

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 345 of 2013

- Smt. Sudha Chauhan W/o Wd/o Late Arwind Chauhan Aged About 33 Years R/o Ward No. 19, Near At Kali Mandir Manendragarh, Distt. Korea, C.G. Present Address Village Semra, Pendra Road, Gaurella, Distt. Bilaspur C.G.

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh Through Police Station Manendragarh, Distt Korea C.G.

---- Respondent

For Appellant	:	Shri Yogendra Chaturvedi, Advocate
For Respondent	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker, J

08/05/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 18.3.2013 passed by the 2nd Additional Sessions Judge, Manendragarh, District Korea in S.T. No.94/10 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing her to undergo R.I. for Life & fine of Rs.2,000/- and RI for 7 years & fine of Rs.1,000/-, plus default stipulations, respectively.
2. In the present case, name of deceased is Arvind Chouhan.
3. The prosecution story, in brief, is that deceased Arvind Chouhan after

deserting his legally married wife had performed love marriage with the accused/appellant. Initially, the deceased had no source of income whereas the accused/appellant was practising law and therefore the father of accused/appellant gave one car to the deceased to which he was plying as taxi and earning livelihood for himself and his family members. On 4.2.2010 PW-14 S.L. Verma & PW-15 Sanjay Kumar hired the taxi of the deceased for going to Raipur from Manendragarh. In the night intervening 5th & 6th February, 2010, the deceased returned his home from Raipur and he was offered a glass of milk by the accused/appellant. On drinking the milk, the deceased felt that the taste of milk was bitter and after drinking the milk, he felt restlessness. The deceased made a telephone call to his landlord Ramkishan (PW-11) & Ramkishan Soni (PW-3) and had asked them to come to his house. When the aforesaid persons reached home of the deceased, they were informed by the deceased that after drinking the milk offered by accused/appellant, taste of which was bitter, he is feeling restlessness. The deceased had requested them to take him to the hospital and therefore they immediately took the deceased to the hospital where he died at 6.45 a.m. while undergoing treatment. Intimation regarding death of deceased was sent from the hospital to the police station based on which Merg Intimation (Ex.P-1) was recorded on 6.2.2010. Inquest on the body of deceased was conducted on 6.2.2010 vide Ex.P-9A. Body was sent for post-mortem examination which was conducted by Dr. Suresh Tiwari (PW-20) vide Ex.P-15A. In the opinion of autopsy surgeon, cause of death was asphyxia and he preserved the viscera to find out the cause of death. Viscera & clothes of the deceased were sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-19 was received in which poisonous substance (Organo Phosphorous Pesticide) was found in Articles-A, C & D i.e.

viscera and sample of vomit emitted out by the deceased on his shirt. However, no poisonous substance was found in the solution of viscera and the steel glass in which milk was offered to the deceased. After merging enquiry, FIR (Ex.P-12) was registered against the accused/appellant under Sections 302 & 201 IPC.

4. On completion of investigation, charge sheet for the offence punishable under Sections 302 & 201 IPC was filed against the accused/appellant and accordingly the charges were framed by the trial Judge against her. The prosecution in order to bring home the charges levelled against the accused/appellant examined 22 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which she abjured her 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;
 - there is no direct evidence that it is the accused/appellant who administered poison to the deceased through milk because in the report of FSL no poisonous substance has been found in the steel glass in which allegedly the milk was given to the deceased. Even there is no evidence to the effect that the appellant was in possession of poison. Thus, the prosecution has failed to establish by evidence the necessary conditions for the proof of murder by poison.
 - there is absolutely no motive proved by the prosecution as against the appellant and therefore the entire case of prosecution falls to the ground.
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.
- deceased made oral dying declaration before PW-3 & PW-11 that it is the accused/appellant who gave milk to him and after drinking that milk, he felt restlessness.
- the relations between the deceased and the accused/appellant were not cordial and the accused/appellant wanted divorce from the deceased.
- accused/appellant being a practising lawyer was aware of the fact that all the evidence are to be disappeared and therefore immediately after offering milk to the deceased, she had cleaned/washed the glass. Cleaning of utensils at 3.00 a.m. in the morning is an unnatural conduct which raises an accusing finger towards the accused/appellant. Even the accused did not accompany her husband to the hospital and remained in the house.
- Even if the poison is not seized from the possession of the appellant or from her house but the fact remains that only after drinking the milk offered by the accused/appellant, the deceased felt restlessness and died during the course of treatment.
- Methyl Parathion is a quick reacting component of organo phosphorous and at times within half an hour of its consumption, a death can take place.

8. We have heard counsel for the parties and perused the evidence available on record.

9. Ramashankar (PW-2) is the police person who helped in the investigation.

10. Ganga Yadav (PW-3), neighbour of the deceased, has stated that on 6.2.2010 at about 4-4.15 a.m. in the morning the deceased made a telephone call and called him at his home. After some time he also received the telephone call of the landlord (PW-11) informing him that deceased is not well. He has further stated that when he reached the home of deceased, Ram Kishan Soni (PW-11) was already there. On being asked, the deceased informed him that at about 3.30 a.m. in the morning he returned home from Raipur, the accused/appellant offered milk to him and after drinking milk, he started feeling stiffness and restlessness in the body. On being asked as to who gave milk to him, the deceased told the name of accused/appellant. He has further stated that at that time accused/appellant was also present there and she had admitted that it is she who gave milk to the deceased. He has further stated that on the request of the deceased, they took him to the hospital. He has further stated on being inquired about the steel glass, the accused/appellant had informed him that she had cleaned/washed the same. In the cross-examination this witness stuck to his version made by him in his examination-in-chief.

11. Shiv Prasad (PW-4), Dipak Khalkho (PW-5), Santosh Sahu (PW-7) are the police persons who helped in the initial investigation. Jamuna Yadav (PW-6) is the person in whose presence one letter was seized vide Ex.P-7. Harihar Singh (PW-9) is the witness of inquest (Ex.P-9A), seizure memo Ex.P-3.

12. Sarju Yadav (PW-10), brother of PW-3, has stated that after performing love marriage, the deceased and the accused were living together. On 6.2.2010 at about 4.00 a.m. his brother Gangaram (PW-3) had received the phone call of the deceased requesting him to come to his house as he is not feeling well. On receipt of the said telephone call, his brother

went to the house of the deceased by the vehicle of deceased and from there they took the deceased to the Central Hospital, Manendragarh. He has further stated that having come to know about the illness of deceased from his mother, he reached the hospital where the deceased informed him that he got ill only after drinking milk. He has further stated that the deceased was admitted in the hospital, however, after some time, he expired.

13. Ramkishan Soni (PW-11) is the landlord of deceased. He has stated that on 6.2.2010 at about 4.30 a.m. in the morning the deceased made a telephone call and requested him to come to his house and took him to the hospital as he is feeling restlessness. He has further stated that he made a call to Gangaram (PW-3) and informed him about the telephone call received by him from the deceased. He has further stated that when he reached the house of accused/appellant, he found him lying on the bed and on being asked, he informed that he is feeling restless. Meanwhile, Gangaram (PW-3) also came there. He has further stated that they were informed by the deceased that as soon he reached home, the accused/appellant gave him a glass of milk and on drinking the milk, he realize that taste of milk was bitter and thereafter he started feeling stiffness & restlessness in the body. He has further stated that he and Gangaram (PW-3) took the deceased in a vehicle to the Central Hospital, Manendragarh. On the way, they met Sarju Yadav, brother of deceased, and the deceased told him also that he is not feeling and requested him to save his life. He has further stated that the doctor after medically examining the deceased had opined that it is a case of poisoning. Thereafter the deceased was admitted in the hospital and his treatment was started. He has further stated that the deceased had vomited in the hospital and at about 6.45 a.m. the

deceased expired. In the cross-examination this witness stuck to his version given in the examination in the chief.

14. Sharif Khan (PW-12) has stated that on 6.2.2010 he had gone to Janakpur to purchase goat. At about 3.50 a.m. in the morning he received the telephone call of the deceased and he informed him that after drinking the milk given by his wife, he is feeling uneasy.

15. Lawrence Toppo (PW-13) is the neighbour of the deceased and he has stated that the relations between the deceased and the appellant were not cordial and they used to quarrel with each other.

16. S.L. Verma (PW-14) has stated that on 4.2.2010 he had hired the vehicle of the deceased for going to Raipur from Manendragarh in connection with some official work. He has further stated that they returned Manendragarh from Raipur on 5th. He has further stated that while returning Manendragarh, all of them had their dinner at about 11.30 p.m. in a hotel situated near Kota. He has further stated that after dropping him at his house at about 3.00 p.m., the deceased had gone to drop others. He has further stated that during the entire trip, the deceased did not complain any problem relating to his health.

17. Sanjay Kumar (PW-15) Almost similar statement has been made by Sanjay Kumar (PW-15).

18. Krishna Chouhan (PW-16) is the elder brother of the deceased. He has stated that after taking divorce from his first wife, the deceased had performed love marriage with the accused/appellant. He has further stated that the deceased used to come to his house and inform that the accused/appellant had illicit relation with one senior advocate at Pendra. The deceased also used to inform his mother that relations between him and the deceased are not cordial.

19. Balkrishna Rajwade (PW-17) is the Head Constable who helped in the

initial investigation. Rampratak Singh (PW-18) is the Patwari who prepared the spot map of Ex.P-11. M.R. Pandey (PW-19) is the City Inspector who did some part of the investigation.

20. Dr. Suresh Tiwari (PW-20) is the doctor who had performed post-examination examination over the body of deceased and gave his report vide Ex.P-19A.

21. Dr. Small Mardi (PW-21) is the doctor who had initially treated the deceased at the Central Hospital, Aamakherwa, Manendragarh. According to this witness, PW-3 & PW-11 informed him that only after drinking the milk, the deceased had started feeling uneasy, complaining pain in stomach and vomited.

22. As correctly pointed out by the counsel for the accused/appellant, 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.

23. On close and careful scrutiny of evidence on record it is clear that the deceased and accused/appellant were living under the same roof and the deceased died due to poisoning which is established from the report of FSL (Ex.P-19A) in which methyl parathion poison

(Organophosphorus compound) was found in the vomit & viscera of the deceased. According to PW-3 & PW-11, on being called by deceased saying that he is not feeling well, they rushed to the house of deceased and there the deceased informed them that on his return from Raipur at about 3.00 a.m. the accused/appellant gave him milk to drink and after drinking the said milk, he realized that the taste of said milk is bitter and immediately thereafter he started feeling uneasiness. It has also come in the statement of PW-11 that accused/appellant had admitted that some tablet had been fallen in the milk. Statement of PW-14 & PW-15, who had hired the taxi of deceased for going to Raipur from Manendragarh, goes to show that during the entire trip the deceased did not express any discomfort. From the above facts it is clear that prior to reaching his house, the deceased was not feeling any sort of uneasiness and only after drinking the milk given by accused/appellant, he felt restlessness. There is no explanation by the accused/appellant in her statement under Section 313 Cr.P.C. as to why she offered milk to the deceased at three o'clock in the morning. This conduct of the accused in giving milk to the deceased in the given facts and circumstances, raises suspicion over her and points towards her guilt.

24. Another incriminating circumstance against the accused/appellant is that she immediately cleaned the glass in which she gave milk to the deceased. This conduct of the accused/appellant goes to show that she knew that the steel glass contained poison and therefore she had taken all the care to eliminate and destroy the evidence against her, otherwise there was no justification in cleaning the glass so early. It is noteworthy to mention here that the accused/appellant was a practising law and as such was well aware of the niceties of law and therefore, in order to make sure that there may not be a trace of poison left in the glass, she

had cleaned the glass with intent to cause disappearance of most incriminating evidence which could have been used against her to prove her complicity in the crime in question.

25. True it is that there is no evidence as to the possession of the poison with the accused/appellant, but it is admitted position that the deceased died of methyl parathion poison and the deceased had informed his landlord & neighbour (PW-11 & PW-3) that he got ill only after drinking the milk given to him by accused/appellant. Therefore, we are considered opinion that mere failure of the prosecution to prove the possession of poison with the accused should not lead to acquittal of accused. Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the Investigating Officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such cases, it is more often than not, impossible for the prosecution to prove possession of poison with the accused.

26. As regards the motive, normally, there is a motive behind every criminal act. However, this does not mean that where prosecution has failed to prove motive, the offender cannot be convicted. It is well known that motive is always hidden in the heart of the culprit and the prosecution is not always obliged to prove motive. In the present case, however, it has come in the evidence that the relations between the accused/appellant and the deceased were strained and the accused/appellant did not want to live with the deceased and wanted divorce from him, which is evident from the document Ex.P-7, a registered notice under Section 80 CPC sent by accused/appellant to the deceased for

dissolution of their marriage and it appears that the deceased was not ready to give divorce to her. In this view of the matter, it can be safely inferred that to get rid of the deceased the accused/appellant decided to finish him and in furtherance thereof she administered poison to the deceased by mixing in the milk as a result of which he died within a few hours.

27. The combined effect of the above circumstances is that it is the accused/appellant, who had opportunity to administer poison, had in fact administered poison (organophosphorus pesticide) to the deceased by mixing it in the milk which led to his death.

28. In the result, the appeal has no substance, the same is liable to be dismissed and is hereby dismissed.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

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