

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 238 of 2008**

- Shiv Kumar, S/o Buddhu @ Budhram Mahar, aged about 38 years, R/o Village – Khujji, P.S. Dongargaon, Distt. Rajnandgaon (CG)

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Dongargarh, District – Rajnandgaon (CG)

---- Respondent

For Appellant	:	Shri Prasoon Agrawal, Advocate.
For Respondent/State	:	Shri Dhiraj Wankhede, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

(25.05.2017)

Pritinker Diwaker

This appeal arises out of the judgment of conviction and order of sentence dated 21.1.2008 passed by the Sessions Judge, Rajnandgaon in ST No.80/2007 convicting the appellant under Sections 302 & 201 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.1000/- and RI for five years and to pay a fine of Rs.1000/- with default stipulations respectively.

02. In the present case, name of the deceased is Bitawanbai, wife of the appellant. As per prosecution case, the appellant used to suspect the fidelity of his wife and quite often there used to be quarrel between

the two on this count. On or before 27.3.2007 the appellant committed murder of his wife/deceased by causing her several injuries and thereafter burnt her. It is further alleged that the appellant dragged the dead body up to a distance of 1 km from his house and hid the same near the village pond under the stones. When the deceased was not seen in the village, there was whisper that it is the appellant who might have killed her. Upon insistence of the villagers, a missing report (Ex.P/4) was lodged on 6.4.2007 by the appellant accompanied by PW-6 Heeralal (Village Kotwar), Sarpanch and other villagers. On 7.4.2007 when the police along with the villagers were searching for the deceased, her dead body, which was in a decomposed condition, was found near the village pond by the villagers. Thereafter, Dehati Merg Intimation (Ex.P/7) was recorded on 7.4.2007 at 2.30 pm at the instance of PW-6 Heeralal. Immediately thereafter at 2.35 pm Dehati Nalishi (Ex.P/6) was recorded. Numbered merg (Ex.P/18) was recorded at 11.25 pm and thereafter FIR (Ex.P/24) was registered against the appellant on 7.4.2007 based on merg enquiry under Sections 302 and 201 of IPC. Inquest on the dead body was conducted on 7.4.2007 vide Ex.P/20. Before sending the dead body for postmortem, it was identified by the villagers Khorbahra Ram Chouhan, Budhram (father of the appellant) and Mahatru Dewangan and this is evident from the internal page No.3 of the postmortem report. Further, father of the appellant Budhram took the dead body in his custody for the purpose of performing last rites vide Ex.P/15. The postmortem was conducted on 8.4.2007 by PW-1 Dr. KK Ramteke vide Ex.P/1. As the dead body was highly decomposed and certain vital

organs were missing, the doctor could not give any opinion regarding cause and mode of death. The appellant was also medically examined vide Ex.P/2 by PW-1 Dr. KK Ramteke who found old healed scar marks over left palm & dorsal extending up to elbow joint on left hand, right palm & dorsal, left foot up to toes and over left knee. These marks appeared to have been caused by burn injury, the injury was simple in nature and seemed to have been caused two weeks prior to the date of examination. After filing of charge sheet, the trial Court framed charges under Sections 302 & 201 of IPC against the accused/appellant.

03. So as to hold the accused guilty, the prosecution examined 15 witnesses in all. Statement of the accused 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, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that the 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. The chain of circumstantial evidence is not complete and therefore, the appellant is entitled for acquittal.

(ii) that the dead body was found in highly decomposed condition

beyond recognition, which is evident from the evidence of autopsy surgeon (PW-1).

(iii) that the appellant has taken a specific defence that the body was not identifiable and it was not the body of the deceased and further, it was not clear as to whether the body was of a male or female.

(iv) that a very improbable story has been put forth by the prosecution where it is said that the body was kept hidden by the appellant under the stones near the village pond, which was being regularly used by the villagers for their day to day need. If the dead body was lying there for about 10 days, it would have been certainly noticed by the villagers.

(v) that PW-6 Heeralal, village Kotwar, is not a reliable witness.

(vi) that though FSL report is positive but there is no serological report confirming the origin and group of the blood found on the articles so seized.

(vii) that the persons who have given the FSL report have not been examined by the prosecution.

06. On the other hand, State counsel supporting the impugned judgment submits as under:

(i) that identity of the dead body is not in dispute and the same was duly identified even before sending it for postmortem by villagers Khorbahra Ram Chouhan, Budhram (father of the appellant) and Mahatru Dewangan. Further, father of the appellant had taken the dead body in his possession for performing the last ritual rites. No question whatsoever has been put to the witnesses including that of Investigating Officer by the defence in respect of identity of the dead

body.

(ii) had any dispute been raised by the appellant regarding identity of the dead body during trial, the same would have been answered by the prosecution in accordance with law. In this respect, reliance has been placed on the decision of the Supreme Court in the matter of **Swarn Kaur Vs. Gurmukh Singh and others**, reported in **(2013) 12 SCC 732**.

(iii) that on the memorandum of the accused/appellant Ex.P/10, seizure Ex.P/11 was effected by which a jerrycan containing ½ liter of kerosene and a piece of burnt wood, which was used by the appellant for burning the deceased and witness to memorandum and seizure PW-6 Hiralal has duly supported the prosecution case.

(iv) that the appellant has failed to offer any explanation as to how he suffered burn injuries which were duly proved by PW-1 Dr. KK Ramteke vide Ex.P/2.

(v) that the accused/appellant gave a false explanation in his defence that his daughter was burnt whereas the said daughter was never produced by the appellant before the doctor or any of the witnesses. Thus offering a false explanation serves as an additional link in completion of chain of circumstantial evidence. Reliance is placed on the decision of the Supreme Court in the matter of **Swapan Patra and others Vs. State of W.B.**, reported in **(1999) 9 SCC 242**.

(vi) that from outside the house of the appellant, seizure (Ex.P/21) of the soil where the deceased was burnt, piece of sari which the deceased was wearing at the time of incident, one green coloured burnt sari and pieces of bangles was made and likewise from the place

where the dead body was found, seizure (Ex.P/22) was effected whereby bunch of hair, broken bangles of blue colour, mud stained with blood, plain and bloodstained soil and stone stained with blood were seized.

(vii) that as per FSL report (Ex.P/28 and P/29) both the pieces of bangles found from the house of the appellant and the deceased and that which were found from the place where the dead body was hidden were having same physical characters. Likewise, in chemical examination kerosene oil was found in the half burnt sari seized from the place where the body was kept hidden.

07. PW-1 Dr. K.K. Ramteke, who conducted postmortem on the body of the deceased vide Ex.P/1, has stated that the body was in decomposed condition and many important parts of the body were found missing. He, however, has categorically stated that the body was of a female but considering the condition of the dead body, it was difficult to express any opinion regarding the cause or mode of death. According to him, face of the body was not identifiable. It is only after examination of the skin, it could have been said whether the death was due to burning or for some other reasons. He also examined the accused/appellant vide Ex.P/2 and noticed old healed scar marks over left palm & dorsal extending up to elbow joint on left hand, right palm & dorsal, left foot up to toes and over left knee. These marks appeared to have been caused by burn injury, the injury was simple in nature and seemed to have been caused two weeks prior to the date of examination.

08. PW-2 Chandrashekhar Pansari is a private doctor to whom the appellant had approached by saying that his daughter has suffered burn injuries and while saving her, he also suffered burn injuries. He has stated that when he asked the appellant to bring his daughter for treatment, the appellant went back and did not return. PW-3 Sevak Ram Dhruv made entry in the Rojnamchasanha regarding missing report lodged by the appellant vide Ex.P/4. PW-4 Dulichand Yadav found the dead body of the deceased in decomposed condition when he was searching the deceased along with other villagers. PW-5 Kunj Lal Netam, Home Guard, helped in effecting seizure vide Ex.P/5. PW-6 Heeralal, Village Kotwar, is the person at whose instance Dehati Nalishi (Ex.P/6) and Dehati Merg (Ex.P/7) were recorded. He also accompanied the appellant when the missing report Ex.P/4 was lodged. This witness also accompanying the villagers when the dead body was found. He is also a witness of memorandum of the appellant Ex.P/10 and seizure Ex.P/11 and proved the same. He has also proved his statement made before the police Ex.D/1 identifying the dead body.

09. PW-7 Smt. Santoshi Bai, PW-8 Dukalu Ram, PW-9 Ku. Laxmibai (daughter of the appellant and the deceased) and PW-10 Ku. Rubibai (elder daughter of the appellant and the deceased) have not fully supported the prosecution case. PW-8 has stated that on 22nd he had gone to the house of the appellant and at that time, the appellant was quarreling with his wife (deceased). He has stated that the appellant was making complaint to his wife that she listens to radio throughout

the night and that the appellant also used to suspect the character of his wife by saying that she has affair with other person. He has further stated that on 23rd or 24th he saw hand of the appellant burnt. PW-10 has stated that on the date of incident her father and mother were quarreling and when her mother went missing she enquired from her father who informed her that she has gone towards the road.

10. PW-11 Smt. Pawarabai, mother of the appellant has turned hostile. PW-12 Buddhu @ Budhram, father of the appellant, has also turned hostile. However, he has not stated anything that he did not identify the dead body of the deceased. PW-13 Dr. Rajkumar Singh, Forensic Expert, has stated that part of the dead body were sent to him for examination and after examination of the same he found it to be of a female. His opinion is Ex.P/17. He has further stated that after examining the bones sent to him, he noticed that these bones were of female and it appeared to have been broken by hard and blunt object. PW-14 Ramchandra Sharma, investigating officer, has duly supported the prosecution case. No question whatsoever has been put to this witness by the defence on the point of identification of the dead body. PW-15 Jeevrakhan is a witness to inquest Ex.P/20 and seizure Ex.P/21. However, he has not fully supported the prosecution case but has admitted his signatures on the documents.

11. In his statement under Section 313 of Cr.P.C. when questions were put to the appellant regarding his burn injuries, he denied the same. He has even further denied the fact that he informed the doctor that his daughter had suffered burn injuries and while saving her, he

too got burnt. In his defence, he has merely stated that he has been falsely implicated and the dead body which was found was not of his wife.

12. 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 which are as under:

(i) that prior to the incident there was quarrel between the appellant and his wife/deceased and this fact has been duly proved by PW-10 Ku. Rubibai and PW-11 Smt. Pawarabai,

(ii) that burn injury was noticed on the hand of the appellant, this fact is evident from his MLC (Ex.P/2), the same has been proved by PW-1 Dr. KK Ramteke, PW-2 Chandrashekhar Pansari and PW-8 Dukalu Ram also,

(iii) that the appellant gave false information to PW-2 Chandrashekhar Pansari, a private doctor, that his daughter has suffered burn injuries and while saving her, he too got burnt but never produced his daughter before the said doctor.

(iv) though burn injuries were found on the body of the appellant and the same has been duly proved by the witnesses as mentioned above, but the appellant in his statement under Section 313 of Cr.P.C. has categorically denied the factum of suffering burn injury and likewise has also not given any plausible and satisfactory reply in respect of his claim that his daughter had suffered burn injuries accidentally.

(v) that on the memorandum of the appellant (Ex.P/10), seizure of jeerycan containing ½ liter of kerosene and half burnt wood was made and witness to memorandum and seizure PW-6 Hiralal has duly

supported the prosecution case.

(vi) that from outside the house of the appellant vide Ex.P/21 seizure was made of the soil where the deceased was burnt, piece of sari which the deceased was wearing at the time of incident, one green coloured burnt sari and pieces of bangles and likewise from the place where the dead body was found, seizure (Ex.P/22) was effected whereby bunch of hair, broken bangles of blue colour, mud stained with blood, plain and bloodstained soil and stone stained with blood were seized. According to FSL report (Ex.P/28 and P/29) both the pieces of bangles found from the house of the appellant and the deceased and that which were found from the place where the dead body was hidden were having same physical characteristics. Likewise, in chemical examination kerosene oil was found in the half burnt sari seized from the place where the body was kept hidden.

(vii) though the wife of the appellant was missing, yet he did not lodge any report of his own and it was lodged only when PW-6 and other villagers insisted.

13. It is by now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no

reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof. (See ***Sunil Clifford Daniel vs. State of Punjab, (2012) 11 SCC 205; Sampath Kumar vs. Inspector of Police, Krishnagiri, (2012) 4 SCC 124; and Mohd. Arif @ Ashfaq vs. State (NCT of Delhi), (2011) 13 SCC 621***)

14. If the incriminating circumstances appearing against the appellant, as mentioned above, are examined on the touchstone of principle of law relating to circumstantial evidence, in the considered opinion of this Court, they are sufficient to lead to only one conclusion that it is the accused/appellant who committed murder of his wife and in order to cause disappearance of the evidence of the offence, took the dead body to a village pond up to a distance of 1 km from his house and hid the same near the village pond under the stones.

15. We find no substance in the argument of the appellant that in absence of proper identification of the dead body, the appellant cannot be convicted. True it is that the dead body was found in decomposed condition and the face was beyond recognition. However, the dead body was duly identified before sending it for postmortem by villagers Khorbahra Ram Chouhan, Budhram (father of the appellant) and Mahatru Dewangan. Further, father of the appellant had taken the dead body in his possession for performing the last ritual rites in presence of the accused/appellant vide Ex.P/15 and no protest was made by the appellant at that time. This apart, no question to this effect has been

put by the defence to the witnesses including the Investigating Officer. Had the dead body was of someone else, neither the father of the appellant nor the appellant would have accepted the same as the body of the deceased. It appears that the identity of the dead body has been disputed by the appellant only at the time of trial but even no relevant question has been put to the investigating officer or any other witness in this respect. In this view of the matter, mere saying in his statement under Section 313 of Cr.P.C. by the appellant that the dead body was not of his wife is not sufficient to doubt the identity of the deceased, rather in the facts and circumstances of the case, such denial amounts to an additional link in the chain of circumstances against him.

16. For the reasons stated above, we are of the opinion that the prosecution has been successful in proving guilt of the appellant based on circumstantial evidence and as such, the trial Court has not committed any illegality or infirmity in convicting him under Sections 302 and 201 of IPC. The appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Though the appellant was granted bail, but as reported, he is still in jail and therefore, no further order regarding his arrest is required. It is made clear that if the appellant is in jail in connection with some other case, he be taken into custody in the present case also to serve out the remaining part of his sentence.

Sd/

(Pritinker Diwaker)
Vacation Judge

Sd/

(Sanjay K. Agrawal)
Vacation Judge