

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1039 of 2014**

- Nagendra Pratap Behra S/o Ganesh Pratap Behra Aged About 25 Years R/o Village Kaya, PS Gharghora, Distt. Civil And Rev. Distt. Raigarh C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through PS Gharghora, Civil And Rev. Distt. Raigarh C.G.

---- Respondent

For Appellant : Shri R.K.Jain, Advocate
 For State : Shri Avinash K. Mishra, Panel Lawyer

D.B.- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board**22/04/2019****Per Manindra Mohan Shrivastava, J.-**

This appeal is directed against impugned judgment of conviction and order of sentence dated 08/09/2014 passed by the 2nd Additional Sessions Judge, Raigarh (CG) in Sessions Trial No.40/2013, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 302 of IPC	Imprisonment for life and fine of Rs.5,000/- (in default of payment of fine, five months additional R.I.)
2	U/s 201 of IPC	R.I. for one year and fine of Rs.1,000/- (in default of payment of fine, additional R.I. of one month)

2. The prosecution story, as is unfolded from the records of the case and the impugned judgment of conviction is that a missing report was recorded in *Rojnamcha Sanha* (Ex.P/19-C) of the police station – Gharghoda on the basis of information given by the appellant that his wife has gone missing since 7 PM of 20/01/2013. He and his wife were threatened by Shriram i.e. father of his wife – Urmila. Two days thereafter, the dead body of Urmila was found in a well situated in the premises of Bhakulal Kanwar (PW2). A morgue intimation in Ex.P/17 was recorded in the police station on the basis of information given by Shriram (PW4), the father of the deceased. In the morgue, it was recorded that the appellant married the deceased and a village panchayat meeting was held and then, on 20/01/2013, appellant's father – Ganesh Behra committed suicide by consuming poison and since that day in the evening, the appellant and the deceased were seen in the village and then the dead body of Urmila was found in the well on 23/01/2013. After preparation of inquest over the dead body, it was sent for post mortem which was conducted by Dr. P.L.Bodalkar (PW8). The doctor opined that the deceased had sustained injury and died due to asphyxia caused due to throttling. Suspecting the appellant to be involved in the alleged commission of offence of murder of his own wife, the police registered FIR in Ex.P/15. The investigation culminated in filing of charge sheet against the appellant. On the basis of material contained therein, the appellant was charged of commission of offence under Section 302 IPC and 201 IPC. The appellant abjured guilt and was put to trial. Though there was no eye witness to the incident, the prosecution led evidence to establish incriminating circumstances that the deceased resided with the appellant and thereafter, she went missing, there was quarrel between them and then both of them were not seen and later on, dead body of Urmila was found in a well. In his examination under Section 313 CrPC, the appellant denied all the incriminating circumstances and stated that he has been falsely implicated. No defence witness was examined.

3. Learned Trial Court relied upon the circumstances that the appellant was married to the deceased against wishes of the parents. Thereafter, appellant's father committed suicide and then, later on, the dead body of Urmila was found in a well and therefore, in all probability, it is the appellant who has committed murder of his own wife.

4. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant would submit that the conviction of the appellant proceeds only on suspicion but the prosecution has failed to establish circumstantial evidence to form a complete chain that the appellant committed murder of his own wife. He would argue that the appellant had lodged a report in the police station on 22/01/2013 that his wife had gone missing. The dead body of Urmila was found in the field of Bhakulal Kanwar (PW2), who is the uncle of the deceased and brother of Shriram (PW4) – father of the deceased. The prosecution witnesses have admitted in their evidence that as the appellant and the deceased had entered into an affair and despite resistance of Shriram (PW4), they married, in village panchayat, Shriram had openly ended his relationship with his daughter and many a times, threat was administered to the appellant and deceased both. It is next submitted that there was no quarrel or motive as to why the appellant would kill – Urmila, with whom, he had married out of their love affair. The only circumstance that the deceased was married to the appellant by itself, without anything more, could not lead to an inference that the appellant must have killed his own wife as the dead body was found in the well situated in the other corner of the village, which is in the premises of the uncle of the deceased.

5. On the other hand, learned State counsel would argue that the appellant and the deceased had an affair and despite resistance offered by Shriram (PW4), marriage was solemnized. In village panchayat meeting, fine was imposed, which could not be paid by the father of the appellant. Later on, the appellant eloped with

his wife - Urmila and then after couple of days, the dead body of Urmila was found in a well. The appellant failed to explain as to how his wife sustained injury and died homicidal death. Therefore, in these circumstances, his conviction does not warrant any interference.

6. We have considered submission of learned counsel for the parties and perused the records.

7. We find that the entire basis of the impugned judgment of conviction and order of sentence is that the appellant failed to explain as to how his wife sustained injury and died homicidal death. Except this, there is no other consideration nor any specific incriminating evidence considered by the learned Trial Court to hold the appellant guilty of commission of offence. The evidence of Inder Sai Rathiya (PW1), Bhakulal Kanwar (PW2), Shriram (PW4), Santoshi Rathiya (PW5) clearly establishes that the appellant and the deceased had an affair. The evidence of the prosecution witnesses also proves that as the appellant and the deceased belong to different community, there was lot of resistance from the side of the family of the deceased, particularly, her father - Shriram (PW4). But the deceased was not willing to give up or succumb to the pressure of her own family and finally, she entered into marriage.

8. Inder Sai Rathiya (PW1) has stated in the cross-examination that any girl belonging to Rathiya community marrying in another community is taken very seriously. He further admitted that Rathiya community was not happy from the marriage of appellant with the deceased and the appellant was also given threat. He also states that fine was imposed on Nagendra and his father owned the responsibility to pay the fine and 4-5 days after meeting, Ganesh Behra (father of the appellant) died, though, he states that either on 20th or 21st February, Nagendra and Urmila left their house. He says that he had not seen them. A suggestion has been given which has been admitted that after 2-4 days of marriage, Nagendra and Urmila

had left the village and thereafter, attempts were made to bring Urmila back to her family but Urmila was not willing to follow her father's instruction and finally, Shriram had threatened saying that he treats his daughter dead. He further states that dead body of Urmila was seen by Bhakulal (PW2). The well was situated in the fields of Bhakulal. Bhakulal and appellant are like brothers.

9. Bhakulal (PW2) has deposed in his evidence that upon being informed by one Jagmohan that Sodhi people have killed Urmila and thrown the body in the well, he went to see the dead body of Urmila and then villagers were informed and report was lodged. This witness was declared hostile and in the cross-examination, a suggestion given to him that the appellant confessed that he had killed his wife, was admitted. In the cross-examination, he states that he is the brother of Shriram Rathiya and that when Urmila had gone along with Nagendra - the appellant, Shriram was keen to call his daughter back but his daughter refused to come, which led to a meeting, called at the instance of Shriram. In panchayat meeting, he was asked to sign the documents relating to marriage of Nagendra and Urmila. Initially, he refused but later on, he signed it. Though he states that Nagendra, in panchayat meeting, stated that he had killed Urmila, this witness clarifies that he did not hear it nor he knows by his personal knowledge.

10. Santoshi Rathiya (PW5) has stated in her cross-examination that the appellant and his wife were living happily and there was no quarrel between them and they had married out of their love affair due to which, the community people were not happy with appellant's father.

11. From the evidence of prosecution witnesses and also from the evidence of the investigating officer, it has also come that on 20/01/2013, appellant's father - Ganesh Behra committed suicide by consuming poison.

12. We find that in the present case, it has also been proved from the evidence on record that on 22/01/2013, at about 18:45 in the evening, a *rojnamcha* regarding missing person was recorded in the police station on the basis of information given by the appellant herein. The said document is also proved in Ex.P/19-C.

13. The overall evidence led by the prosecution itself shows that the appellant and the deceased had love affair and despite serious resistance offered by the father of the deceased - Shriram (PW4), the appellant and the deceased married. There were certain disputes at the community level, panchayat meeting was organized, fine was imposed and then on 20/01/2013, father of the appellant committed suicide. On the basis of report given by the appellant, a missing person's report was recorded in the police station and then on 23/01/2013, dead body of Urmila was found in a well. This well is not situated in and around the house of the appellant but from the evidence of the prosecution witnesses, it is established that the well is situated in the field of Bhakulal Kanwar (PW2) who is the uncle of the deceased and brother of Shriram. There is no evidence that before the wife of the appellant went missing, there was any quarrel between the appellant and his wife. On the contrary, the evidence of Santoshi Rathiya (PW5) is that the appellant and his wife were living happily and there was no dispute between them. Therefore, on the totality of these circumstances, we find it difficult to hold that the prosecution has proved by clinching circumstantial evidence of incriminating nature that in all probability, the appellant and the appellant alone must have killed his own wife. Unless there was a strong motive, the prosecution story that the appellant would kill one, with whom he was immensely in love and contacted marriage, is also improbable.

14. In a case where the prosecution comes out with an allegation which is sought to be supported only from circumstantial evidence, as is well settled, the prosecution is required to establish each and every circumstantial evidence in the manner it

forms a complete chain that the accused must have killed his own wife and all those circumstances are compatible only with the hypothesis of the guilt of the appellant.

In the present case, we find that the prosecution has failed to establish its case beyond reasonable doubt.

Learned Trial Court has based conviction by wrongly including provisions of Section 106 of the Evidence Act that it was for the appellant to explain as to how his wife sustained injury and died homicidal death. As the appellant had lodged report that his wife had gone missing on 22/01/2013 and the dead body was found in a well situated in the field of the uncle of the deceased, in the absence of there being any clinching evidence that just before the incident, the appellant and the deceased were seen around the well or there was any quarrel going on between them, the prosecution story could not travel beyond suspicion.

15. In the result, the appeal is allowed. The impugned judgment of conviction and order of sentence is set aside. The appellant be set at liberty forthwith if not required in any other case.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Gautam Chourdiya)
Judge