

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1534 of 2015

Shivkumar @ Lallu Pathari, S/o. Maansai Pathari, Aged about 37 years, R/o. Khadgwan-Garhipara, P.S. Khadgwan, District Korea (C.G.)
----- Appellant

Versus

State of Chhattisgarh through Station House Officer, Police Station Khadgwan, District Korea, Chhattisgarh

----- Respondent

For the Appellant :- Mr. Pushkar Sinha, Advocate
For the Respondent :- Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

20.02.2019

1. By this appeal the appellant assails legality and validity of the judgment of conviction and order of sentence dated 30.09.2015 passed by the Additional Sessions Judge, Manendragarh, District Korea, in Sessions Trial No. 33/2013, whereby the appellant has been held guilty for commission of offence under Section 302 IPC and sentenced to undergo imprisonment for life and also to pay fine of Rs. 1000/- plus default stipulation.

2. According to the prosecution, the appellant killed his wife by strangulating, on 24.12.2012 in the afternoon about 2.00 pm while she was coming back after offering water to the goats. At about 4.30 pm in the afternoon, Manmati (PW-2) lodged a report in the Police Station upon which, an FIR (Ex P-3) was registered. The investigation eventually culminated in filing of the charge against the appellant for alleged commission of offence under Section 302 IPC for killing his own wife. Learned trial Court framed charge against the appellant that the appellant killed his wife by throttling her with an intention to cause her death. The postmortem report (Ex.P-26) revealed that the death was on account of throttling and various bruises, scratches were found around the neck and some other parts of the body. One contusion was also found over her chest and an injury over the kidney.
3. The appellant abjured his guilt and was tried for commission of the alleged offence. Most of the prosecution witnesses turned hostile and the prosecution could not prove the case by leading any cogent evidence. However, the learned trial Court taking into consideration the evidence of motive behind commission of offence, held that the appellant must have been there at the spot where the dead body of his wife was found which was at a distance of 200 meters away from his house. That alone was made basis to convict the appellant by way of judgment dated 30.09.2015 which is now assailed in this appeal.

4. Pointed submission of learned counsel for the appellant is that present is a case of no evidence and the judgment of conviction is only based on suspicion which the prosecution failed to translate into truth. He would argue that the dead body of the appellant's wife was found on the road, away from home at a distance of 200 meters and nobody had seen the incident. The evidence of motive against the appellant is highly doubtful because more number of witnesses have stated that the relationship between the appellant and the deceased was cordial. The evidence of the brother of the deceased that the appellant used to harass her or beat her in the state of intoxication because the appellant doubted her character are highly doubtful, unreliable and mostly improvement upon their respective case diary statements. He would also argue that the learned trial Court assumed present to be a case of last seen only on the theoretical basis that there could be a motive for the appellant to kill his own wife. Therefore, the conviction is wholly unsustainable under the law.
5. State counsel on the other hand, supports the judgment of conviction and order of sentence by submitting that even though the prosecution witnesses have turned hostile and not supported the case of the prosecution, PW-1, PW-22, PW-23 and PW-24 are the witnesses who have clearly deposed that the deceased used to be frequently assaulted by the appellant in a state of intoxication and that the appellant also doubted character of his wife by saying that the child born to his wife

was not his biological son. He would argue that even though the dead body was not found in the house, it was found very near the house at about 200 meters and the appellant being the husband, was required to discharge burden of proving facts within his knowledge as to how his wife died homicidal death. He would further argue that the learned trial Court has treated present to be a case of last seen only in that manner and not that at the spot something happened between the appellant and the deceased.

6. We have heard learned counsel for the parties and perused the record.
7. The evidence of the Dr. J.K. Yadav (PW-28) proves beyond reasonable doubt that Kavita @ pooja died homicidal death. On the basis of the examination of the dead body, it has been clearly opined that Kavita @ Pooja died homicidal death because of throttling, numbers of scratches were found around the neck and other parts of the body, there was a contusion on the chest and also near the kidney. The kind of superficial injuries coupled with cause of death being throttling, leaves no manner of doubt that present is case of homicidal death that Kavita @ Pooja was strangled to death.
8. However, in our opinion, the prosecution has failed to lead any clinching evidence to draw an inference based on circumstantial evidence that in all probability it is the appellant and the appellant alone who must have killed his wife. There is

no eyewitness to the incident. It is also the case of the prosecution, that dead body of Kavita @ Pooja was found on the road which is at a place about 200 meters away from the house of the appellant. There is no eye witnesses who saw the appellant and the deceased at the spot immediately before the dead body of Kavita @ Pooja was found laying on the road. There is no evidence of any kind of dispute, quarrel or fight between the appellant and the deceased. Rather most of the witnesses have stated that the relationship between the accused and the deceased was cordial.

9. True it is that some of the witnesses namely PW-22, PW-23 and PW-24 stated regarding maltreatment but their statement is not coherent. Chandrashekar (PW-22) has stated that the appellant was a drunkard and used to beat his wife Kavita @ Pooj in drunken state as was informed to him by his sister. He states that he does not know why the accused/appellant used to assault his wife. In cross examination, he admitted that the appellant did not doubt the character of her wife. Ashok Pradhan (PW-23) the other brother of the deceased states that the appellant used to scold his wife telling her that he was not the biological father of the child born to her. Both the versions apart from being contradictory to each other, are improvements if compared to the case diary statements of the respective witnesses.

10. As far as Parvati Pradhan (PW-24) is concerned, she states that she used to be informed on the telephone that the appellant used to harass the deceased doubting on her character.
11. Only on the basis of weak circumstantial evidence of motive in the present case, in respect of which also, the evidence of the witnesses is contradictory, conviction could not be ordered without there being any other clinching circumstantial evidence, particularly when the dead body was not found in the house but 200 meters away from the house of the appellant. In a suggestion given to Manmati (PW-2), it has been admitted that on the date of the incident since morning the appellant had already left the house in connection with his job. The burden to prove the fact that how his wife sustained injuries and died homicidal death, by application of section 106 of the Evidence Act, could not be fastened on the appellant because the prosecution was first required to prove that the deceased died in her own house and at that time, the appellant was present in the house and that the appellant failed to establish plea of alibi.
12. We find that learned trial court has drawn an inference of it being a case of last seen based only on the evidence of motive, to which we take a strong exception. We are at complete loss as to how an inference of last seen could be drawn only on the basis of motive particularly when the deceased was found dead at a distance of 200 meters away from the house and nobody had seen the appellant on the road at or around the time dead body was found much less any incident of quarrel, fight

between the husband and wife. Learned counsel for the appellant rightly submitted that the prosecution has completely failed to translate suspicion into truth. It needs no repetition that suspicion, however, strong cannot take place of truth. In a case based on circumstantial evidence, in order to bring home the guilt of the accused, the prosecution is required to prove the chain of circumstances which are compatible only with the hypothesis of guilt. In the present case, all those ingredients are completely lacking. The impugned judgment of conviction and order of sentence is unsustainable in law and is therefore set aside. The appeal is allowed and the appellant is acquitted of the charge. He be set free forthwith.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge