of the doctor gets support from the medical book of a renown author i.e. Modi's Medical Jurisprudence and Toxicology, Nineteenth Edition, Page No.144, according to which, in case of suicide by hanging, the mark is usually situated above the thyroid cartilage between the larynx and the chin and is directed obliquely upward following the line of mandible (lower jaw). Thus, the symptoms noticed by the doctor on the body of deceased during the course of post-mortem examination are more an indication of a death by suicide than by homicide. It would, therefore, be more correct to say that the post-mortem certificate Ex.P-26 rules out the possibility of death having occurred by homicide.

Undoubtedly, the opinion of a doctor cannot have any binding force and cannot be said to be the last on what he deposes or meant for implicit acceptance. On the other hand, his evidence is liable to be sifted, analysed and tested. However, in this case, there is no other circumstance to show that there could be case of homicide and the said opinion is the only document showing that it was suicidal death. True it is that the word 'suicidal' is missing in the post-mortem report, but, on a specific query being raised by the investigating officer of the case with regard to cause of death of deceased, the doctor has categorically opined that the deceased had died of suicidal hanging. Thus, non-mentioning by PW-15 about the word 'suicidal' cannot be a ground to discard his entire testimony, particularly when the post-mortem report indicates positive signs of death by suicide by hanging and not of death by strangulation.

So far as presence of ante mortem injuries on the body of deceased is concerned, accused/appellant Chandra Sekhar in his statement recorded under Section 313 CrPC has explained the circumstances under which the injuries were caused on the body of the deceased. He has stated that as the deceased had slapped him in the morning of fateful day, therefore, he assaulted her by *nanchaku* on her legs. According to medical evidence also, the external injuries over both knee and legs of the deceased were caused by hard, rough & blunt object. Nothing has been brought on record by the prosecution showing that the explanation offered by accused/appellant Chandra Sekhar is false. It is settled position that when an accused offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions, the same should ordinarily be accepted unless the circumstances indicate that they are false.

That apart, it has come in the evidence that husband of the deceased was suffering from acute mental ailment; the deceased was more meritorious than her husband and she was not happy with the job of her husband as he was working in a dairy. In this way, to some extent, it appears that the deceased was not happy at her own and not because of any mischief from the side of accused/appellants. Thus in our opinion the possibility of deceased having committed suicide by hanging herself cannot be ruled out.

30. In view of above, the determination of complicity of appellant Chandra Sekhar with the murder of deceased becomes unnecessary because of the failure on the part of the prosecution to prove the crucial question, namely, that the deceased met with a homicidal death.
31. Coming next to the conviction and sentence of appellant Chandra Sekhar under Section 498A IPC. A reading of Section 498A IPC shows that

whoever being the husband or the relative of the husband of a woman subject (s) such woman to such cruelty, shall be punished for imprisonment for a term which may extend to three years and shall, also, be liable for fine. The explanations (a) and (b) to Section 498A IPC, furnish an explanation for the word 'cruelty' which means any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to forcing her or any person related to her to meet any demand or property or security or on account of failure to her or any person related to her to meet such demand. In the present case, as per medical evidence, ante mortem abrasions and lacerations caused by hard, blunt & rough object were noticed on the body of the deceased. Accused/appellant himself has admitted in his statement recorded under Section 313 CrPC that he had caused injuries to the deceased by a *naanchaku*. Thus, it is apparent that the deceased was being cruelly treated by her husband i.e. accused/appellant Chandra Sekhar, which is a necessary ingredient for bringing home the charge under Section 498A of IPC and being so, the conviction of accused/appellant under Section 498A of IPC by the trial Court cannot be faulted with.

32. So far as the conviction of accused/appellants in Cr. A. No.405/2005 under Section 498A of IPC is concerned, in order to attract Section 498A of IPC, the prosecution will have to establish that the deceased was subjected to cruelty and for the said purpose, cruelty as explained in Section 498A of IPC, Clause (a) or Clause (b), will have to be proved. From the contents of written complaint (Ex.P-25) it is clear that there is no mention of specific date and time when these appellants demanded dowry

and caused cruelty and harassment to the deceased, except that in the marriage cash of Rs.50,000/- and other household articles like television, fridge, cooler, motor cycle, gold & silver ornaments were given as dowry. Thus, there is no reliable, cogent and trustworthy evidence on record with regard to demand of dowry as well as mental & physical cruelty meted out to the deceased by these appellants for demand of dowry. In absence of any particular allegation against these appellants in this behalf, it would be improper to uphold their conviction under Section 498A of IPC.

33. In the result;

- Cr.A. No.393/2005 filed by appellants Ram Kumar & Smt. Sarita Soni is allowed. Impugned judgment convicting and sentencing them under Section 498A of IPC is hereby set aside and they are acquitted of that charge. They are already on bail. Their bail bonds stand discharged.
- Cr. A. No.405/2005 filed on behalf of appellant Chandra Sekhar is allowed in part. Conviction and sentence of accused/appellant Chandra Sekhar under Section 302 IPC are hereby set aside. However, his conviction & sentence under Section 498A of IPC is hereby maintained.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan/-