
(2013) 11 CHH CK 0021
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1396 of 1998

Asha John

APPELLANT

Vs

The State of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) 2 CGLJ 56 : (2014) 3 Crimes 8

Hon'ble Judges : Sunil Kumar Sinha, J; Rangnath Chandrakar, J

Bench : Division Bench

Advocate : Savita Tiwari, for the Appellant; Pushpa Dwivedi, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 22nd of April, 1998 passed in Sessions Trial No. 43/1996 by the 1st Additional Sessions Judge, Rajnandgaon. By the impugned judgment, the appellant has been convicted u/s 302 IPC and sentenced to undergo imprisonment for life. The facts, briefly stated, are as under:--

1.1. Appellant - Ashajohn was a deserted lady. She was residing all alone in her parental house. On 4.7.1995, she delivered a male child. The villagers had heard the cries of the child. However, when they visited her house, they found that the child was dead. Dead body was kept in a room and it was covered by clothes. They suspected it to be a homicidal death. Village Kotwar was informed and a report (Ex. P/1) was lodged in the concerned Police Station.

1.2. The Investigating Officer reached to the house of the appellant, gave notice to the Panchas and prepared inquest (Ex. P/3) on the dead body of the deceased child. The dead body was sent for postmortem. The postmortem examination was conducted by Dr. K.K. Ramtake (PW-5). He found that it was a dead body of newly delivered child. There were no external or internal injuries on the dead body of the child. He opined that the cause of death was asphyxia due to

suffocation. However, no opinion was given regarding mode of his death. The postmortem report is Ex. P/4.

1.3. On 13.7.1995, a query in this regard was made. The Autopsy Surgeon replied in the query that definite opinion cannot be given about the cause of suffocation, as no any significant mark was seen externally or internally at the time of postmortem examination and it was plainly a matter of Police investigation. The query report is Ex. P/5.

1.4. On 10.8.1995, a further query was made about the mode of death. In reply to the said query, the Autopsy Surgeon stated that no exact opinion can be given about the mode of death on the basis of postmortem examination. He further mentioned that in the postmortem, no significant evidence was seen about the homicidal death. It was cleared that there was no sign seen that the respiration was stopped forcefully. The query report dated 11.8.1995 is Ex. P/6.

1.5. The learned Sessions Judge framed charges u/s 302 in alternative Section 315 IPC. The appellant was acquitted u/s 315 IPC. However, she was convicted u/s 302 IPC, holding that the facts and circumstances of the case would show that it was a homicidal death and the appellant was liable for the same. The appellant has challenged the validity of the said judgment and findings. Hence, this appeal.

2. Ms. Savita Tiwari, learned counsel appearing on behalf of the appellant, has vehemently argued that it was not proved that the deceased had died homicidal death, therefore, conviction u/s 302 IPC cannot be sustained.

3. On the other hand, Ms. Pushpa Dwivedi, learned Panel Lawyer appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court.

4. We have heard counsel for the parties.

5. The appellant had delivered a fully grown-up male child is proved by the postmortem report (Ex. P/4). Dr. K.K. Ramtake (PW-5) had also performed Hydrostatic Test and a positive result was found. This further proves that the child was born alive, who died on account of suffocation. The evidence of Dr. K.K. Ramtake (PW-5) would further show that there was no external or internal injury on the dead body of the child. Though he opined that the cause of death was asphyxia on account of suffocation, but he did not opine about the mode of death or the death being homicidal in nature.

6. "The term, suffocation, is applied to that form of death that results from the exclusion of air from the lungs, by means other than that of the compression of the neck. According to the Modi's Medical Jurisprudence and Toxicology, 24th Edition 2011, page 462, the causes of suffocation are:

(i) smothering or closure of the mouth and the nostrils;

(ii) choking or obstruction of the air-passages from within;

- (iii) pressure on the chest (traumatic or crush asphyxia);
- (iv) inhalation of irrespirable gases;
- (v) gagging; and
- (vi) burking.

Many symptoms have been shown about the asphyxia death by suffocation in pages 462 to 467. In page 467, the author has opined that "Sometimes, it is not easy to state whether death is due to suffocation, inasmuch as the signs of asphyxia may be altogether absent, or these signs may be present in death from epilepsy, tetanus, or strychnine poisoning. To come to a definite conclusion it is, therefore, very essential to look for evidences of violence in the shape of external marks surrounding the mouth and nostrils or on inside the mucosal surface, or on the chest, or the presence of foreign bodies or Tardieu spots that death occurred from suffocation, since they are found in deaths from apoplexy, heart disease, and narcotic poisoning". It was further opined at page 467 that the "Circumstantial evidence should always be taken into consideration to establish the proof of death from suffocation".

7. In the instant case, the Autopsy Surgeon was not in a position to state as to what was the cause of suffocation. The learned Sessions Judge has held that the appellant was hiding that a child was delivered by her, therefore, it was an incriminating circumstance against her. It has further been held that the appellant had not offered any explanation as to how her child died or she did not take defence that she could not properly look after the child after birth, therefore, they were also incriminating circumstances against her, leading to the conclusion that it was a homicidal death and the appellant was author of the crime.

8. Admittedly, there was no eye-witness to the incident and the case of the prosecution was based on circumstantial evidence. The main circumstances were that just after delivery, the child had cried and when the neighbours went to the house of the appellant, they saw that the child was dead and his dead body was kept in a room of the house of the appellant by covering it by clothes and the appellant did not offer any explanation about the death of her child. How the above circumstances would lead to conclusion that it was a homicidal death and the appellant was the author of the crime. How and in what manner a mother reacts in such situation would depend on many factors like her physical and mental condition, capacity to bear shock, manner of showing pains even by keeping mum and so on. Therefore, only on these attaining circumstances, nothing can be attributed to the appellant.

9. There may be many reasons for smothering, in which, the death may not be homicidal. Dr. K.K. Ramtake (PW-5) has also admitted in his cross-examination that if after the birth, some portion of the body of the mother or the clothes used at that time, comes over the nostrils of the child thereby blocking the air-

passage, then also, smothering may be caused resulting into asphyxial death. He has also admitted in para 6 of the cross-examination that if after delivery, the placenta comes over the nostrils of the child that can also cause suffocation. He further admitted that if no assistance is given to the mother at the time of delivery, then there is always a possibility of happening such incidents and in such circumstances, the death would simply be said as accidental.

10. In the instant case, this is an admitted position that the appellant was all alone in her parental house at the time of delivery of the child. Therefore, possibility of an accidental death in such manners cannot be fully ruled out and in these facts situation, the circumstances which have been held to be incriminating, become capable of being explained. The above circumstances were not of conclusive nature and tendency. We are of the view that the learned Sessions Judge was not justified in holding the death of the deceased as homicidal on the above facts and circumstances of the case. For the foregoing reasons, we allow this appeal and set-aside the conviction and sentence awarded to the appellant u/s 302 IPC. The appellant is acquitted of the charges framed against her. It is stated that she is on bail after undergoing about 4 years and 1 month. Her bail bond shall continue for a period of 6 months in view of Section 437A Cr.P.C.