

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1155 of 2012

(Arising out of the judgment dated 14.12.2012 passed by Additional Sessions Judge, Mungeli, District Bilaspur in ST No.16/2012)

- Jitendra Kumar Aadil S/o Ganesh Aadil Aged About 25 Years R/o Village Buchvakanpa P.S. Jarhagaon , Distt. Mungeli C.G. ,

---- Petitioner

Versus

- State Of Chhattisgarh Through - P.S. Jarhagaon , Distt. Mungeli C.G.

---- Respondent

For Appellant	Mr. Rajesh Jain, Advocate
For Respondent /State	Mr. Bhaskar Pyasi, Panel Lawyer

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &

Hon'ble Mrs. Justice Vimla Singh Kapoor

Order On Board By

Prashant Kumar Mishra, J.

9/7/2018

1. Heard.
2. The appellant has been found guilty of committing murder of his wife Baby by strangulating her at about 6 p.m. on 4.2.2012. The trial Court has acquitted the other two accused persons namely Amardas, appellant's younger brother and Asmani Bai,

mother of the appellant.

3. The appellant was married with the deceased about 5 year back prior to the date of the incident. They have a 2 ½ year old daughter out of the wedlock. At about 6:00 p.m., on 4.2.2012, the appellant's father Ganesh informed PW-3 Mohan Lal that his daughter has died by hanging. Mohan Lal could not muster courage to visit the appellant's house, therefore, he requested his brother Vikram Mohale (PW-6) to visit the appellant's village at Buchhvakanpa and verify the news. When PW-6 Vikram Mohale reached the village, the dead body of Baby was lying on a cot and was visibly bearing ligature marks over her neck. Therefore, on the next morning, at about 9:30 am, merger intimation was lodged by PW-3 Mohan Lal raising doubt that his daughter has been murdered. The FIR-Ex.P/17 was registered on 13.2.2012 against the present appellant only for the reason that in the postmortem report- Ex.P/13, the Autopsy Surgeon Dr. MK Rai (PW-12) has found that the death has occurred due to strangulation by applying thick thread or wire; duration of death was within 24-36 hours and; nature of death was most probably homicidal. Coupled with the case diary statements of the witnesses to the effect that a day prior to the date of the incident, there was a dispute leading to altercation between the appellant and the deceased, the charge sheet was filed against the present appellant and two other acquitted persons for the offence under Sections 302 and 201 of IPC.
4. In the course of trial, the prosecution has examined PW-1 Om

Prakash, PW-2 Phup Ram Sahu, PW-3 Mohan Lal, PW-4 Kamsurat, PW-5 Geeta, PW-6 Vikram Mohale, PW-7 Manohar Mohale, PW-8 Sanjay Bhonsle, PW-9 Mas, Netam, PW-10 Dr. R.K. Singh, PW-11 Chhotelal Ahirwar, PW-12 Dr. SK Rai and PW-13 B. Ujur.

5. The appellant abjured the guilt and complained of false implication. However, he did not examine any defence witnesses. On the basis of the disclosure statement made by the appellant and other circumstantial evidence, the trial Court has convicted him for committing offence under Section 302 of IPC.
6. Mr. RK Jain, learned counsel for the appellant, would submit that the fact that the appellant was not present in the house at the time of the incident having been established from the statements of the prosecution witnesses, the appellant could not have been convicted. He would submit that the trial Judge has wrongly believed the part of the disclosure statement Ex.P/1, which is not admissible in evidence and has, thus, committed serious error of law.
7. Per contra, Mr. Bhaskar Pyasi, learned Panel Lawyer for the State, would submit that there being evidence of strained relation between the husband and wife and further evidence that the appellant and his relatives has tried to mislead the Investigating Officer by citing different reasons at different point of time regarding the manner in which the deceased died, the trial Court has rightly convicted the appellant.

8. We have heard learned counsel for the parties at length and perused the record including the photographs of the dead body of the deceased, which is part of the postmortem report-Ex.P/13 and the same compels us to draw an instant inference or conclusion that the deceased has been murdered by strangulation with a rope or wire. However, the fact that the deceased has been murdered is one thing and to say that the appellant has murdered the deceased is another thing, because, for that, we have to rest our judgment on the basis of legally admissible evidence and not on the basis of emotion or morality.
9. The evidence put-forth by the prosecution is in the form of statements of the parents of the deceased namely PW-3 Mohan Lal & PW-4 Kamsurat and two of the deceased's uncles namely Geeta & PW-6 Vikram Mohale. The pivot of the prosecution case depends on the findings which may be recorded on the basis of the statements of these four persons.
10. Mohan Lal (PW-3) would state that the appellant's father Ganesh had informed him about 2 days prior to the date of the incident that the appellant and his wife had altercation on account of stitching of blouse for the deceased. This witness is a resident of village Fadwani and had immediately gone to village Buchvakanpa along with PW-5 Geeta on receiving the information about the dispute between the appellant and the deceased. He says that when they reached village Buchwakanpa, the appellant was not present in the house and

they had persuaded the deceased not to raise quarrel. He called Ganesh at about 12-1:00 noon on the next day to enquire as to whether the appellant has returned to the house but was informed that the appellant has still not returned. During cross-examination, he admits that Ganesh had informed him that the deceased had tried to commit suicide about 2 days back, on which, he had persuaded the deceased not to do such things. He would further admit that before the date of the incident, appellant Jitendra had left the house. There is no statement by this witness that Jitendra was available in the house on the date of the incident. Similarly, PW-4 Kamsurat (mother of the deceased) shall also admit that she was informed by the appellant's mother that Jitendra had left the house at 4:00 am.

11. PW-5 Geeta moves a step ahead to state in his examination-in-chief that when he had gone to village Buchwakanpa with PW-3 Mohan Lal and had met deceased Baby, she had informed them that Jitendra had left the house at about 4:00 am. In cross-examination, this witness would admit that when after receiving the information about the death of the deceased, they went to the house of the appellant, he was not present there, meaning thereby, that the appellant was not present in the house since the previous day of the incident when he left the house at 4:00 am. PW-6 Vikram Mohale is an Ex-MLA. He had gone to the house of the deceased immediately after the incident. He admits like other witnesses PW-3 Mohanlal , PW-4 Kamsurat & PW-5 Geeta that the deceased had no problem in her marital house at any point of time and was living peacefully and happily.

This witness admits that he knows PW-12 Dr. M.K. Rai, who has conducted the postmortem, and he being former MLA, sometimes used to visit his house. However, this fact has been denied by Dr. M.K. Rai himself.

12. PW-12 Dr. M.K. Rai has proved the postmortem report and would make elaborate statement to the effect that the deceased had ligature marks over her neck and that the death was homicidal.

13. We are not discussing this evidence in detail because there is nothing in the cross-examination of Dr. M K Rai, which would discredit his statement and doubt the nature or mode of death of the deceased.

14. We are concentrating on the core question as to whether the appellant could have committed the murder of the deceased and whether his guilt has been brought home on the basis of evidence on record.

15. In their examination under Section 313 of Cr.PC, appellant Jitendra as well as the acquitted accused persons have stated that at the time of the incident, the appellant was not in the house as on account of the previous altercation about 2 days back with Baby, he had left the house at 4:00 am on the next day. It is their stand in the accused's statement that the deceased committed suicide by hanging. However, the dead body was brought down on the cot with the help of villagers. However, for nailing the accused, there is no legally admissible

evidence because once the prosecution witnesses themselves admit that the appellant was not available in the house at the time of the incident, the appellant is successful in wriggling out the clutches of the mischief of Section 106 of the Evidence Act. Had it been proved that the appellant was present in the house at the time of the offence, it would have been easier for the prosecution to establish his guilt with the aid of Section 106 of the Evidence Act, but the prosecution having failed to prove this most crucial fact with unimpeachable evidence, it is difficult for us to convict the appellant for committing murder of the deceased as there is absolutely no evidence to hold that he was present in the house at the time of the incident.

16. The trial Court has sought assistance from the disclosure statement of the appellant, after which, a rope was recovered at his instance. However, the part of the disclosure statement of the appellant where he would admit his guilt is not admissible in evidence, therefore, the trial Court was not at all justified in recording that part of the statement and some other circumstantial evidence to convict the appellant.

17. For all the above stated discussions, we are of the opinion that the appellant deserves to be allowed benefit of doubt because once there is the smallest doubt in the mind of the Court that the appellant may not be present in the house at the time of the incident, he cannot be held guilty of committing murder because the case of the prosecution is not based on any such circumstantial evidence with the aid of which we can hold him

guilty. Moreover, one Dr RK Singh, Professor and Head of the Department of Forensic Examination, Pt. Jawaharlal Nehru Medical College, Raipur, had suggested for DNA test to ascertain whether the blood and traces of skin present over the rope recovered from the appellant are matching with the blood group of the deceased, however, no such test was carried out by the IO. Thus, there is no effort by the prosecution to collect any circumstantial evidence to connect the appellant with the crime pursuant to the recovery of the rope at his instance.

18. In the result, the appeal deserves to be and is hereby allowed giving the appellant benefit of doubt. The impugned judgment of conviction and sentence is set-aside. The appellant is in jail. The appellant is to be set at liberty forthwith unless to be required in connection with any other case.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Vimla Singh Kapoor)

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