

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1165 of 2012

- Dilharan Sahu S/o Duklaha Sahu Aged About 32 Years R/o Village Matsagra, PS - Takhatpur, Distt. Bilaspur C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through SHO, PS - Takhatpur, Distt. Bilaspur C.G. , Chhattisgarh

---- Respondent

For Appellant	: Shri N.K.Chaterjee, Advocate
For Respondent/State	: Shri Vivek Sharma, G.A.

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

Judgement on Board by Diwaker J.

27/02/2018

This appeal has been preferred against the judgment and order dated 17.10.2012 passed by the Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 137/2011 convicting the accused/appellant for the offence punishable under Section 302 IPC for committing murder of his wife Champa Bai by setting her ablaze and sentencing him to undergo imprisonment for life with fine of Rs. 500/- plus default stipulation.

2. In the present case, name of the deceased is Champa Bai wife of accused/appellant. Marriage was solemnized sometime in the month of May 2010 and she died in her matrimonial house after suffering 95%

burn injuries on 31.05.2011. As per prosecution case, on 31.05.2011 at about 7.00 a.m. accused/appellant was working in a stone crushing mine near his house along with Urvashi PW-3 and her husband Mohan. At the relevant time father of the appellant Dukalha Sahu (PW-16) was repairing the roof of his house. It is said that accused/appellant came to his house to take the crowbar and after taking the same he went back to his workplace and then 20 minutes later, his father informed him that his wife had sustained burn injuries. Accused/appellant immediately rushed to his house and saw the deceased lying in the kitchen in a burnt condition and the villagers also gathered there who had come to the conclusion that she died. At about 10.30 a.m. on 31.05.2011 a complaint Ex.P-1 was lodged by Laxman Sahu (PW-1) brother of the deceased raising suspicion that on account of cruelty being meted out to his sister she might have committed suicide. Inquest (Ex.P-3) on the body of deceased was prepared and body was sent for postmortem examination which was conducted by Dr. Devendra Kumar Dubey (PW-8) vide Ex.P-10 and according to him, cause of death was due to asphyxia which is ante mortem in nature. Based on a complaint enquiry on 01.06.2011, FIR Ex. P-25 was registered against the appellant under Section 304-B IPC. While framing the charge, trial judge has framed charge against the appellant under Section 304-B IPC in alternative under Section 302 IPC.

3. So as to hold the accused persons guilty, prosecution has examined 20 witnesses in support of its case. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties the trial Court has acquitted the appellant of the offence under Section 304-B IPC but convicted and sentenced him of the offence under Section 302 IPC. Hence the present appeal.

5. Contention of counsel for the appellant is :

i) that there is no eyewitness to the occurrence and the conviction of the appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of the appellant could be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder.

ii) the possibility of accidental death or deceased committing suicide cannot be ruled out. It has been argued that the deceased was suffering from severe stomach ache.

iii) that in the house in question, apart from the appellant his father Dukalha (PW-16) was also residing and at the relevant time father of the appellant was repairing the roof of his house.

iii) that at the relevant the appellant was not in the house in question and was working in a stone crushing mine near his house and this fact has been duly proved by Urvashi (PW-3).

iv) the circumstances collected by the prosecution does not indicate that it is the appellant alone who can be held liable for committing the murder of the deceased and as such the chain of circumstance is not complete.

iv) that the appellant is in jail since 01.06.2011 and has served enough sentence though not responsible for commission of any

ofence.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Laxman Prasad (PW-1) is the brother of the deceased and lodger of merged intimation Ex.P-1. He has stated that the accused/appellant used to consume liquor and that on the date of incident he received information about the death of the deceased. He admits that the family of the appellant was known to him and that the financial condition of the appellant was not very good. He further admits that there was no direct demand of dowry either by the appellant or his father. He also admits that the deceased was suffering from some stomach ailment and on account of poor financial condition of the appellant she could not get proper treatment. Dewari (PW-2) is a witness to inquest Ex.P-3 and seizure Ex.P-6. Urvashi (PW-3) has stated that on the date of incident she was working in a stone crushing mine along with her husband and the appellant. She has stated that on the date of incident, appellant had gone to his house for bringing crow bar and he was back to his work place and after about 20 minutes Duklaha Sahu (PW-1) father of the appellant informed them about the incident and then she along with her husband and the appellant rushed to the place of occurrence and found the deceased dead after sustaining burn injuries. B.R .Druv (PW-4) has done the inquest.

Chhotelal (PW-5) is a witness to seizure Ex.P-6 and inquest Ex.P-3. He has stated that no demand was settled at the time of marriage nor there was any complaint by the deceased or her relatives. Sukhnandan (PW-6) is the witness to inquest Ex.P-3 and seizure Ex.P-7. Badriprasad Sahu (PW-7) father of the deceased has stated that in the marriage sufficient articles were given but behaviour of the appellant was not good with his daughter. However there appears to be material improvement in his court statement from that of his diary statement. He admits that the deceased was suffering from some stomach ailment and she was also hospitalized. He further admits that normally kerosene is being found in every house of the village. He admits that on the ground of suspicion he asked his son to report against the appellant. He also admits that at the time of the incident father of the appellant was repairing the roof of his house. Dr. Devendra Kumar Dubey (PW-8) is the doctor who conducted postmortem examination vide Ex.P-10 and he opined that cause of death was due to asphyxia which is ante mortem in nature. Gangotri Bai (PW-9) mother of the deceased has made almost similar statement as has been made by her husband (PW-7). Dhaniram (PW-10), Maniram (PW-11) and Mahesh Prasad Sahu (PW-12) are the relatives of the deceased who have stated that the deceased was subjected to cruelty by the appellant for demand of dowry. Arun Kumar Mishra (PW-13) and Jahorik Netam (PW-14) are the Constables who assisted in the investigation. Vijay Mohan Sharma (PW-15) is the patwari who prepared spot map (Ex.P-20). Duklaha Sahu (PW-16) father of the appellant has stated that at the time of incident he was repairing the roof of his house and when the children brought sugar and tea from the

shop, they smelled some clothes were burning and he got down, saw the deceased burning and called the appellant who was working in the nearby stone crushing mine. He has also stated that the deceased was hospitalized on number of occasions as she was ill and that on account of her poor financial condition deceased was unhappy. Sirish pal Singh (PW-17) is the Head Constable who assisted in the investigation. Yashwant Koushik (PW-18) and Purushottam (PW-19) have not stated anything against the appellant and have been declared hostile. Smt. Sadhna Singh (PW-20) is the Investigating Officer who has done the investigation.

9. Law in respect of case based on circumstantial evidence is very clear. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion except the guilt of the accused person, is discernible without any doubt. It is a settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only at one conclusion, that is, the guilt of the accused.

10. If the above position of law is considered in the light of evidence of the present case, following facts emerge:

i) At the relevant time appellant was not at home and was working in a nearby stone crushing mine whereas father of the appellant was repairing the roof of his house and just before the incident, the appellant returned to his house picked up the crow bar and returned back to his workplace and on getting the information from his father,

appellant along with one Urvashi and her husband reached the place of occurrence and saw deceased lying in burnt condition.

ii) from the spot seizure of jerrican and match box was made.

iii) independent witnesses have also stated that at the relevant time appellant was working in the stone crushing mine.

iv) deceased was suffering from some stomach ailment for which she was hospitalized many times and that the financial condition of the appellant and the deceased was not good.

v) appellant was in a habit of consuming liquor.

11. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the accused/appellant in committing the murder of the deceased. Neither the circumstantial evidence nor any other piece of evidence is there on record to show the involvement of the appellant in the commission of the said offence. Admittedly, at the time of occurrence of the incident the appellant was not there at home and it was his father who was repairing the roof of his house. The court below has erred in law in convicting the appellant merely on the basis of surmises and conjectures. Even the homicidal death of the deceased has not been proved by the prosecution and considering all these aspects of the case we are of the view that benefit of doubt is to be extended to the appellant.

12. Consequently, the appeal is allowed. Impugned judgment

convicting and sentencing the accused/appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. Accused/appellant is in jail. He be set free forthwith if not required in any case.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Sanjay Agrawal)

Judge