

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 143 of 2010****Judgment reserved on 22-1-2018****Judgment delivered on 15-02-2018**

- State Of Chhattisgarh Through P.S. Bankimongra, District Korba, Chhattisgarh

---- Appellant**Versus**

- Shivdayal, S/o Samaru @ Pasu Anant, Aged about, 24 years, R/o Chaka Buda P.S.Bankimongra, Tah. Katghora, District Korba., Chhattisgarh

---- Respondent

For Appellant/State : Shri Arvind Dubey, Panel Lawyer
For respondent : Shri Awadh Tripathi, Advocate

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV Judgment**Per Ram Prasanna Sharma, J.**

1. This acquittal appeal is preferred against the judgment dated 3.8.2007 passed by the Additional Sessions Judge, Katghora, Sessions Division Korba (CG) (for short the 'trial Court') in Sessions Trial No. 100/2006 wherein the trial Court has acquitted the respondent for commission of murder of one lady namely- Sukrima under Section 302 of the Indian Penal Code.

2. Facts of the case in brief are that deceased Sukrima and her sister Sushila alias Susri were residing in village Jawali and they were studying. The respondent committed forcible sexual intercourse with Sukrima and when she threatened the respondent that she will inform the incident to her parents, the

respondent administered some poisonous substance to her which ultimately caused her death. The matter was reported to Police Station Bankimongra and after registration of First Information Report, Police swung into action and body of the deceased was sent for autopsy. Viscera of the deceased was sent for chemical examination and after examination it was found that she consumed poisonous substance which is a pesticide 'phosphamedan'. Statements of the witnesses were recorded under Section 161 Cr.P.C. and after completion of investigation, charge sheet was filed against the respondent. The respondent did not plead guilty, therefore, trial was conducted. After examination of the witnesses, statement of the respondent was recorded under Section 313 Cr.P.C. After hearing counsel for both the parties, the trial Court acquitted the respondent of the charge as aforementioned.

3. Learned counsel for the State submits as under:

(i) The trial Court has overlooked the statement of Sushila alias Susri (PW1) who was present at the time of incident and residing with the deceased and same was corroborated by other witnesses, thus finding of the trial Court is perverse in facts of the case.

(ii) The trial Court has given undue weightage to minor omissions and contradictions which are bound to occur, but the same is not sufficient to discredit the version of the witnesses present during the incident.

(iii) The trial Court has misdirected itself in believing that it may be a case of self consumption of poison.

4. On the other hand, learned counsel for the respondent submitted that the finding arrived at by the trial Court is according to the facts and circumstances of the case based on legally admissible evidence and not liable to be disturbed.

5. Heard learned counsel for the parties and perused the record.

6. The first point for consideration is whether this Court can disturb the finding of acquittal recorded by the trial Court and whether any limitation should be placed upon such power.

7. In **Sheo Swarup vs. King Emperor reported in AIR 1934 Privy Council 227**, **Athley Vs. State of UP reported in AIR 1955 SC 807**, and **Sanwat Singh Vs. State of Rajasthan reported in AIR 1961 SC 715**, it is held that: (1) an appellate Court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup Case* afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (I) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record

having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.'

8. To substantiate the charge, prosecution has examined as many as 14 witnesses and to nullify the charge defence has examined 3 witnesses.

9. Sushila @ Sushri (PW1) was residing with the deceased at village Jawali and claiming to be an eye-witness to the incident. She deposed that the respondent entered into her house at night and threatened her and again on next day, he entered into her house and administered some liquid to her sister. As per this witness, the respondent subjected the deceased to some poisonous substance in liquid form, but in her cross-examination, she admitted that this fact was not stated before the Investigating Officer when he recorded her statement under Section 161Cr.P.C. as per Ex. D/1. Date of incident is 20.3.2006 and statement of this witness is recorded before the Police Officer on the same day in which, she stated that her sister- Sukrima consumed poison herself. There is no explanation in the statement of this witness as to what prompted her to claim to be an eye-witness before the trial Court and what was the reason for not stating the same before the Investigating Officer on the date of incident. It is a settled law that quality of the evidence is to be seen. When a witness is deposing

different thing at different stages, his/her version loses its credibility and it is difficult to act on the statement of such witness.

10. Bagdiha (PW2) is father of the deceased as well as Sushila alias Susri (PW1). Smt. Ramabai (PW3) is mother of the deceased, who has stated that Sushila @ Susri (PW1) informed them that the respondent has administered some poisonous substance to Sukrima. Both the witnesses are hearsay witnesses and they have stated what Sushila alias Susri (PW1) informed them.

11. Now the point is that whether this hearsay evidence is admissible and can be acted upon. Hearsay evidence is not received as relevant evidence. In **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

In view of the above, hearsay evidence is inadmissible in evidence and same cannot be acted upon.

12. Fekulal (PW11) is a person who deposed that Sushila alias Susri (PW1) informed him that Sukrima consumed something. This witness is also hearsay witness and his testimony is not to be acted upon. When Sushila alias Susri (PW1) is not consistent to her earlier version, it is difficult for us to record any finding on the basis of her statement and when version of Sushila alias Susri (PW1) is not reliable, version of other witnesses to whom she informed about the incident is not legally admissible in evidence. As a whole, it is not established that the respondent had administered poison to the deceased.

13. Dr. R.S. Kanwar (PW9) is a Medical Expert, who conducted autopsy of the deceased and as per version of this witness, after examination he found that no sexual intercourse was committed with the deceased and she was not pregnant.

14. The prosecution is basing its theory on assumption that since the respondent committed forcible sexual intercourse with the deceased and she threatened that the incident will be informed to her parents, that is why the respondent committed murder of the deceased, but from the evidence of the examining Doctor, it is not a case of forcible sexual intercourse and deceased was not pregnant. From the version of Doctor, theory put forth by the prosecution is not believable.

15. True it is that if any offence is committed inside the secrecy of house, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, but here in the

present case, Sushila alias Susri (PW1) was present with the deceased and her earlier version is theory of self consumption of poison and developed theory of administration of poison by the respondent. Both the theories are opposite to each other and it is difficult for us to hold that it is a case of administration of poison by the respondent. In cases of murder by administration of poison, it must be proved beyond reasonable doubt that the accused was in possession of the poison that was found in the body of the deceased before the incident and that possession was not innocent and it was for criminal act. It is not the case here that the respondent purchased the poison from anywhere and was in possession of that poisonous substance 'phosphamedan' before the incident.

16. The view taken by the trial Court is the only view that can be taken in fact and circumstances of the case and same is not liable to be interfered with.

17. In the result, the appeal is liable to be and is hereby dismissed.

**Sd/
JUDGE
(Prashant Kumar Mishra)**

**Sd/
JUDGE
(Ram Prasanna Sharma)**

