

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.634 of 2012

(Arising out of judgment dated 21.3.2012 in Sessions Trial No.100/2011
of the learned Additional Sessions Judge, Balod)

Kamlesh Kumar S/o Purushottam Tekam, Aged about 24 years, R/o
Village-Borindkala, Thana-Gurur, Dist-Durg (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh, through Police Station Gurur, District Durg (CG)

---- Respondent

For Appellant: Mr.Yogendra Chaturvedi, Advocate
For State/Respondent: Ms Sunita Jain, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board

Sanjay K. Agrawal, J

03/02/2018

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 21.3.2012 passed by the Additional Sessions Judge, Balod, District Durg in Sessions Trial No.100/2011, whereby learned Additional Sessions Judge has convicted the appellant for offence under Sections 450 and 302 of the IPC and sentenced him to undergo RI for ten years and fine of ₹ 50/- and imprisonment for life and fine of ₹ 50/- respectively, in default of payment of fine to further undergo RI for three months on each default.
2. The prosecution case as unfolded during the course of trial is as

under: -

3. It is the case of the prosecution that on 7.7.2011 at about 2.30 p.m. at village Boridkala the appellant trespassed the house of Urvashi (since deceased) and administered poison to her by which she died and thereby committed the offence. It is further case of the prosecution that, pursuant to that, merger intimation Ex.P/10 was registered by Police Station Gurur on 7.7.2011. Inquest was conducted over the body of the deceased vide Ex.P/2 on 8.7.2011. Dead body of the deceased was sent for postmortem to District Hospital, Dhamtari, where Dr.D.S. Dev (PW-8) conducted postmortem vide Ex.P/11 and opined that cause of death was due to asphyxia as a result of suspected poisoning. Thereafter, F.I.R. Ex.P/15 was lodged on 17.7.2011 by Assistant Sub-Inspector R.K. Mandlesh (PW-10) at Police Station Gurur for offence under Sections 450 and 302 of the IPC naming the present appellant as a sole accused. The jurisdictional police completed the investigation and filed the charge-sheet. The appellant abjured guilt and entered into defence.
4. In order to bring home the offence, the prosecution examined as many as 10 witnesses and exhibited 18 documents Exs.P-1 to P-18. Statement of the accused under Section 313 of the CrPC was recorded in which he denied guilt. However, he examined none in his defence.
5. The trial Court after appreciating oral and documentary evidence available on record and relying upon evidence of Mohan (PW-1),

father of the deceased, Shivdayal Sinha (PW-2) and Rajeshwari (PW-3), sister of the deceased convicted the appellant for offence under Sections 450 and 302 of the IPC and sentenced him as mentioned in opening paragraph of this judgment.

6. Mr.Yogendra Chaturvedi, learned counsel appearing for the appellant, would submit that testimony of Mohan (PW-1), Shivdayal Sinha (PW-2) and Rajeshwari (PW-3) are not reliable as there are many contradictions in their evidence and the trial Court has committed grave legal error in basing the conviction on their testimony. He would further submit that Rajeshwari (PW-3) has clearly admitted in her cross-examination that nothing was informed by her sister to her about the incident and Mohan (PW-1) reached to the house after the deceased has become unconscious and Shivdayal Sinha (PW-2) also reached to the spot thereafter. Star witness Santu and Santoshi Bai, who reached first in time to the spot, were not examined by the prosecution. Therefore, the judgment of conviction recorded and sentence awarded deserves to be set aside being contrary to the material available on record.
7. Ms Sunita Jain, learned Panel Lawyer appearing for the State/ respondent, would support the impugned judgment and submit that the prosecution has been able to bring home the offence and there is sufficient evidence available on record to hold him guilt and he has rightly been convicted by the Additional Sessions Judge.
8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and gone through the record

with utmost circumspection.

9. First question would be whether death of deceased Urvashi was homicidal in nature.
10. In order to prove this fact, Dr.D.S.Dev (PW-8) has been examined. He has clearly opined that cause of death was due to asphyxia as a result of suspected poisoning. Learned trial Judge has recorded the finding that death was homicidal in nature, which has not been seriously disputed by the appellant in this appeal and we also found that death of deceased Urvashi is homicidal in nature and thereby affirm the finding recorded by the learned trial Court.
11. This would bring us to the next question as to whether poison was administered by the present appellant.
12. The prosecution has examined three witnesses. We will discuss the testimony of three witnesses one by one. Mohan (PW-1) is the father of the deceased. He has clearly stated in his evidence before the Court that on the fateful day her daughter Urvashi was in home and he had gone to his field along with his wife, in the field Santu Gond (not examined) came to them and informed that his daughter Urvashi is not well and she requires hospitalization, then he and his wife both came back to their home and found Urvashi vomiting and thereafter she became unconscious, then he enquired from his neighbour Shivdayal (PW-2), he was informed by Shivdayal (PW-2) that accused Kamlesh has administered poison to her daughter Urvashi and she

was taken to hospital where she died. So far as this witness is concerned, he reached to his house when Urvashi has become unconscious. He was informed by Shivdayal (PW-2) that the accused has administered poison to her daughter, therefore, no oral dying declaration was made to him by deceased Urvashi. Shivdayal Sinha (PW-2) has stated before the Court that he came to know about the incident from villagers that the accused has administered poison to Urvashi, then he rushed to the house of Urvashi, then Urvashi informed him that accused Kamlesh has administered poison to her. In his cross-examination, he stated that when he reached to the house of Urvashi, parents of the deceased i.e. Mohan and his wife had already reached there and he also came to know that on the same day accused Kamlesh has also consumed poison and he was hospitalized. Shivdayal Sinha (PW-2) is hearsay witness as he came to know through the villagers. Rajeshwari (PW-3), sister of the deceased, has been declared hostile by the prosecution. In examination-in-chief, she stated that when she reached to the house she saw that the accused was running out from her house and when she entered into the house she found Urvashi lying. She was informed by her sister that the accused has administered her some medicine and at that time Santu (not examined) and Shivdayal came to his house. In para 9 of her cross-examination, she has clearly stated that nothing was stated by deceased Urvashi to her about the incident and only she requested her to call her parents.

13. The aforesaid discussion would clearly show that Santu and

Santoshi Bai have reached first in time to the house of the deceased, but the prosecution has chosen not to examine them. If the prosecution has examined them, they could have stated the correct version of the incident as to who administered poison or poisonous substance to the deceased. Explanation of the prosecution is blissfully silent on this point. Not only this, Shivmangal Sinha (PW-2) has admitted that he reached to the spot after the deceased father and mother reached to the house and at that time, the deceased had already become unconscious and lying unconscious. Thus, statement of Shivmangal Sinha (PW-2) that the deceased has made dying declaration to him is also not worth reliable. Statement of Mohan (PW-1) cannot be relied upon as he has stated before the Court that Shivmangal Sinha (PW-2) informed him about the incident that the accused has administered poison to her daughter, as such, testimony of Mohan (PW-1), Shivdayal Sinha (PW-2) and Rajeshwari (PW-3) does not inspire confidence and trustworthy and conviction cannot be based on the aforesaid statements. One thing must be noticed here that there is some evidence on record to show that there was affair between the deceased and the appellant and Shivmangal Sinha (PW-2) has clearly stated that on that day appellant has also consumed poison and he was hospitalized. Not only this, seizure of bottle in which poisonous substance was found was not seized from the possession of the appellant, but was seized from the house of the deceased. Thus, only evidence that Rajeshwari (PW-3) seen the accused running out from the house of the deceased is not

sufficient to hold him guilty for offence under Sections 302 and 450 of the IPC. We are satisfied that the prosecution has failed to bring sufficient and adequate evidence to bring home the offence under Sections 302 and 450 of the IPC against the appellant / accused herein.

14. Thus, for the foregoing reasons, it is held that the prosecution has not been able to establish beyond reasonable doubt that the accused/appellant has caused the death of deceased Urvashi on 7.7.2011. Thus, the accused is entitled for acquittal.
15. For the reasons aforementioned, the impugned judgment of the trial Court convicting the accused/appellant for offence under Sections 302 and 450 of the IPC and sentencing him for life imprisonment and RI for ten years cannot be sustained and the same are accordingly set aside. The appeal filed by the appellant is allowed. He is acquitted of the charges. He is in custody. He be released forthwith, unless required in any other case.
16. Before parting with the record, a note of caution is necessary to be made for the State Judicial Forensic Science Laboratory, Raipur.
17. In this case, seized articles were sent for chemical analysis on 16.9.2011, but no such report was available in the record. The appellant was convicted and his appeal was pending consideration since 27.7.2012. This Court by order dated 9.9.2017 after hearing the parties found that FSL report is not available and directed the Director, State Judicial Forensic Science Laboratory, Raipur to send the report. The Director, State Judicial Forensic Science Laboratory, Raipur has sent the report by its memo dated 19.9.2017. It appears

that such a report was sent earlier on 8.5.2012 to the Superintendent of Police, Durg, but said report is not brought on record. It further appears that the State Judicial Forensic Science Laboratory, Raipur took at least one year in examining the articles. The trial concluded on 21.3.2012 and thereafter the report is said to have been sent to the Superintendent of Police, Durg. He has not taken pain to bring the same on record. It is the case of suspected poisoning and FSL report is very important document. The examination ought to have been conducted by the State Judicial Forensic Science Laboratory, Raipur within a reasonable time and it could have been sent to the Superintendent of Police right in time before the conclusion of trial, but that was not done and the Superintendent of Police has also not even taken care and did not bring the report on record. Non-examination of seized and sent article by the State Judicial Forensic Science Laboratory, Raipur right in time seriously interferes the criminal administration of justice, which cannot be countenanced.

18. The Supreme Court in the matter of Joshinder Yadav v. State of Bihar¹ has clearly held that the criminal court must be alert, it must oversee the actions of prosecution and investigating agency. It was observed as under:-

“26. Having noticed that in several cases where poisoning is suspected, the prosecuting agencies are not taking steps to obtain viscera report, we feel it necessary to issue certain directions in that behalf. We direct that in cases where poisoning is suspected, immediately after the post-mortem, the viscera should be sent to the FSL. The prosecuting agencies should ensure that the viscera is, in fact, sent to the FSL for examination and the FSL should ensure that the viscera is examined immediately and report is sent to the investigating agencies/courts post haste. If the viscera report is not received, the concerned court must ask for explanation and must summon the concerned

1 (2014) 4 SCC 42

officer of the FSL to give an explanation as to why the viscera report is not forwarded to the investigating agency/court. The criminal court must ensure that it is brought on record.”

19. The Supreme Court in the matter of Chhotan Sao and another v. State of Bihar² has held as under:-

“16. Before parting with the appeal, we wish to place on record our anguish regarding the inadequacy of investigation, the failure to discharge the responsibility on the part of the public prosecutor and the Magistrate who took cognizance of the offence under Section 304B. The Investigating Officer who submitted the charge sheet ought not to have done it without securing the viscera report from the forensic lab and placing it before the Court. Having regard to the nature of the crime, it is a very vital document more particularly in the absence of any direct evidence regarding the consumption of poison by the deceased Babita Devi. Equally the public prosecutor failed in his responsibility to guide the investigating officer in that regard. Coming to the magistrate who committed the matter to the Sessions Court, he failed to apply his mind and mechanically committed the matter for trial. Public prosecutors and judicial officers owe a greater responsibility to ensure compliance with law in a criminal case. Any lapse on their part such as the one which occurred in the instant case is bound to jeopardise the prosecution case resulting in avoidable acquittals. Inefficiency and callousness on their part is bound to shake the faith of the society in the system of administration of criminal justice in this country which, in our opinion, has reached considerably lower level than desirable.”

20. The Supreme Court in the matter of State of Gujarat v. Kishanbhai and others³ has held as under:-

“23. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require

² (2014) 4 SCC 54

³ (2014) 5 SCC 108

the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

21. In view of above, it is directed that a copy of this judgment be sent to the Additional Chief Secretary, Department of Home, State of Chhattisgarh and the Director, State Judicial Forensic Science Laboratory, Raipur who shall in turn ensure that FSL examination of seized articles be done within a reasonable time from the date of its receipt and it is brought on record by the prosecuting agency before conclusion of trial. The trial Court shall also oversee the actions of prosecution and investigating agency as indicated by the Supreme Court in **Joshinder Yadav** (supra).

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No.634 of 2012****Appellant**

Kamlesh Kumar

Versus**Respondent**

State of Chhattisgarh

(Head-note)

(English)

Direction issued to the Additional Chief Secretary, Department of Home and the Director, State Judicial Forensic Science Laboratory, Raipur for timely FSL examination of seized articles and that to be brought on record well within time.

(हिन्दी)

जब्तशुदा वस्तुओं के समय पर एफ.एस.एल. परीक्षण तथा उसे समय रहते दर्ज करने हेतु अतिरिक्त मुख्य सचिव, गृह विभाग तथा निदेशक, राज्य न्यायिक विधि विज्ञान प्रयोगशाला, रायपुर को निर्देश जारी।