

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 11 of 2014**

Taro Bai @ Podahin W/o Late Jagannath Rajwar Aged About 50 Years
 R/o Village Naharpara, Kanchanpur, Ps Lakhanpur, Civil And Rev.
 Distt. Surguja, Chhattisgarh **--- Appellant**

Versus

State of Chhattisgarh through PS Lakhanpur, Civil and Rev. Distt.
 Surguja Chhattisgarh

--- Respondent

 For Appellant : Mr. Suresh Kumar Verma, Advocate.
 For Respondent/ State : Mr. Avinash Singh, Panel Lawyer.

DB : Hon'ble Shri Justice Goutam Bhaduri, Judge
Hon'ble Shri Justice Arvind Singh Chandel, Judge

Order on Board**Per Goutam Bhaduri, J****25.10.2021**

1. The instant appeal is against the Judgment/Order dated 25.11.2013 passed by the learned Additional Sessions Judge (FTC) Ambikapur, District Sarguja in Sessions Trial No. 12/2011 whereby the appellant was convicted under section 302 of IPC and sentenced to undergo life imprisonment. Further the appellant was also directed to pay a fine of 1000/-, in default of payment of fine, to further undergo Rigorous Imprisonment for one month.
2. The case of prosecution in a nutshell is that a report was lodged by one Likhan Das (P.W.1) on 24.11.2010 that on previous date i.e., 23.11.2010 at about 6.30 p.m. , his father Shyam Das went to roam

around and did not return home. On the next day, his dead body was found near the house of accused on road side of village Kachanpur at Lakhanpur canal in the nude state. The deceased was burnt to death and thrown away by some unknown person. On being inspected the area of incident, it was found that the dead body was dragged from the house of the accused, appellant herein, and the house was found locked. The police broke open the door, entered into the house and seized certain articles like ashes, shoes of the deceased, Kerosene oil, sample earth etc., from the house were seized. It is also observed that his body was dragged from the house and was left open at the road side. During postmortem, it was found that the deceased was killed by burning. After lodging FIR, the investigation was carried out and the charge sheet was filed against the appellant. The charges u/s 302 IPC was framed against the appellant on the ground that the deceased has developed illicit relation with the accused and due to such reason or the other as the deceased used to abuse the accused, while sleeping he was burnt to death by pouring kerosene oil and thereafter his body was thrown out at the road side.

3. During trial, the accused abjured the guilt and pleaded innocence. The prosecution has examined as many as 15 witnesses including Likhan Das (P.W.1), son of deceased. After hearing the parties and appraisal of evidence, the trial Court convicted and sentenced the accused as aforesaid and hence this appeal.
4. Learned counsel for the appellant would submit that there is no eye witness in this case and the conviction is solely based on circumstantial evidence. He would submit that though in the FIR, the suspicion was raised about the role of other persons but one of the

suspects who is appellant herein was picked as an accused and despite there being no evidence on record, the conviction order was made against her. It is further submitted that the seizure and memorandum witness Balsai (P.W.8), in whose presence the seizure was made, did not support the case of prosecution and it is the case where only on the basis of seizure, the presumption has been drawn that the appellant has committed offence. He further submits that there is no eye witness in this case and the prosecution has even failed to prove the motive of accused. He would submit that because of the reason that the dead-body was found near the house of the accused, the accused cannot be inculpated for the offence. He further submits that in order to convict a person, the chain of circumstances are required to be proved and in any case, if it gives rise to any suspicion, the benefit of doubt should lean in favour of the accused. Therefore, the conviction and sentence of the appellant be set aside.

5. Per contra, learned State Counsel opposes the argument and submits that the room of the house which was locked, wherein the shoes of the deceased was found and seized, is that of the accused. He would further submit that the deceased was having illicit relation with the accused and the motive has been stated that because of the fact that the deceased used to abuse the accused, she committed the offence. Therefore the order of the court below is well merited and it does not call for any interference.
6. Heard learned counsel for the parties and perused the entire record of the court below. The death of deceased Shyam Das is not in dispute. As per the postmortem report (Ex.P.27) proved by Dr. Marco (P.W.13), the deceased died because of antemortem burns, which

caused asphyxia and the death was homicidal in nature. The appellant is inculpated on the basis of FIR (Ex.P-1) wherein the suspicion was raised on her. Reading of the FIR which was lodged by Likhandas Manikpuri (P.W.1), son of deceased, would show that it reported that the dead- body of his father was found lying on the road side in a burnt condition and the suspicion was raised against the present applicant with whom it is stated that the deceased developed illicit relation and used to visit her house. It is further stated that before the death, the deceased went to her house. Apart from the present appellant, the FIR also named Hari Rajwade and Janak Ram Rajwade. In police statement, the complainant has stated that because of illicit relation of deceased with appellant Podahinbai, Hari Rajwad and others could have murdered his father and thrown away the dead body at Kanchanpur canal near the house of Padohin Bai. Similarly, in examination-in-chief, Likhan Das (P.W.1) has stated that because of illicit relations with accused Taro Bai @ Padohin Bai, his father used to frequently visit her house and for this reason, her son Hari Rajwad had beaten his father. In his evidence, he further raised suspicion that appellant Taro Bai, Hari Ram and Jhanak Ram Rajwade have burn his father to death.

7. Admittedly, there is no eye witness to the incident in this case. The suspicion on whom it was raised apart from the present appellant is Hari Rajwade, son of appellant. The entire case of prosecution is based on circumstantial evidence of memorandum and seizure. In regard to proof of a case based on circumstantial evidence, the Supreme Court has laid down five principles in ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116***, which have been

further reiterated in ***State of Himachal Pradesh Vs. Raj Kumar (2014) 14 SCC 39 at para 8***, which are reproduced hereinbelow.

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused”.

8. Further, as has been held in ***Mani v. State of T.N. (2009) 17 SCC 273***

which has been reiterated in ***Sangili alias Sanganathan Vs. State of Tamil Nadu represented by Inspector of Police (2014) 10 SCC 264***

the discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery.

9. The entire conviction in the instant case is based on discovery of articles, which is proved by Ex.P-11. The witness to the seizure P.W.7 Balram Rajwade has not supported the case of seizure. A perusal of his statement would show that in his cross-examination, he has

deposed that the Police Officers after breaking open the lock of the room, went inside the house, seized certain goods, came out keeping those goods in a jute bag and asked him to sign. Thereafter, he has signed it.

10. A perusal of the seizure memo Ex.P-11 would show that on the basis of memorandum and seizure, the story of the prosecution is that the deceased after consuming liquor used to abuse the appellant and she was having living relation with deceased. Having frustrated with the same, when the deceased was sleeping he was burnt by pouring Kerosene oil. On the basis of such seizure memorandum, certain articles like shoes/chappal of deceased, plastic cap, nylon string, yellow colour salwar, half burnt pillow, half burnt match box, Kerosene oil and some ashes were recovered. There is no identification of the shoe of the deceased as to whether such article which was seized from the house of accused belonged to the deceased or not. It is only on presumption the prosecution story travelled. Even for the sake of probability, if it is accepted that the seized articles belonged to the deceased then the prosecution story that the deceased frequently used to visit and stay in the house of present appellant cannot be ignored. Therefore, only on the basis of certain recovery, the conviction cannot be made.
11. Taking into consideration the overall evidence it would show that the chain of circumstances has not been proved within all human probability with the crime committed by the appellant alone so as to draw an inference without any iota of doubt that she is the sole and exclusive author of the crime. Simply because the fact that the burnt dead body was found near the house of appellant, the suspicion was

raised on appellant in the FIR and she has been inculpated. However, in respect the other accused against whom though suspicion was raised against them along-with accused, they were not brought to the guilt by the police. Therefore under such facts situation, exclusively this appellant cannot be driven to a corner. Further, there is no evidence on record to prove that burning of body took place inside the room of accused and thereafter, the body was dragged by her alone to some distance. Even there is no forensic evidence on record to show the condition of the dead-body whether it was in a decomposed state and burnt, left any part of body either on floor or wall or at the door step. No parts of body or flesh or skin have been recovered from the room. Further, likewise, in between the house of accused and the place where the body was found lying and dragged, no part of skin or body or flesh was recovered as per the prosecution.

12. After evaluating the entire evidence on record, we are of the considered opinion that the appellant is entitled to benefit of doubt as the crime committed by the appellant solely has not been proved beyond any suspicion. Under the circumstances, giving the benefit of doubt, we are inclined to allow this appeal. Accordingly, the appeal is allowed. The judgment of conviction and order of sentence passed by the court below is set aside. The appellant be set at liberty if she is not required in any other crime.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Arvind Singh Chandel)
Judge