

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 16 of 2015

- Sandeep Vashnik S/o Birendra Vashnik Aged About 23 Years R/o Dhubad Godi, Tahsil Vara-Sivini, Chowki Khair Lanji, Police Station Rampayali, District Balaghat (MP) Presetnly residing at Shanker Nagar Ambedkar Chowk, House Of Itwari Dewangan, Police Station Mohan Nagar, Durg District Durg, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Of Police Station Mohan Nagar, Durg, District Durg [CG]

---- Respondent

For Appellant	:	Shri B.P. Singh, Advocate.
For Respondent	:	Shri R. Agrawal, Government Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Choradiya
Judgement

Per P. Diwaker, J

30/07/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 2.12.2014 passed by the learned Additional Sessions Judge, Durg in S.T. No.96/13 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life and fine of Rs.5,000/-, in default to undergo additional RI for 3 months.
2. In the present case name of deceased is Shalu Wasnik, aged about 15 years. She was younger sister of accused/appellant.
3. The prosecution story, in brief, is that the deceased was having love affair with Akash Borkar (PW-3) and she used to talk with him on mobile phone.

On the date of incident at about 12 in the noon, the accused/appellant had seen the deceased talking with said Akash Borkar on phone and on that count, he firstly caused as many as 15 injuries to her by a plastic pipe and thereafter he throttled her. At about 4 in the evening, the accused/appellant took the deceased to the District Hospital, Durg where he reported that deceased had fallen down on the ground from terrace and received injuries. During the course of treatment, she succumbed to the injuries at 8.10 p.m. Information regarding her death was sent to the police station from the hospital vide Ex.P-12 based on which un-numbered merg (Ex.P-13) was recorded at 11.05 p.m. Next day numbered merg (Ex.P-23) was recorded and based on which, FIR (Ex.P-31) was registered for the offence punishable under Section 302 of IPC against unknown person. Inquest (Ex.P-16) was prepared over the body of deceased on 22.10.2012. Body was sent for post-mortem examination which was conducted by Dr. V.S. Baghel (PW-4) and he noticed following injuries on the body of deceased;-

- Abrasion of 2x1cm in size over left temporal area;
- bruise of 3x2cm in size at right side of face
- bruise of 1x¼ cm in size on right sub mandibular area anteriorly.
- bruise of 2x¼ cm in size at supra-sternal border
- bruise of 12 x 3½ cm in size on postero lateral aspect of right arm placed obliquely, two in numbers.
- bruise of 3x3cm in size on right shoulder.
- swelling with multiple abrasions on right elbow and hand
- bruise of 10x2cm in size placed vertically and 11x2cm in size placed obliquely on right side of upper part of chest
- bruise of 14x2cm in size placed vertically on right buttock
- bruise of 10x4cm in size at right knee & 3x2cm on left knee
- bruise of 12x2cm in size placed obliquely on medial aspect of left thigh & 7x4cm in size at left thigh

- bruise of 11x2cm in size on left arm.
- multiple abrasions on left FA posterior laterally.
- bruise of 7x2cm on anterior medial aspect of left arm.
- bruise on both hands at palmar aspect.

He opined that cause of death was asphyxia due to airway obstruction caused by ante mortem throttling and the death was homicidal in nature.

On the basis of memorandum statement (Ex.P-2) of accused/appellant, one plastic pipe like club stained with blood like substance was seized vide seizure memo Ex.P-3. One Nokia Mobile with Sim having IMF NO.356413017425880 has been seized from the possession of PW-8, father of accused & deceased, vide seizure memo of Ex.P-4. Seized articles were sent for chemical examination to FSL and as per FSL report Ex.P-40, blood has been found on the pipe seized at the instance of appellant, whereas pillow & pillow cover seized from the spot were found stained with 'A' group human blood. Statements of witnesses were recorded in the course of investigation.

4. After investigation, charge sheet against the accused/appellant was filed under Section 302 of IPC followed by framing of charge by the Court below under that section. The prosecution in order to bring home the charge levelled against the accused/appellant examined 18 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. The accused/appellant further pleaded alibi stating that he had gone to the market at the relevant point of time. In support of his plea of alibi, he got examined one witness, DW-1.
5. 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.
6. Learned counsel for the accused/appellants submit that;-

- there is no eyewitness to the incident and conviction of appellant is based on the circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder of the deceased.
- at the time alleged incident, the appellant was not at home and when he reached home and found the deceased lying in injured condition, he immediately took her to the hospital. As the appellant had heard the word 'roof' from the mouth of deceased, he thought that she might have fallen from the roof and received injuries, therefore, he reported to the doctor that she had received injuries due to fall from the roof.
- According to defence witness, he saw the appellant and his mother in the market in the afternoon and therefore it appears very unnatural that after committing murder of the deceased, the appellant and his mother would go to the market.
- apart from the appellant, the father, mother & sister of the deceased were also residing under the same roof, but none of them has been either suspected or charge sheeted. When it is apparent that there were other inmates also in the house, it would not be justified to draw presumption against one to the effect that he is the author of the crime.
- though FSL report (Ex.P-40) speaks about the presence of blood on the plastic pipe seized at the instance of appellant, however, the prosecution could not establish as to what was the origin of blood and what was its grouping and in absence of proof of origin and grouping, merely presence of blood on the above article (plastic

pipe), would not by itself connect the appellant with the crime in question.

- The autopsy surgeon noticed white stains on the underwear of the deceased, but the same was not sent by the investigating officer for chemical analysis. This white stains appeared to be of human semen and therefore the possibility that the deceased was first raped and thereafter murdered by some unknown person cannot be ruled out.
- even if the entire prosecution case is taken as it is, it is apparent that the incident had occurred on the spur of moment, in a heat of possession and without there being any pre-mediation and therefore the act committed by the appellant would come within the ambit of offence punishable under Section 304 Part I of IPC as he could be attributed with the knowledge that the injuries caused by him are likely to cause death of deceased.
- Reliance is placed on the judgements delivered by the Hon'ble Supreme Court in the matter of Mulak Raj & others v. State of Haryana reported in (1996) 7 SCC 308 and this Court in Cr.A. No.587/2004 dated 25.10.2016.

7. On the other hand, learned counsel appearing for the State has supported the impugned judgment. He further submits that the deceased received injuries inside the house; the accused/appellant had given a false information to the doctor that the deceased had received injuries due to fall from the roof, whereas the autopsy surgeon, who opined the cause of death as asphyxia due to ante mortem throttling, has categorically stated that the injuries sustained by the deceased could not have been possible due to fall from roof. The submission of false information clearly shows that deceased had not sustained injuries due to fall from roof, rather it is

the accused/appellant who caused grievous injuries to her by plastic pipe which resulted in her death. He further submits that though there is no serological report in respect of origin of human blood found on the plastic pipe seized at the instance of accused/appellant, but report of FSL is positive and the accused/appellant failed to offer any explanation as to how the blood came on the plastic pipe seized at his instance, therefore, absence of report of serologist is not fatal to the prosecution. He further submits that the manner in which assaults were carried out leave no doubt that accused/appellant had acted with the intention to kill the deceased, therefore, his conviction under Section 302 of IPC is just and proper.

8. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
9. Khemlal Dewangan (PW-1) is the friend of accused/appellant who helped him to take the deceased to the hospital. As per diary statement of this witness, the accused/appellant had confessed before him that he had inflicted injuries to the deceased as she was talking to her boyfriend on her mobile phone, but in the Court this witness did not support the prosecution case and turned hostile.
10. Dhritesh Kumar Dewangan (PW-2) is a witness of memorandum (Ex.P-2) & seizure memo (Ex.P-3). Though this witness has not supported the prosecution case and turned hostile, but he has admitted his signature over the aforesaid documents.
11. Akash Borkar (PW-3) is the boy with whom the deceased was allegedly having love affair. He has stated that he used to take with deceased on mobile phone and even a day prior to the incident, he had talked with her and she informed him that she would get marry with him and would inform this fact to her parents. Next day he came to know from the ladies of locality that the deceased has been admitted in the hospital and on the

same day in the night, he learnt about the death of the deceased. At this stage this witness has been declared hostile. In the cross-examination this witness has admitted that except the accused/appellant, the family members of deceased were not aware about their love affair.

12. Dr. V.S. Baghel (PW-4) is the person who conducted post-mortem examination over the body of deceased and noticed the injuries as described above. He has opined that cause of death of deceased was asphyxia due to airway obstruction caused by ante mortem throttling and the death was homicidal in nature. He had also examined the weapon of offence (plastic pipe) sent to him by the police and vide Ex.P-9, opined that injuries suffered by the deceased could have been caused by said weapon.
13. Chhaganlal Sinha (PW-5) is the Patwari who prepared spot map Ex.P-11. Pramod Ramteke (PW-6) is the Ward Boy who went to the police station and gave information regarding head injury sustained by the deceased. Suresh Kumar Kapse (PW-7) did not support the prosecution case and turned hostile.
14. Birendra Wasnik (PW-8), father of accused & deceased, has not supported the prosecution case and turned hostile.
15. Smt. Mamta Wasnik (PW-9), mother of accused & deceased, also did not support the prosecution case and turned hostile. However, she has deposed that on the date of occurrence, she along with her son (accused) had gone to the market and when she returned at about 3-4 in the evening, she saw that her daughter (deceased) was sleeping on the bed and was saying 'roof-roof'.
16. Khursheed Baksh (PW-10), Pawan Singh (PW-11), Fagnuram Sinha (PW-12), Pooran Lal Thakur (PW-14), are the police personnel who assisted in the investigation.

17. Dr. (Smt.) Pooja Mishra (PW-15) is the doctor who first attended the deceased in District Hospital, Durg. According to this witness, she was informed by accused/appellant that the deceased had sustained injuries due to fall from height. She has further stated that looking to critical condition of deceased, she was immediately admitted in the emergency ward and preliminary treatment was given to her.
18. Dewanand Upke (PW-16) did not support the prosecution case and turned hostile. Prakash Chandra Shrivastava (PW-17) is the investigating officer who has duly supported the prosecution case. Durgesh Kumar Bhivgade (PW-18) is the Constable who had obtained call details of Mobile Nos.9907027250 & 9907120940 from the respective service providers vide Ex.P-42 & P-43. Said mobiles were registered in the name of one Birendra Sudama & Nanda.
19. M. Sinha (DW-1) has stated that on the date of occurrence he saw the accused/appellant going to the market along with his mother in rickshaw and at that time both the sisters of accused/appellant were standing at the door of their house. He has further stated that at about 4 in the evening he saw the accused and his mother coming back from the market.
20. In the case in hand, there is no eye witness to the incident, the incident took place inside the house of appellant and the case of prosecution rests upon circumstantial evidence. It is now well settled that the circumstance from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with this innocence.
21. Close scrutiny of evidence of record makes it clear that the deceased and

the accused being brother & sister were residing under the same roof, the deceased used to talk with Akash Borkar (PW-3) on mobile phone, which was not liked by her brother (accused/appellant herein). On 21.10.2012 the deceased was brought to District Hospital, Durg in injured condition and the accused/appellant informed the doctor that she received injuries due to fall on the ground from the roof (height). Dr. V.S. Baghel (PW-4), who had conducted post-mortem of the deceased had opined that cause of death is asphyxia due to airway obstruction caused by ante mortem throttling. In the cross-examination the doctor has denied the suggestion that the injuries noticed on the body of deceased do not appear to have come due to fall from height. Hence, it is established by medical evidence that death of deceased was homicidal and not accidental in view of presence of ante-mortem injuries and throttling. Thus, the information given by the accused/appellant that the deceased sustained injuries due to fall on the ground from the roof stands falsified in view of the medical evidence and therefore it is an incriminating circumstance against the appellant. Since the information given by accused/appellant to the police regarding the manner in which the deceased sustained injuries stands falsified by medical evidence, therefore, this itself is sufficient to say that false information given by the accused/appellant is sufficient to establish the guilt against him.

22. That apart, a plastic pipe was seized at the instance of accused/appellant, the same was sent to the chemical examiner, who found that the same was stained with human blood. When said plastic pipe was sent to the autopsy surgeon for ascertaining as to whether the injuries found on the body of deceased could be inflicted by the same, he specifically stated, after examining the same, that the injuries sustained by the deceased could be possible by the said weapon. However, there is no explanation

from the accused/appellant as to how the blood stains are there in the plastic pipe seized at his instance. True it is that there is no serological report opining the origin of blood found on the recovered plastic pipe, but the bloodstained plastic pipe was recovered on the basis of information given by accused/appellant and therefore, he has to explain the blood stains found therein, which he failed to do so, and therefore it has to be inferred that the blood stains found on the plastic pipe (weapon of offence) are that of the deceased. Thus, the recovery of plastic pipe stained with human blood at the instance of appellant is an additional link in the chain of circumstances against the accused/appellant.

23. So far as the plea of alibi is concerned, it is well settled that plea of alibi should be raised by relating accused from the beginning. In the present case, after examination of accused/appellant under Section 313 of CrPC, the defence witness was examined and he deposed that he met the accused/appellant and his mother in the market in the afternoon and thereafter on the same day at about 4 in the evening he saw them returning home from the market. However, the accused/appellant has not taken specific defence regarding plea of alibi during the course of investigation or in his statement recorded under Section 313 of CrPC. Thus, the aforesaid fact gives rise to the inference that by the time the statement of accused/appellant was recorded, the story as narrated by DW-1 in his statement was not in the mind of the defence. In such legal and factual position, evidence of DW-1 Megesh Sinha appears to be totally false and unacceptable. Therefore, we are of the considered opinion that the trial Court has rightly disbelieved the defence story.

24. As the accused/appellant had failed to substantiate the plea of alibi and admittedly the occurrence had taken place inside the house, 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 as also how the deceased sustained injuries on her person. However, instead of offering such explanation, the accused/appellant ventured to give false information regarding the manner in which the deceased sustained injuries 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.

25. Further, we find no substance in the argument of counsel for the accused/appellant that in the facts and circumstances of case the accused/appellant is liable to be held guilty under Section 304 Part-I of the IPC for the reason that the appellant had not only assaulted the deceased mercilessly by hard plastic pipe thereby causing as many as 15 injuries on various parts of her body but also attempted to throttle her which ultimately caused death of the deceased. This goes to show that the accused/appellant had intention to cause death of the deceased and had every knowledge that the injuries being inflicted by him on the deceased were sure to result in her death.

26. The judgements relied upon by the learned counsel for the appellant are entirely distinguishable from the facts and circumstances of the present case and thus, the same cannot be pressed into service for the benefit of accused/appellant. In both these judgments, the accused had not given false information regarding the manner in which the deceased had sustained injuries, nor there was any recovery of bloodstained articles at the instance of accused. Hence the judgements cited on behalf of accused/appellant does not help him.

27. Thus, the above analysis clearly shows that though there is no direct evidence about the cause of death, but the circumstances projected by the prosecution complete the chain of link and established that, in all

probabilities, the act must have been done by the accused/appellant. Hence, the findings recorded by the trial Court convicting the accused/appellant under Section 302 IPC are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

28. In the result, we find no merits in the appeal and the same is, hereby, dismissed. Since the accused/appellant is already in custody, there is no need of his surrender etc.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge

roshan/-