

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1106 of 2012

- Rajesh Jumnani S/o Shri Sadhram Jumnani, aged about 35 years, R/o Bajaj Colony, House of Govardhan Das Soni, New Rajendra Nagar, Near Sai Mandir, PS Rajendra Nagar, Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through The District Magistrate Raipur C.G.

---- Respondent

For Appellant	:	Shri S.C. Verma, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer..

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgement

Per P. Diwaker, J

07/09/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 17.10.2012 passed by the learned Additional Sessions Judge, Raipur in S.T. No.275/11 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life and fine of Rs.5,000/- & RI for 3 years with fine of Rs.500/-, with usual default clauses, respectively.
2. The prosecution case, in brief, is that accused/appellant is the owner of spice (garam masala) factory situated at Gudhiyari, Raipur and the deceased was working there as labourer. On the fateful day, when the deceased was all alone in the factory, the accused/appellant caught hold of her with the intention to commit sexual intercourse with her and when the said act of accused/appellant was opposed by her saying that she

would disclose about it to everyone, he knocked her to the ground and strangled her to death. After committing murder of deceased, the accused/appellant stood the deceased along the rack and connected it with live electricity wire of tullu pump in order to show that cause of death of the deceased was an accidental one i.e. due to electrocution. After doing all this, the accused/appellant rushed to Pramod Gupta (PW-6) and informed him that the deceased had become unconscious. Seeing the deceased standing with the support of rack, PW-6 went back to his factory, called two labourers namely Savita & Bala and when they touched the deceased, they also felt electric shock. When the main switch was turned off at the instance of accused/appellant, the deceased fell to the ground. The deceased was taken to a nearby doctor (PW-9) who declared her dead. At the instance of accused/appellant, the deceased to the Medical College Hospital, Raipur where also the doctors declared her brought dead. After receiving a memo (Ex.P-8) from the hospital regarding death of deceased, Merg Intimation (Ex.P-9) was recorded on 28.9.2011. Inquest (Ex.P-1) was prepared over the body of deceased on 29.9.2011. Post-mortem examination over the body of deceased was conducted by Dr. S.K. Bagh (PW-11) vide Ex.P-10 and he noticed one contusion on both side of neck in supra-clavicular region of 6x2.5cm in size at right side and 6.3x2.7cm at left side, obliquely vertical in direction, blackish red colour ecchymosis was present, neck muscles were contused both side, muscle along the thyroid and trachea cartilages were contused massively, tracheal cartilages were loosen and depressed, superior horn of thyroid cartilage were broken and depressed, scalp show blackish red colour ecchymosis on both side. As per opinion of the autopsy surgeon, death was due to asphyxia as a result of throttling, death was homicidal in nature and duration of death was within 24 hours prior to post-mortem

examination. After mere inquiry, FIR (Ex.P-11) was registered on 29.9.2011 for the offence punishable under Section 302 of IPC against unknown. On 30.9.2011 accused/appellant herein was arrested and his memorandum was recorded vide Ex.P-5 and pursuant to disclosure statement made by accused/appellant, one pliers, two wires, one full jeans pant were seized vide seizure memo Ex.P-6.

3. After investigation, charge sheet against the accused persons was filed under Sections 302 & 201 of IPC and accordingly the charges were framed against him by the trial Court. The prosecution in order to bring home the charges levelled against the accused/appellant has examined 12 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for the appellant submits that;-
 - there is no direct evidence against the appellant and the entire case is based on circumstantial evidence. In the cases based on circumstantial evidence, it is settled position in law that 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 accused and none else. In the present case, the circumstances highlighted by the prosecution do not present a complete chain of circumstances to warrant the conclusion of guilt of the appellant. Reliance is placed on the judgements in the matter of Sharad Birdichand Sarda vs. State of Maharashtra reported in AIR 1984 SC 1622 & Bodh Raj alias Bodha

& ors v. State of Jammu & Kashmir reported in AIR 2002 SC 3164 wherein

- factory / shop of appellant is in the market place and therefore the possibility of third person entering the premises and committed murder of deceased cannot be ruled out.
- even if the entire prosecution case is taken as it is, it is apparent that the incident occurred all of a sudden when the deceased threatened him saying that she would disclose what he had attempted to do with her and therefore the case of the appellant will fall under Section 304 Part I or II of IPC.
- the appellant is in custody for the last more than seven years and therefore while converting his conviction under section 304 Part I or II of IPC, he be sentenced to the period already undergone.

6. On the other hand, learned counsel appearing for the State has supported the impugned judgment and submitted that conviction of the accused/appellant is strictly in accordance with law. He submits that the deceased was found lying dead in the factory premises of accused/appellant and as per post-mortem report, death was homicidal in nature and being so, in view of Section 106 of Evidence act, it was incumbent upon the appellant to explain as to how the deceased died a homicidal death as also how the deceased sustained injuries found on her body as the death of deceased took place inside his factory premises, however, except going on complete denial mode, the appellant has not offered any explanation much less the satisfactory explanation in this regard. This can be taken as an additional link of evidence against him. He further submits that accused/appellant tried to destroy the evidence by creating a picture that deceased died due to electrocution. This conduct on the part of accused/appellant in causing

disappearance of the evidence of murder is one of the strong circumstances against him.

7. Smt. Savita (PW-1) has stated that she was working as labourer in the factory of Pramod Gupta (PW-6). On the fateful day, on being asked by PW-6, she went to the factory of accused/appellant and saw the deceased standing with the support of iron rack and when the main switch was turned off, she fell to the ground. She is also witness to seizure memo Ex.P-3 & P-4.
8. M. Keshav Rao (PW-2), father of deceased, has not stated anything incriminating against the accused/appellant. Smt. Laxmi Garte (PW-3) has also stated in the similar manner as has been deposed by Smt. Savita (PW-2). N.S. Vasu (PW-4) is the witness of memorandum (Ex.P-5) seizure memo Ex.P-6. Ashok Sahu (PW-5) is the witness of seizure memo Ex.P-5 & P-6.
9. Pramod Gupta (PW-6) has stated that on the date of incident the accused/appellant came to him and informed him that the deceased had become unconscious and when he reached there he found the deceased standing with the support of rack. He rushed to his factory and came back with Bala & Savita and when they tried to touch the deceased, they also felt electric shock. Thereafter they had turned off the main switch and the deceased fell to the ground. They took the deceased to the doctor in an auto rickshaw who informed him that deceased had already expired. Thereafter at the instance of accused/appellant, they took the deceased to Medical College Hospital, Raipur where also the doctors declared her brought dead. He is also witness to seizure memo Ex.P-2 and document Ex.P-3.
10. Shiv Kumar Sahu (PW-7) is the Patwari who prepared the spot map Ex.P-4. Prakash Paseriya (PW-8) is the Ward Boy who gave intimation to the

police regarding death of deceased vide Ex.P-8.

11. Dr. Vikas Agrawal (PW-9) is the doctor who first declared the deceased dead. Manmohan Singh (PW-10) is the police person who on the basis receipt of intimation regarding death of deceased had recorded mere intimation Ex.P-9.
12. Dr. S.K. Bagh (PW-11) is the doctor who conducted post-mortem examination on the body of deceased and noticed the injuries & symptoms as described above. He opined that cause of death of deceased was asphyxia due to throttling and death was homicidal in nature. In the cross-examination he denied the suggestion that ligature marks may come due to electrocution. He has further denied the suggestion that dead body cannot stand without support. He has denied the suggestion that throttling marks could come due to electrocution. He has admitted that burn marks may would come in case of electrocution.
13. R.S. Singh (PW-12) is the investigating officer who has duly supported the prosecution case.
14. Close scrutiny of evidence of record makes it clear that it is the accused/appellant who committed murder of deceased by strangulation and thereafter staged a drama to show that the deceased died due to electrocution, thereby tried to cause disappearance of evidence of murder in order to save himself from the legal punishment. From the evidence on record it is clear that at the relevant point of time accused/appellant and deceased were alone in the factory premises. Accused/appellant went to Pramod Gupta (PW-6), informed him that the deceased had become unconscious and thereafter both of them took the deceased to the hospital where she was declared brought dead by the doctors. Dr. S.K. Bagh (PW-11), who had conducted post-mortem of the deceased had opined that cause of death was asphyxia due to throttling. In the cross-examination

the doctor has denied the suggestion that marks as are found in case of throttling may come due to electric shock. Hence, it is established by medical evidence that death of deceased was homicidal and not accidental one. Thus, the information given by the accused/appellant that the deceased died due to electrocution stands falsified in view of the medical evidence and therefore it is an incriminating circumstance against the appellant and sufficient to establish the guilt against him.

That apart, the deceased was found lying dead inside the factory premises of accused/appellant and at that point of time except the accused/appellant none else was present there. Therefore, in view of the provisions of Section 106 of the Evidence Act, it was incumbent upon the accused/appellant to explain as to how the deceased died a homicidal death. However, instead of offering such explanation, the accused/appellant ventured to give false information as to cause of death of deceased thereby turning the needle of suspicion towards him. This circumstance, therefore, provides missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.

Further, we find no substance in the argument of counsel for the accused/appellant that in the facts and circumstances of case accused/appellant is liable to be held guilty under Section 304 Part-I or II of the IPC. The death of deceased is not a natural or accidental one and it is homicidal as is evident from post-mortem report. Accused/appellant after strangulating the deceased to death, created a scene to show that cause of death was due to accidental electrical shock. It is thus apparent the accused/appellant in a cool and calculated manner killed the deceased and thereafter created a scene to show that deceased died due to electrocution. This goes to show that accused/appellant had intention to cause death of the deceased and had every knowledge that the neck is a

vital part of the body and if much pressure is applied on it, it may cause death.

15. In view of the post-mortem report (Ex.P-10) wherein cause of death of deceased is mentioned as asphyxia due to throttling, it is apparent that the accused/appellant after murdering the deceased, had decided to cause disappearance of evidence of murder and in pursuance thereof, he made the body of deceased to stand with the support of iron rack and thereafter connected live electric wire with said iron rack to show as if the death was due to electrocution. After doing all this, he went to PW-6 and gave a wrong information that the deceased had become unconscious. Thus, we are of the considered opinion, that the trial Court was further justified in convicting & sentencing the accused/appellant under Section 201 of IPC.
16. Thus, on overall scrutiny of the facts and circumstances of case coupled with medical evidence, we are of the view that the trial Court has rightly held the accused/appellant guilty for the offence punishable under Sections 302 & 201 of IPC.
17. In the result, the appeal has no substance, the same is liable to be dismissed and is hereby dismissed. Since the accused/appellant is already in jail, no direction regarding his surrender etc. is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Smt. Rajani Dubey)
Judge

roshan/-