

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 757 of 2015

Abhay Sahu S/o Jeevdhan Prasad Sahu Aged About 28 Years R/o Village Raghunathpur, Police Station Raghunathpur, District Balrampur - Ramanujganj Chhattisgarh. , Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through S.H.O. Police Station Raghunathpur, District Balrampur Ramanujganj Chhattisgarh. , Chhattisgarh

---- Respondent

For Appellant	:	Dr. N.K. Shukla, Senior Advocate with Shri Vikram Sharma, Advocate
For State	:	Ms. K. Tripti Rao, Advocate

**D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Rajani Dubey**

CAV Judgment

[11/01/2019](#)

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 1st June 2015 passed by learned Additional Sessions Judge, Ramanujganj, District Balrampur-Ramanujganj in ST No.329 of 2012 whereby and whereunder the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs.500/- and in default of payment of fine, additional RI for three months.
2. The prosecution story, as unfolded from the records of the case, is that Basanti, wife of the appellant, was found dead in her house. It is the case of the prosecution that an information was given to Devkumar (PW1) brother

of the deceased, regarding illness of his sister, whereafter Devkumar reached the house of the appellant and found that his sister was lying dead. He was informed by the appellant that Basanti was carrying pregnancy and as the baby was unwanted, for the purpose of causing abortion, co-accused Dr. Gopal Prasad was called who is said to have prescribed certain medicines for abortion which were administered. Unfortunately, Basanti died. As this was the reason stated by the appellant to the brother of the deceased, a morgue intimation in Ex.P-1 and FIR in Ex.P-2 were recorded in the police station at the instance of Devkumar (PW1) in which the story as stated by the appellant was recorded. Inquest over dead body was prepared in Ex.P-5 in the presence of witnesses. The dead body was also sent for postmortem and a team of two doctors namely Dr. Govind Singh (PW16) & Dr. R. B. Prajapati (PW17) conducted postmortem and prepared postmortem report in Ex.P-10. The postmortem report disclosed certain injuries and according to doctor, the cause of death was asphyxia as a result of injury sustained over the mouth and nose. While according to the appellant, the deceased died due to administration of certain pills given to her to abort pregnancy, postmortem conducted by Dr. Govind Singh (PW16) and Dr. R. B. Prajapati (PW17) disclosed death caused due to asphyxia. The police, therefore, filed a charge sheet making allegation of commission of murder not only against the appellant that he caused death of his wife but also against Dr. Gopal Prasad, the co-accused that by giving pills for abortion, he caused death. Against the appellant and co-accused, separate charges were framed. Against the appellant, charges under Section 302 IPC were framed whereas against other co-accused, charges under Section 314 IPC were framed. In order to prove its case, the prosecution examined as many as 18 witnesses. Co-accused examined himself as the sole defence witness. Present appellant did not examine any defence witness. In his examination under Section 313 Cr.P.C., appellant denied incriminating evidence and circumstances appearing against him in the evidence of the prosecution and stated that he has been falsely implicated.

3. The learned trial Court found that as far as co-accused Dr. Gopal Prasad is

concerned, he deserved to be acquitted as the prosecution has failed to prove that the abortion pills was purchased by the appellant- Abhay from co-accused Dr. Gopal Prasad nor any documentary evidence in that regard was proved and that co-accused produced the document relating to his registration with Chhattisgarh Paramedical Council of he having taken paramedical training course and thus competent to treat simple diseases. However, taking into consideration that Basanti died homicidal death due to asphyxia, there was no pregnancy found and that Basanti died in her house in the presence of her own husband, the appellant- Abhay Sahu who failed to explain how his wife sustained injury and died homicidal death, the Court below convicted appellant- Abhay Sahu for commission of offence under Section 302 IPC.

4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned senior counsel for the appellant would argue that the entire case of the prosecution, right from the stage of investigation itself, is doubtful and even according to the prosecution, the cause of death could be either homicidal or death could be caused due to administration of contraceptive pills. He would argue that charge sheet filed against the present appellant- Abhay Sahu and co-accused Dr. Gopal Prasad made two different inconsistent allegations which demolishes the case of the prosecution, as the very cause of death is rendered doubtful. He would next submit that the prosecution case of deceased having sustained injury is doubtful because the witnesses who were present at the spot stated that they did not see any apparent injury on the body of the deceased. It is next contended that even the cause of death of the deceased is not proved to be homicidal in nature because the symptoms are capable of multiple inferences including a possible case of death due to heavy discharge of blood during pregnancy which could possibly be caused due to administration of certain contraceptive pills used for abortion.
5. Learned counsel for the appellant has relied upon a published research work relating to Drug- Induced Bleeding carried out by Johnathan W.

Hamrick, ParmD and Diane Nykamp, PharmD. Learned senior counsel for the appellant has also relied upon the judgment of the Supreme Court in **Navaneethakrishnan Vs. State by Inspector of Police** (Criminal Appeal No.1134 of 2013 decided on 16th April 2018) and judgment passed by this Court in the cases of **Rupesh Kumar Vs. State of Chhattisgarh** (CRA No.724 of 2011 decided on 7.4.2018), **Bhola @ Krishna Kanwar Vs. State of Chhattisgarh** (CRA No.4 of 2018 decided on 18.4.2018) **Hare Krishna Sing @ Krishna Singh Vs. State of Chhattisgarh** and other connected matter (CRA No.768 of 2018 decided on 17.4.2018), **Manharan Dhruv Vs. State of Chhattisgarh** (CRA No.683 of 2012 decided on 25.4.2018), **Chunnilal and Anr. Vs. State of Chhattisgarh** (CRA No.151 of 2012 decided on 3.4.2018) and **Rati Pradhan Vs. State of Chhattisgarh** (CRA No.917 of 2012 decided on 3.4.2018), to buttress submission that where cause of death itself becomes doubtful, no conviction could be ordered.

6. On the other hand, learned counsel for the State submitted that it was because of the misleading act of the appellant explaining to brother of the deceased Devkumar (PW1) that initially investigation was misled as if the death was caused due to administration of certain drugs for inducing abortion. However, the medical opinion and presence of injuries on the body of the deceased proves that it was a case of death caused due to asphyxia by use of force by suffocating the mouth and the nostril resulting in several internal injury and it could even be thrusting of some object in the mouth so as to gag the deceased resulting in damage of teeth and other internal parts of the mouth and finally leading to asphyxia. The deceased died in her own house in which the appellant lived along with his children. It was for the appellant to come out with explanation to explain as to how his wife sustained injuries and died due to asphyxia. The appellant failed to explain. He could also not establish any plea of alibi. The explanation given by the appellant to his brother-in-law Dev Kumar (PW1) was false and provides an additional link to the incriminating circumstance. Therefore, it is argued, the learned Court below has rightly concluded that the appellant himself has killed his wife.

7. We have heard learned counsel for the parties and perused the records.
8. This case has an interesting illusion feature. We find that after morgue intimation and FIR was lodged by Dev Kumar (PW1) brother of the deceased, investigation proceeded to culminate in filing of charge sheet not only against the present appellant but also against co-accused Dr. Gopal Prasad. While it is alleged that at the instance of appellant, Dr. Gopal Prasad administered certain medicine for inducing abortion which ultimately led to death, simultaneously, it was also alleged that the appellant's wife died in suspicious circumstances and at that time, the appellant was at home along with children and there was nobody else. Therefore, the allegation was levelled against the appellant and co-accused of having caused death of Basanti and thereby committing offence under Section 302 and 314 IPC as also under provision of Section 11 read with Section 34 of Chhattisgarh Ayurvigyan Parishad Adhiniyam 1987.
9. It appears that the prosecution was initially misled because of the morgue (Ex.P1) and the FIR (Ex.P-2). Both these informations were recorded at the instance of Devkumar (PW1), the brother of the deceased. Devkumar (PW1) has stated that when a call was given in the night by one Jagdev Yadav, neighbour of his brother-in-law(appellant) that his sister is lying unconscious and he may come to see, whereafter, he immediately went to house of his sister and found that she was lying dead on the cot and blood had oozed out from her mouth, though other injury was not apparent. He further deposed that when he inquired from his brother-in-law, the appellant, as to what happened, he told that he does not know. He further deposes that thereafter, he came back and a call of one Dayashankar was received that it is advisable to call the doctor as Basanti was still alive. Thereafter, the doctor was called and after checking, the doctor said that Basanti had already died whereafter, he lodged morgue in Ex. P-1 and also FIR in Ex.P2. He then states that when in the police station, he asked doctor as to how his sister died, he stated that for inducing abortion, a tablet was administered which was given by Dr. Gopal Prasad. In his cross-examination, he admits that when in the morning, he had gone to the

house of appellant, he was informed by the appellant that Basanti was administered pills for inducing abortion. Rudra Prasad (PW2) who is relative of the appellant states that at about 12:00 in the night, his brother-in-law Dev Kumar (PW1) called him up informing that Basanti died but he could not disclose as to how she died. He says that next day he went to the house of Devkumar and from there, they went to police station Raghunathgar. He then states that Abhay told him that Basanti was complaining of abdominal pain.

10. Ashok Sahu (PW3) brother-in-law of the appellant and the brother of the deceased deposed that in the night, his brother-in-law Devkumar called him to inform that Basanti died and he does not know how she died. Mahadev (PW6) also deposes that he was informed by Devkumar that his sister died.

11. Subhash (PW7) states that when he heard cries from house of Basanti and went to her house he was informed that she is not keeping well. Doctor came, checked her up and declared that Basanti died. He then states that he was called by Devkumar. They went to call doctor. The doctor came and checked and then declared that Basanti had already died but does not know how she died. Dayashankar (PW8) also deposes that in the night, the appellant came to his house and stated that something has happened to his wife and he went to house of the appellant. He found Basanti lying dead on a cot. Banspati (PW9), the elder sister of the deceased, states that in the night at about 12:00 - 1:00 hrs., she received a telephone call that her sister Basanti died. Kaushilya (PW11) sister of the deceased also deposed that in the night, she received phone call that Basanti died. Raghunandan (PW13) states that in the night, neighbour Dayashankar came and informed that Basanti died, whereafter, he went to appellant's house and found Basanti lying dead but he does not know how she died.

12. From the aforesaid evidence, as brought by the prosecution, what is found is that brothers and sister of the deceased and the neighbour of the appellant came to know in the night that something happened to Basanti, when they went to the house, they found that she was dead and at that

time, appellant was unable to explain how his wife died but then what is deposed by Dev Kumar (PW1) is that in next morning, the appellant started making different story that the wife was carrying pregnancy and she was administered pills to induce abortion. It would thus be clear that the appellant, who was present in the house along with his children and his wife (the deceased), would be best knowing as to how his wife died. He came out with a story that his wife died possibly because of administration of drugs for inducing abortion. As this was the story disclosed by the appellant to his brother-in-law Devkumar (PW1), it explains how in the morgue intimation (Ex.P-1) and FIR (Ex.P-2), it has been stated at the instance of Devkumar that probably his sister died on account of consuming drug and that such drug was given by doctor, co-accused Gopal Prasad. The police, it appears, proceeded in that direction also and finally landed up with the charge sheet before the Magistrate on the allegation that both the appellants and co-accused had committed murder by administration of certain pills. It has to be noticed that the postmortem report prepared by Dr. Govind Singh (PW16) and Dr. R.B. Prajapati (PW17) gave entirely different picture in which doctor found contusion on the face, nose, lips and internal parts of the mouth and many teeth were also uprooted, though, not fully broken, showing signs of struggle and blood mixed froth was also found in the nostril. The cause of death according to doctor was asphyxia due to gagging of mouth and nostril with force.

13. Dr. Govind Singh (PW16) has proved postmortem report. He has deposed that blood was oozing out from mouth of the deceased. Lips, nails had turned blue. There were contusion in both nostril. Contusion was also found on the upper part of the chest. He also deposed that there was frothing blood found in the wind pipe and throat both. There was contusion found in the mouth, food pipe, oesophagus and inside the mouth around gum, there were contusion as also bleeding. He further deposed that central incisors, lateral incisor and canine teeth were partly damaged and uprooted. His opinion was that injury was caused due to hard and blunt object which was antemortem in nature. As far as injury on the nostril, lips and inside the mouth is concerned, it could be caused due

to hard and sharp object. Doctor emphatically stated that cause of death was asphyxia because of the injury caused on the face, mouth and it appears to be homicidal in nature. The doctor has been subjected to detailed cross-examination in which he has clearly deposed that all the injuries were apparent. He has also stated that in the event of asphyxia and obstruction to breath, froth mixed blood may come in the wind pipe and the throat. He has denied that no froth mixed blood was found in the throat and in the wind pipe. He has denied that because of excessive bleeding, mouth may turn blue. He has denied that there were no injury found on the body of the deceased. He has further explained that at the time of conducting postmortem, though, there was no blood found outside the mouth but it was found inside the mouth. Teeth were shaken though not broken. It is also important to note that on a query made by the Court, the doctor admitted that he has not given detailed explanation as to how asphyxia was caused but he deposed that from the injury on the face and mouth, it is revealed that asphyxia was possibly caused due to compression and gagging of mouth and nostril.

14. Learned senior counsel appearing for the appellant has made elaborate submission before us to convince us that the evidence which has come on record does not rule out that excessive bleeding might have been caused due to abortion. For this purpose, the literature on Drug-Induced Bleeding was also placed before us. According to learned counsel for the appellant, the evidence on record and seizure of certain tablets found from the spot also leads to possibility that in order to induce abortion, Basanti must have taken certain pills leading to excessive bleeding. After having given our anxious consideration, we find ourselves unable to accept the submission of learned senior counsel.

It is true that right from the beginning, the appellant sought to develop a story told by him to Devkumar (PW1) and others that on certain medicines prescribed by co-accused Dr. Gopal Prasad, the wife was administered medicine to induce abortion because she was carrying pregnancy. Moreover, it is also case of the prosecution that from the possession of the

appellant, certain tablets were also seized but then, such a story and seizure of those tablets by themselves, without anything more, do not probabalize that the deceased might have suffered excessive bleeding because of administration of those tablets. This is because in the postmortem report, no pregnancy was found. The doctor has emphatically stated in the postmortem report (Ex.P-10) that the deceased was not found pregnant. Moreover, there is nothing in the postmortem report or the evidence of the doctor that in the viscera of the deceased, any particular medical combination matching those tablets seized from the appellant was found so as to suggest that the deceased had consumed certain tablets. Further, there is no evidence of any excessive internal bleeding or even external bleeding from any part of the mouth including vaginal exits. Therefore, the entire story of deceased carrying pregnancy and some tablets having been administered to induce abortion and in that process, deceased suffering from excessive bleeding and then succumbing to death, appears to be mere story developed by the appellant to save himself by misleading even the investigating agency.

15. Dr. Govind Singh (PW16), in his cross-examination, has been asked regarding his qualification and though he states that he is not M.D. (Medicines), he has broad knowledge of medicines and he has given his opinion on the basis of that broad knowledge which he possessed by virtue of he being a medical practitioner. In para-4 of his evidence, he has stated that medicine which was seized is mainly used for the purpose of treating gastrointestinal problems and sometimes may also be used for abortion.
16. On the other hand, the postmortem report clearly proves that death was homicidal in nature. Doctor has clearly deposed and it is also contained in the postmortem report that blood was coming out from the mouth. Nails and lips had turned blue. There were contusion in both nostril. Contusion was also found on the upper part of the chest. Blood was found in the throat and wind pipe. Not only this, there were multiple contusions found in the mouth, food pipe, oesophagus and in all the four directions inside the mouth around gum and number of teeth were already uprooted,

though, not completely removed. According to doctor, all injuries were antemortem in nature and the cause of death was asphyxia which could be caused due to injury found in the mouth and the nostril. In the specific question raised by the Court, the doctor has stated in para-9 of his deposition that asphyxia could be caused due to compression of mouth and nose of the deceased. We have carefully perused the postmortem report and the evidence of Dr. Govind Singh (PW16). The nature of injury, the part of the body where such injury was found, cause of death, presence of blood mixed froth in the throat, wind pipe, all are leading to conclusion that the mouth and nostril of the deceased was gagged and possibly something was also thrust in her mouth to gag her in which process deceased sustained multiple internal injuries in her mouth and other parts and even her teeth were damaged. In all this process, there were obstruction to breath which finally resulted in asphyxia, which is also explained from the fact that nails and lips had turned blue. This clearly shows that the Basnati was gagged to death. In our considered opinion. it was clearly homicidal in nature.

17. There is overwhelming evidence led by the prosecution that the deceased was found dead in her own house in the midnight and was so seen by number of witnesses including her brother Dev Kumar (PW1) who reached there at spot. Not only this, it is also found that the deceased was found dead in the house which was used as residence by the appellant and children and there was nobody else. Therefore, it was for the appellant and the appellant alone to explain how his wife died due to asphyxia caused by violent act of gagging her mouth. The explanation given by the appellant appears to be clearly false. From the evidence of Devkumar (PW1) who lodged morgue and FIR both, it is clear that when he asked the appellant, the appellant made a story that his wife was carrying pregnancy and Dr. Gopal who had come, had prescribed certain medicine which was consumed by his wife but the postmortem report falsifies such explanation because the deceased was not found carrying any pregnancy nor the report shows presence of any medicine used for inducing abortion. Dr. Gopal has been acquitted by learned trial Court. Section 106 the Indian Evidence Act

comes into application to cast burden on the appellant to explain as to how his wife died homicidal death. The false explanation given by the appellant to cover the whole thing only provides an additional link and an incriminating circumstance pointing towards his guilt.

18.The decisions cited by learned counsel for the appellant are not applicable in the circumstance of the case because from the medical evidence and other circumstance of the case, we found that prosecution has succeeded in proving that Basanti, appellant's wife, died homicidal death in her own house. She was gagged and she died due to asphyxia having sustained several injuries on her face, lips and nostril and inside mouth.

19.In the result, we do not find any ground to interfere with the impugned judgment of conviction and order of sentence.

20.The appeal is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge