

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 937 of 2014

1. Arun Kumar S/o Krishna Kumar Kahar Aged About 32 Years
R/o. Vill. Birra, P.S. Birra, Civil And Rev. Distt. Janjgir-
Champa Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through P.S. Dongargarh, Distt.
Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant

Ms. Indira Tripathi, Advocate

For Respondent/State

Ms. Fouzia Mirza, Addl. Adv. General

Hon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.Judgment on BoardByPrashant Kumar Mishra, J.4-8-2020

1. Appellant would call in question his conviction under Section 302 of the Indian Penal Code (for short 'the IPC') and sentence of life imprisonment by the Additional Sessions Judge, Link Court, Dongargarh, District Rajnandgaon, in ST No.2/2014.

2. As per the prosecution case at about 5.00 pm on 10-11-2013 one boy and girl were sitting on the hills of Maa Bamleshwari Temple to whom the informant Anil Kumar Yadav (PW-1), who is an Insurance Agent, enquired on which the boy stated his name to be Arun and referred the girl {Ranu @ Janaki (since deceased)} as his wife. Anil Kumar Yadav (PW-1) asked them to sit in front on which the girl came out and fell down. The girl informed Anil Kumar Yadav (PW-1) that the boy (appellant-Arun Kumar) has poisoned her. The girl was frothing from her mouth. The appellant also confessed to have poisoned the girl. Anil Kumar Yadav (PW-1) made the arrangements to send the girl to the hospital and lodged the First Information Report (FIR) (Ex.P/1). The deceased died in course of treatment.
3. During investigation, appellant's memorandum statement was recorded on 11-11-2013 vide Ex.P/3 in which he disclosed that after love affair for about two months he was married to the deceased. On 10-11-2013 they had gone to visit Maa Bamleshwari Temple where he made her to consume Borax (Suhaga) poison because the deceased was pressurizing him to do some work which he did not want to do. The remaining poison (Borax) has been concealed in a stone which he can get recovered. Vide seizure memo (Ex.P/4) the Borax was

recovered from the indicated place. Broken bangles and one water bottle were also recovered. Viscera was recovered vide Ex.P/5. In the postmortem report (Ex.P/7) conducted by Dr. S. Choudhary & Dr. Suchita Srivastava (PW-5) the cause of death was found to be cardio respiratory arrest. Final opinion can be given after examination of viscera by forensic expert. In the FSL Report (Ex.P/12) the viscera article 'B' & 'C' were found to contain Borax chemical which was used for poisoning the deceased.

4. In course of trial the prosecution examined as many as 9 witnesses to bring home the charges whereas the appellant while denying the charges examined his wife Rajkumari as DW-1 in his defence. On completion of trial, the trial Court has convicted the appellant for committing offence under Section 302 of the IPC.
5. Learned counsel appearing for the appellant would submit that the informant Anil Kumar Yadav (PW-1) has turned hostile denying material part of the FIR and the appellant having already married to DW-1 Rajkumari the entire prosecution case that the appellant was married with the deceased and he committed her murder is false and concocted. Learned counsel would further submit that the witnesses to

the memorandum and seizure have not supported the prosecution, therefore, the appellant deserves to be acquitted.

6. On the other hand, learned counsel appearing for the State would support the impugned judgment of conviction.
7. Anil Kumar Yadav (PW-1) has supported the prosecution by stating that he had gone to the temple at the Bamleshwari hills at about 4.00 pm and saw the appellant and the deceased sitting there. On enquiry, the appellant informed that they are husband and wife upon which he requested them that if they are husband and wife why they are hiding and not sitting in front on which they came out. The deceased fell down; started writhing; and frothing was coming out from her mouth. Albeit this witness has been declared hostile and denied some of the contents of the FIR, particularly the confession made by the appellant, however, he supports the prosecution to the extent that the appellant and the deceased were present at the Bamleshwari hills. This witness has not been cross-examined that the appellant and the deceased were not seen together by him at the place of occurrence.
8. PW-2 Raju Katakwar & PW-3 Parmanand Prasad are the witnesses to the memorandum statement (Ex.P/3) and seizure

memos (Ex.P/4 & Ex.P/5). They have not supported the prosecution, but they would admit their signatures on these documents. Parmanand Prasad (PW-3) admits that when he saw the girl she was unconscious.

9. PW-5 Dr. Suchita Srivastava is one of the surgeon who conducted the postmortem. The Doctors have found that the death was due to cardio respiratory arrest, but final opinion was reserved to be given after examination of viscera by forensic expert. The FSL Report (Ex.P/12) is positive for presence of Borax (Suhaga) in the viscera of the deceased.
10. PW-7 Mehattar is the father of the deceased. According to this witness, the deceased was missing since 4-9-2013 for which he lodged a report at the Chirmiri police, however, his daughter was not traceable for about two months. He was continuously searching for his daughter and reached Rajnandgaon on 9-11-2013. On 10-11-2013 he received a call from his house that the Dongargarh police have informed that his daughter has been found at Dongargarh temple. He immediately rushed to the Nag temple, Dongargarh and found his daughter to be unconscious and blood mixed frothing had come out from her mouth.

11. DW-1 Rajkumari deposes that her husband (appellant herein) had gone from his house on 10-11-2013 meaning thereby that before this date the appellant was staying with her.
12. From the aforesaid evidence, it clearly appears that the deceased was last seen together with the appellant on the date of incident as has been stated by informant Anil Kumar Yadav (PW-1). Even if there is no evidence to the effect that appellant made confessional statement to Anil Kumar Yadav (PW-1), the fact that he was the person who was seen with the deceased at the Dongargarh temple and in his presence the deceased fell unconscious is fully proved. It is also to be seen that the deceased was frothing and later on the deceased was found to have died by consuming Borax chemical, which was used to poison the deceased. Presence of Borax chemical has been proved in the FSL Report (Ex.P/12).
13. In his memorandum statement (Ex.P/3) recorded on 11-11-2013 the appellant informed the police that he had given Borax chemical substance to the deceased. On this date the Investigating Officer was not aware as to what poisonous substance would be found in the viscera of the deceased. In the postmortem report the viscera was preserved for forensic examination. It was only on 26-12-2013 the Investigating

Officer became aware from the FSL Report that the viscera contains Borax chemical. Thus, the fact that Borax chemical substance has been used for poisoning the deceased was within the exclusive knowledge of the appellant which he had revealed to the Investigating Officer and this fact was found fully corroborated or rather proved from the FSL report. Appellant's presence with the deceased at the Dongargarh Hill Temple and finding of Borax in the forensic report of the viscera of the deceased clearly proves that it was the appellant who poisoned the deceased as no one else was in the company of the deceased nor is a case of commission of suicide.

14. For the foregoing reasons, in our considered opinion, the appellant has rightly been convicted by the trial Court.
15. In the result, the appeal, *sans* merit, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri