

(2018) 09 CHH CK 0138

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 971 Of 2012

Uttam Kumar Soni

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Sept. 10, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 201, 302, 498A
- Evidence Act, 1872 - Section 106

Hon'ble Judges: Pritinker Diwaker, J

Bench: Single Bench

Advocate: Sunil Sahu, Neeraj Mehta

Final Decision: Dismissed

Judgement

Pritinker Diwaker, J

01. This appeal arises out of the judgment of conviction and order of sentence dated 18.9.2012 passed by the Sessions Judge, Mahasamund (CG) in

S.T.No.85/2011 convicting the accused/appellant under Sections 498A, 201 & 302 of IPC and sentencing him to undergo RI for two years, fine of

Rs.5000/-; RI for three years, fine of Rs.5000/- and life imprisonment plus fine of Rs.10,000/- with default stipulations respectively.

02. As per prosecution case, on 2.9.2011 at about 2 pm the appellant had a quarrel with his wife/deceased Indulata Soni and she immediately informed

about the same to her mother PW-7 Vimla Soni over telephone. It is further case of the prosecution that soon thereafter at around 2.30 pm the

appellant committed murder of his wife by throttling and in order to cause disappearance of evidence of the offence burnt her by pouring kerosene on her body. At the instance of PW-1 Shyam Kumar, uncle of the appellant, on 2.9.2011 itself at 5 pm mere intimation Ex.P/1 was recorded. Inquest on the dead body was conducted on 2.9.2011 vide Ex.P/2. Thereafter, the dead body was sent for postmortem which was conducted on 3.9.2011 by PW-11 Dr. SR Sidar vide Ex.P/5. The autopsy surgeon noticed that the body was 100% burnt, eyes closed, tongue protruded, frothy blood present in nose, skin detached as gloves of bilateral hand, heat rupture present over right waist at about 10 x 5 cm over right thigh posteriorly at about 20 x 10 cm, over left waist 9 x 5 cm and over left thigh posterior 23 x 12 cm. The doctor also noticed fracture of hyoid bone. In his opinion, the cause of death was asphyxia and nervous congestion due to throttling and nature of death was homicidal and the burn was postmortem. After receiving postmortem report and conducting preliminary enquiry, on 13.9.2011 FIR (Ex.P/10) was registered against the appellant under Sections 302 & 201 of IPC. While framing charge, the trial Judge charged the appellant under Sections 498A, 302 & 201 of IPC.

03. So as to hold the accused/appellant guilty the prosecution examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

In defence, he examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para- 1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that eyewitness to the incident Tikeshwar (DW-2), son of the appellant and the deceased, has categorically stated that the deceased poured kerosene on herself and set her ablaze and that at the relevant time, the appellant had gone to other village.

(ii) that the entire case of the prosecution is based on circumstantial evidence but none of the circumstances from which inference of guilt of the appellant could be drawn has been proved beyond reasonable doubt.

(iii) that postmortem report of the deceased is merely suggestive in nature and the finding given by the doctor is not binding.

(iv) that the prosecution has utterly failed to prove that death of the deceased was homicidal in nature.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that dead body has been found in the kitchen garden of the appellant's house and as such present being a case of house murder, the appellant was

required to offer probable explanation in his statement u/s 313 of CrPC whereas no such explanation has been offered by him.

(ii) that soon before the incident, the deceased had called her mother (PW-7) and informed her that the appellant is demanding Rs.25,000/- and is

beating her therefor.

(iii) that hyoid bone of the deceased was found fractured, the cause of death was asphyxia due to throttling and the burn was found to be postmortem

and in these circumstances, by no stretch of imagination it can be said that present is a case of suicide.

(iv) that considering the overall evidence on record, conviction of the appellant under Sections 302, 201 as also 498A of IPC is just and proper and

needs no interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Shyam Kumar Swarnkar, uncle of the appellant, lodged the merger intimation Ex.P/1. He states that after receiving information about the

incident he reached the place of occurrence within 10-15 minutes, by that time number of villagers had gathered outside the house of the appellant, he

was asked by the appellant to report the matter in the police station and then he along with Kotwar and other villagers went to police station and

lodged merger intimation. PW-2 Bhagatram, Village Kotwar, is a witness to inquest Ex.P/2 and seizure Ex.P/3 whereby one plastic box of kerosene oil

and match box were seized. PW-3 Urmila Bai has turned hostile. PW-4 Deepkunwar, aunt of the deceased, states that the deceased used to inform

her about the demand of dowry and ill-treatment being meted out to her in connection therewith by the appellant. She further states that soon before

the incident the deceased had informed her mother (PW-7) telephonically that the appellant is quarreling with her. In cross-examination she remained firm and denied all the adverse suggestions by the defence.

09. PW-5 Ramlal Soni, father of the deceased, has stated that the accused/appellant used to harass the deceased for dowry and even one day prior to the date of incident the appellant had demanded Rs.25,000/- which was informed to him by her daughter/deceased. PW-6 Badriprasad, uncle of the deceased, has stated that he was informed by the deceased that the appellant used to ill-treat her. PW-7 Vimla Soni, mother of the deceased, has stated that her daughter was being subjected to cruelty by the appellant in connection with demand of dowry and he also used to doubt her fidelity. She states that on the date of incident she received a call from her daughter who informed her that the appellant is committing marpeet with her for not bringing Rs.25,000/- and golden ring from her parental house and that after some time the appellant informed over telephone that her daughter/deceased has succumbed to burn injuries. In cross-examination she remained firm. PW-8 Devendra Kumar Soni is brother of the deceased to whom information was given by the appellant about the incident. PW-9 Shivlal Soni, maternal uncle of the deceased, has also stated that the deceased was being subjected to cruelty by the appellant in connection with dowry. PW-10 Smt. Lalita Chouhan, neighbour of the deceased, has stated that there used to be quarrel between the appellant and the deceased frequently and once the deceased had made up her mind to commit suicide, however, she and others reasoned with the deceased not to do so and convinced her. Nothing could be elicited from her by the defence in cross-examination to its advantage.

10. PW-11 Dr. SR Sidar conducted postmortem on the body of the deceased on 3.9.2011 vide Ex.P/5 and noticed that the body was 100% burnt, eyes closed, tongue protruded, frothy blood present in nose, skin detached as gloves of bilateral hand, heat rupture present over right waist at about 10 x 5 cm, over right thigh posteriorly at about 20 x 10 cm, over left waist 9 x 5 cm and over left thigh posterior 23 x 12 cm. The doctor also noticed fracture of hyoid bone. In his opinion, the cause of death was asphyxia and nervous congestion due to throttling and nature of death was homicidal the burn

was postmortem. PW-12 Subhash Lal, investigating officer, has duly supported the prosecution case.

11. DW-1 Chetan Swarnkar has stated that elder son of the deceased and the appellant came to him and informed that his mother is burning and then

he made a call to the appellant and the appellant reached to his grocery shop within 10-15 minutes. DW-2 Tikeshwar, son of the appellant and the

deceased, aged about 10 years, has stated that at the relevant time, the appellant had gone to other village.

12. Close scrutiny of the evidence makes it clear that the appellant used to ill-treat the deceased and also commit marpeet with her in connection with

demand of dowry. According to PW-5 Ramlal Soni, father of the deceased, even one day prior to the incident the appellant had demanded Rs.25,000/-

from the deceased. PW-7 Vimla Soni, mother of the deceased, states that on the date of incident she received a call from the deceased who informed

her that the appellant is committing marpeet with her for not bringing Rs.25,000/- and golden ring and that after some time the appellant informed her

that the deceased has succumbed to burn injuries. PW-4 Deepkunwar, aunt of the deceased also supports the evidence of PW-7 that she received a

call on the date of incident from the deceased informing her about the cruelty being meted out to her (deceased) by the appellant. PW-10 Smt. Lalita

Chouhan, neighbour of the deceased states that the deceased was being treated with cruelty by the appellant to such an extent that once she had

made up her mind to commit suicide. Thus, from the unrebutted evidence of PW-4 Deepkunwar, PW-5 Ramlal Soni, PW-6 Badri Prasad, PW-7

Vimla Soni, PW-9 Shivilal Soni & PW- 10 Smt. Lalita Chouhan, it is clear that the deceased was being subjected to cruelty by the appellant in

connection with dowry and that soon before her death also she was being treated so by the appellant.

13. From the medical evidence it is seen that the death of the deceased was homicidal in nature, her hyoid bone was fractured and the cause of death

was asphyxia and nervous congestion due to throttling and that the burn was postmortem. In cross-examination the autopsy surgeon (PW-11) has

denied all the adverse suggestion put to him by the defence and stated that there was no other circumstance which could suggest that the fracture of

hyoid bone was due to some other reason and not the result of throttling.

14. Admittedly, the body of the deceased was found in the house of the appellant. In a case like this when an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation.

15. In the case in hand, though the appellant has tried to explain the said circumstance by making statement under Section 313 of Cr.P.C. that on the date of incident he was not present in the house and the defence witnesses have also been examined to substantiate this plea. It is well settled principle of law that onus to prove alibi is on the accused, when such plea is taken by the accused, it must be conclusively proved by him. Accused pleading alibi must lead evidence to show that at the relevant time he was so far off from the place of occurrence that he could not have committed the offence whereas it has come in the evidence of DW-1 Chetan Swarnkar that upon coming to know about the incident when he made a call to the appellant, he reached to his grocery shop within 10-15 minutes and that the place where the appellant is alleged to be there at the relevant time is just 1- 1 ½ km away from the place of occurrence. Even otherwise, the circumstantial evidence coupled with the medical evidence in this case falsify the plea of alibi and further points out towards the guilt of the appellant.

16. Thus, from the overall evidence available on record, it stands proved beyond all reasonable doubt that it is the appellant who used to harass and ill-

treat the deceased in connection with dowry, soon before her death he had a quarrel with her and during this process, he throttled her to death and in

order to cause disappearance of evidence of the crime set her ablaze. In this view of the matter, we are of the opinion that the trial Court was fully

justified in holding him guilty under Sections 498A, 302 & 201 of IPC.

17. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no order regarding his arrest/surrender

etc. is required to be passed.