

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 331 of 2017**

- Harishankar S/o Dukalu Baiga, aged about 25 years, R/o village Abarhiyatola, P.S. Gaurela, District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through : Aarakshi Kendra Gaurela, District Bilaspur (C.G.)

---- Respondent

For Appellant.	:	Shri Vikash A. Shrivastava, Advocate.
For Respondent.	:	Smt. Madhunisha Singh, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****10/01/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 19.03.2008 passed by Additional Sessions Judge (FTC), Pendra Road, District Bilaspur, in S.T. No.56/2007 convicting the accused/appellant under Sections 302/34 and 201 of IPC & sentencing him to undergo imprisonment for life with fine of Rs.100/- and R.I. for six months with fine of Rs.100/-, plus default stipulations respectively.

02. In the present case name of the deceased is Sonkali, wife of the accused/appellant. It is alleged that about a week before the incident i.e. in the night intervening 8-9/11/2007,

the accused/appellant and the deceased had gone to the village of maternal grand mother of the appellant and there they quarreled when the deceased raised suspicion that the accused/appellant is having illicit relation with one girl Bhalu. It is further alleged that in the night they again started quarreling, the accused/appellant was scolded by his maternal grand mother and thereafter accused/appellant committed murder of his wife Sonkali by strangulating her. After the incident, accused/appellant called co-accused Bhola and with his help, he hanged the dead body of the deceased on a tree. Merg intimation Ex.P/10 was lodged by the appellant on 09.11.2007 at 12.30 pm. On the same day, inquest on the dead body was conducted vide Ex.P/2 and body was sent for postmortem examination to Community Health Center, Gourela where Dr. N.S. Painkra (PW/8) conducted postmortem on the body of deceased on 10.11.2007 and gave his report Ex.P/12 noticing following injuries :-

- (i) Both upper and lower limbs extended, both eyes were semi opened and congested. Froth with blood came out from the nostril, tongue was slightly protruded with clinched between the teeth.
- (ii) Multiple scratch mark present on the lat and neck. One blue spot in the size of 6 cm x 2.5 cm present on the left lower neck.
- (iii) One saree encircling the neck twice with one knot present on the upper neck. On dissection of

neck muscles clotted blood was found.

The Autopsy Surgeon opined the cause of death of deceased to be asphyxia due to strangulation (throttling) and death was homicidal in nature.

03. After merging inquiry, FIR (Ex.P/15) was registered against the appellant on 11.11.2007 under Sections 302, 201 and 34 of IPC. After filing of the charge sheet, the trial Court framed charges under Sections 302 and 201 of IPC against the appellant, whereas against acquitted co-accused Bhola charge was framed under Section 201 of IPC.

04. So as to hold the accused persons guilty, the prosecution examined as many as 09 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record acquitted co-accused Bhola of the offence but has convicted and sentenced the present accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits :-

(i) That there is no eye-witness to the occurrence and conviction of the appellant is based on the circumstantial evidence but none of the circumstances from which the

inference of guilt of the appellant can be drawn has been proved beyond reasonable doubt and, therefore, there can be no inference that it was the appellant who committed murder.

(ii) That Gulwasiya (PW/1), eye-witness to the incident, has not supported the prosecution case and turned hostile.

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

08. We have heard learned counsel for the parties and perused the material available on record.

09. Gulwasiya (PW/1), maternal grand mother of the appellant, who had seen the accused/appellant committing the offence, has not supported the prosecution case and turned hostile. She has stated that it is the deceased who hanged herself. From the evidence of this witness, it is also clear that in the house in question her husband was also there.

10. Chaitu (PW/2) and Makhan Singh (PW/3), witnesses to inquest (Ex.P/2), spot map (Ex.P/3 & P/4)) and seizure (Ex.P/5), have turned hostile. Archana @ Bhalu (PW/4) turned hostile.

11. Shivcharan (PW/5), father of the deceased, has stated that after seeing the dead body of the deceased he had suspicion that she might have been strangled. He has also stated that he had seen the ligature mark of palm on the neck of the deceased.

12. Shyam Bai (PW/6), mother of the deceased, has stated that it is the accused/appellant who killed her daughter.

13. M. N. Bati (PW/7) - Sub Inspector, assisted in the investigation.

14. N.S. Painkra (PW/8) conducted postmortem examination on the body of deceased and gave his report Ex.P/12 opining the cause of death of deceased to be asphyxia due to strangulation and death was homicidal in nature.

15. S.N. Soni (PW/9) is the Investigating Officer who has duly supported the prosecution case.

16. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence showing involvement of the accused/appellant in commission of murder of his wife Sonkali and the trial Court has convicted the accused/appellant only on the ground of his being inmate of the same house where body of deceased was found hanging on the tree.

17. In the matter of **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210**, the Supreme Court while dealing with circumstantial evidence observed in paras 11, 12 & 13 as under:-

“11. In Hanumant Govind Nargundkar V. State of M.P. [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:

“10..... It is well to remember that in cases where

the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

12. In *Padala Veera Reddy V. State of A.P.* [(1989) Supp (2) SCC 706], this Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any

other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. **In Sharad Birdhichand Sarda v. State of Maharashtra** [(1984) 4 SCC 116], it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. In the present case, Gulwasiya (PW/1), most important witness of the prosecution, has not supported the prosecution case. She has stated that the accused/appellant and his wife had come to her house and stayed for a week. Thereafter, on Wednesday at 8.00 am, accused/appellant went to market and after that at about 10.00 am, deceased Sonkali also came out of her (PW/1) house saying that she is going to her house. At evening, when accused/appellant came and inquired about his wife, she said that deceased had gone to her house. Thereafter, accused/appellant and this witness slept together in her house and she is not aware whether deceased might have come at night or not and on the next day she saw the body of deceased hanging on a tree. On this point, this witness was cross-examined by the prosecution but nothing specific could be brought against the accused/appellant. Since, the important prosecution witness (PW/1) has not supported the prosecution case, there are material contradictions in her court evidence as compared to her diary statement (Ex.P/1), and, therefore, we have no reason to believe the statement of this witness. It is not a case of the prosecution that on the fateful night it is the appellant and his wife who were residing alone in the house in

question where the body of deceased was found, whereas, according to prosecution itself, PW/1 and her husband were also there (residing) in the house in question. Though, Autopsy Surgeon (PW/8) has opined the cause of death to be asphyxia due to strangulation and death was homicidal in nature and has stated that there were nail scratch marks on the neck of the deceased which is corroborated by the evidence of PW/5, father of the deceased, and injuries were antemortem in nature, but the prosecution has not conducted any such test which could establish this fact that the nail scratch mark was of the nail of the appellant. True it is that in case where house murder is the issue, heavy burden lies on the shoulder of the accused to explain as to under what circumstances the deceased dies, but in the present case, there were other persons (maternal grand mother and father of the appellant) also residing under the same roof where incident took place and were present at the relevant time but they were neither charge sheeted nor interrogated, thus, the accused/appellant alone cannot be held responsible for killing his wife.

19. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused in the crime in question and for that the benefit of doubt has to go to the accused. The trial Court while convicting and sentencing the accused/appellant has not considered the evidence of the prosecution in its true

perspective and thereby committed error in convicting the accused/appellant.

20. In view of what has been discussed above, the findings recorded by the Court below cannot be sustained in the eye of law and are liable to be set aside. The appeal is thus allowed, judgment impugned is set aside and the accused/appellant stands acquitted of the charges levelled against him by extending him benefit of doubt. The accused/appellant is reported to be in jail. He be set at liberty forthwith if not required in any other case.

21. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Sanjay Agrawal)
JUDGE