

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 723 of 2013

Khaitu Ram, aged about 35 years, S/o. Navara Ram, R/o. Village Bhuneswerpur (Dahughariya) P.S. Shankergarh, Revenue District Balrampur-Ramanujganj, Civil District Sarguja (CG)

---- Appellant

Versus

State of Chhattisgarh Through Police Station Shankergarh, District Balrampur- Ramanujganj(CG)

---- Respondent

For the Appellant :- Mr. Ashutosh Singh Kachhawaha, Advocate
For the respondent :- Mr. Anshuman Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgment on Board By Manindra Mohan Shrivastava, J.

21.09.2021

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 08.04.2013 passed by the Sessions Judge, Ramanujganj in Sessions Trial No. 123/2011, whereby and whereunder the appellant has been held guilty for commission of offence under Section 302 IPC and sentenced life imprisonment and fine of Rs. 500 with default stipulation.

2. The prosecution story as unfolded from the impugned judgment of conviction and order of sentence and the records of the case is that the appellant's wife the deceased and his parents had gone to collect forest produce which was taken to market for sold. Thereafter, it is said that the appellant, his wife, mother and his father, all four purchased the liquor and consumed the same together. The parents of the appellant left for home leaving behind the appellant and his wife. All this happened on 21.12.2012. Next day at about 4-5 PM in the evening, the appellant came to his father Nawra (PW-2) and informed him that the dead body of his wife lying near Nala, he may go and see and thereafter the appellant went away to some other place. On receipt of this shocking information, Nawra (PW-2) informed the villagers and all proceeded to the spot where the dead body of Sanjhiyaro Bai was found as disclosed by the appellant. Appellant, however, could not be found immediately and was taken into custody after two days being suspect. In the meantime, panchanama was prepared and the dead body was sent for postmortem and the postmortem was conducted by Dr. Shashikala (PW-1), who found as many as 28 injuries on the body of the deceased. Most of the injuries except two, were bruises, contusion, abrasion and scratches marks found all over the body, and liver was also found damaged, as a result of heavy blow in the abdominal part. The appellant was arrested and his memorandum was recorded and stone which was alleged to be used for killing the wife was seized from the place of incident. Upon completion of usual investigation charge sheet was filed against the

appellant before the jurisdictional magistrate, who in turn, committed the case to the Sessions Court. On the basis material contained in the charge sheet, learned trial Court framed charges against the appellant alleging that the appellant murdered his own wife. The appellant having abjured guilt, was put to trial. In order to prove its case, the prosecution examined as many as 13 witnesses. The accused was, thereafter, examined under Section 313 CrPC in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution, which the appellant denied and stated that he is innocent and falsely implicated. No defence witnesses was examined.

3. Learned trial court relying upon circumstantial evidence of last seen, discovery of the dead body at the instance of the appellant, conduct of the appellant in leaving the place, as also evidence of motive that the appellant suspected character of his wife that she was having illicit affair with third person, held the appellant guilty of commission of offence and sentenced as described above.
4. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the prosecution case and the conviction is based on extremely weak circumstantial evidence which have remained inconclusive and falling short of the legal requirement of conviction by drawing a reasonable inference that in all probability, the appellant and the appellant alone must have killed his own wife. He would argue that the entire case of the prosecution rests on the evidence of appellant's father Navara (PW-2), whose evidence at

the most is to the effect that on the previous day, all of them had gone to collect forest produce and after selling the same, they had consumed liquor and they left the appellant and wife behind. But in his cross-examination, he admitted that nether there was any existing dispute between the appellant and his wife nor at the time when the appellant and wife were left behind, there was any quarrel going on between them to say that after the parents left, the appellant continued to quarrel and ultimately killed his wife. He would further ague that the prosecution evidence of discovery of dead body as stated by Navara (PW-2), is not reliable because dead body was not found in any hidden place but near a *Nala* which is on the side of village road and is accessible to all. Next submission is that as far as the evidence with regard to motive is concerned, the same is not as strong as would constitute motive to go to the extent of committing murder because there is no evidence of any such alleged relationship of the wife with third person, due to which some quarrel had taken place. Lastly, it is submitted that the appellant's conduct of informing his father regarding his wife lying dead near *Nala* and then proceeding elsewhere by itself is not necessarily a doubtful conduct of guilty mind because every person reacts to a situation in different manner. The appellant was shocked and if in that state of mind, he wondered here and there, it would not constitute a relevant evidence of conduct showing guilty mind. In support of his submission learned counsel for the appellant has placed reliance upon the Supreme Court decision in the case of

**Anjan Kumar Sarma and others vs. State of Assam 2017(14)
SCC 359.**

5. On the other hand, state counsel would submit that though the case of the prosecution is based only on the circumstantial evidence, a complete chain of circumstances has been formed which starts from the appellant and the deceased moving together and finally left behind alone at a place and on the next day the appellant coming to his father and informing regarding death of his wife without explaining as to how his wife died. The appellant has not only failed to explain how his wife died homicidal death, he has not even come out with any plea of alibi of having left the company of his wife where they consumed liquor. There is evidence of motive also and thus the trial court has not committed any illegality in convicting the appellant.
6. We have heard the learned counsel for the parties and perused the record and also the impugned judgment.
7. The conviction of the appellant is founded only on circumstantial evidence as there no direct evidence. In such a situation, law is well settled that in order to hold a person guilty of commission of offence where the evidence is only circumstantial evidence, the chain of circumstances must be completed so as to lead to reasonable inference that in all probability, the accused alone must have committed the offence. Keeping in view the aforesaid settled legal position, which we have examined the evidence on record.

8. Homicidal death of deceased Sanjhiyaro Bai is not substantially in dispute and there is reliable evidence of Dr. Shashikala Toppo (PW-1), who conducted the postmortem. The doctor has proved his report and has also proved the injuries which was found on the body of the deceased, which are large in number. He has deposed that upon examination, as many as 28 injuries found in the body of the deceased. Most of the injuries except two, were bruises, contusion, abrasion and scratches marks was found all over the body. Upon internal examination, extra dural hemorrhage was found under frontal temporal region of skull, there was compressed fracture on left frontal bone and hematoma was also found. 7Th and 8th ribs were also fractured. Right lobe of the liver was also damaged. Taking into consideration the aforesaid medical of the dead body injuries found, the doctor opined that cause of death was hypo volume shock, as a result of excess bleeding, damage of internal organ and head injury. Nothing could be elicited in the cross-examination to support the defence case that the death could possibly be caused due to fall on stone. Doctor has clearly stated that even when a person falls on the stone in intoxicated condition, only minor abrasion could be caused but the internal injuries found on the body of the deceased could not be caused. The only suggestion that if a person fall with extreme force then only head injuries could be caused has been admitted.

We have examined the postmortem report and the evidence of the doctor. The deceased was found having suffered multiple scratches, abrasion and contusion allover the body which clearly

indicates that the deceased was bitterly beaten, dragged and because of such repeated assault and dragging, she received such kind of injury. Not only that, there was fracture in the frontal bone and extra dural hemorrhage as also hematoma showing that the deceased was assaulted on her head with heavy hard and blunt object. The liver was found damaged meaning thereby that there was heavy blow given in the abdominal part leading to damage of liver. Therefore, it was neither accidental nor suicidal much less a natural death and therefore, it is clearly a homicidal death in nature.

9. Father of the appellant Nawra (PW-2) has deposed that he along with his wife, son (the appellant) and daughter-in-law Sanjhiyaro Bai (deceased) had gone to collect timber from the forest which was sold in Bhuneswerpur Basti and liquor was purchased. Thereafter, he along with his wife, son and daughter-in-law sat together and consumed liquor there and then he came back along with his wife leaving behind the appellant and the deceased as they did not go to home along with them. He further deposed that on the next day, at about 4-5 PM in the evening, the appellant came back alone and Sanjhiyaro Bai was not accompanying. The appellant had disclosed him that his daughter-in-law is lying dead near '*Dahu Jhariya Nala*' and he may go and see. Further evidence of this witness is that upon such disclosure, he went to the spot as disclosed by the appellant along with Bhodaro, Kuppi, Sukhiya, Shalo, Sukar and Mukhna there they found the dead body of Sanjhiyaro Bai at the spot. This witness further states that the

appellant after having disclosed the fact regarding Sanjhiyaro Bai lying dead near Nala, did not come along with him but he went somewhere else. This witness has also admitted suggestion given by the prosecution after he was declared hostile, as he not fully support the case of the prosecution, that the appellant was doubting the character of his wife because his wife was having illicit relation with one Suresh Pahadi Korba. He has been subjected to cross-examination in which, it has been elicited that there was no existing dispute between the appellant and his wife nor at the time, when they left the place where they all had consumed liquor, there was any quarrel going between the appellant and his wife. It has also been elicited that the deceased was a drunkard. He has denied suggestion that the appellant went along with them to house. He has reiterated that appellant and his wife Sanjhiyaro Bai were left behind. An improvement in his statement that he was informed by the appellant that he had slapped his wife has been elicited by confronting him with the case diary statement (Ex.D-1) in which, he state that though he has stated this fact, he does not know why this fact was not written in the case diary statement. We have to keep in mind that this witness is none other than the father of the appellant and nothing could be elicited in his cross-examination as to why he would falsely speak and implicate his son.

10. Other prosecution witnesses namely Bhodro (PW-3), Kuppi (PW-4), Sukhiya (PW-6), Dhobsai Paikra (PW-7), Shivram @ Sioram (PW-9), Shalo (PW-10), Sukar (Pw-11) and Bhukhna (PW-12), all have supported the evidence of Nawra (PW-2), that after Nawra (PW-2)

informed everybody, all of them proceeded towards the place which the appellant disclosed and there the dead body of Sanjhiyaro Bai was found.

11. From the aforesaid evidence of prosecution witnesses particularly Nawra (PW-2) falling circumstances are proved beyond doubt:-
 - (i) that the appellant was last seen with his wife Sanjhiyaro Bai (ii) the dead body of Sanjhiyaro Bai was found at the place as disclosed and discovered from the statement appellant given to his father Nawra (PW-2), (iii) the appellant after informing his father that his wife died and was lying at the place stated by him, did not go along with him but going to some other place (iv) that the appellant suspected character of his wife on account of illicit relation with another person.
12. True it is, that to prove all the circumstantial evidence, except the place where the dead body was found, the only evidence is that of Nawra (PW-2), however, it is well settled law that it is not the quantity but the quality of evidence which matter. Nawra (PW-2) is none other than the father of the appellant. He is a natural witness and there is no reason why his statement should be disbelieved. There is no other contrary evidence either emerging from the evidence of prosecution or the appellant examination under section 313 CrPC that would render the evidence of Nawra (PW-2) doubtful. Failure on the part of the appellant to explain as to how his wife sustained multiple injuries and died because of the fatal injury, provides an additional link.

13. Learned counsel for the appellant has heavily relied upon the Supreme Court decision in the case of **Anjan Kumar Sarma and others vs. State of Assam** (supra). In that case, the Supreme Court, on fact, found that the prosecution case rested only on the circumstantial evidence of last seen and that the appellant failed to explain as to how the death has taken place. The combination of these two were found to be insufficient to warrant conviction. This would be clear on the observation made in the following paragraph:-

“ **23.** It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr. Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in *State of Goa v. Sanjay Thakran*, (2007) 3 SCC 755 in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under:-

"34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused

guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period,

the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case."

14. In the present case, apart from and in addition to the clinching evidence of last seen and additional link in the form of failure on the part of the appellant to explain how his wife sustained multiple injuries, 28 in number and ultimately succumbed to death, there are many other circumstances which have been found proved as above. Therefore, aforesaid decision of the Supreme Court is distinguishable.
15. The test laid by their Lordship in the Supreme Court in the case **Sharad Birdhi Chand Sarda vs State of Maharashtra reported in (1984) 4 SCC 116** are fully satisfied, if the circumstantial evidence as found proved are taken together. They form complete chain and lead to reasonable inference that in all probability, it is the appellant and the appellant alone who must have killed his wife. Therefore, we do not find any good ground to interfere with impugned judgment of conviction and order of sentence. In the result, appeal is dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge