

(2012) 07 CHH CK 0061
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 2044 of 1996

Rekha Alias Kavita

APPELLANT

Vs

State of M.P. (Now C.G.)

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 3 CGBCLJ 324 : (2012) 4 CGLJ 88

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Renu Kochar, for the Appellant; Arvind Dubey, Panel Lawyer, for the State, for the Respondent

Judgement

Hon''ble Shri Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 24th of September, 1996 passed in Session Trial No. 77/95 by the Second Additional Session Judge, Raipur. 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:--

Deceased-Munna @ Vipin was husband of the appellant. They were residing in a portion of deceased's ancestral house. The mother of the deceased namely-Chandralata (PW-6) was also residing separately in the same house. The deceased was in habit of drinking. He always used to torture the appellant and his mother to extract money for drinking liquor. The case of the prosecution is that on 8.10.94 at about 7.00 a.m., the deceased, firstly has broken the household articles and bicycle etc. and has sold them in the market by taking them on a barrow (thela). Thereafter he came in drunken condition and started harassing the appellant and other family members. The deceased said that he will kill his mother-Chandralata (PW-6). In fact, the deceased was harassing her mother for partition. The family members, seeing that the deceased was in heavily drunken condition, said the deceased to sleep and suggested that they will talk in the evening. The allegations are that when the deceased was sleeping in the room,

the appellant put him on fire and closed the door from outside using the door chain (sankal) and thereafter went away from the house. Further case of the prosecution is that when the neighbours saw heavy smoke in the house of the deceased, police party was called, the door was opened and it was found that the deceased had died on account of serious burn injuries. The police, after completion of formalities, sent the dead body for post-mortem. The postmortem examination was conducted by Dr. Arvind Neralwar (PW-10). He found 100% ante-mortem burn injuries of 4th to 5th degree all over the dead body of the deceased; carbon particles were present in trachea. The Autopsy Surgeon opined that the cause of death was syncope due to ante-mortem burns, however no opinion was given about mode of death.

2. There was no eye-witness to the incident and the case of the prosecution was based on circumstantial evidence. Following are the circumstances, on which, the Session Judge relied and convicted & sentenced the appellant as above:--

- (i) Deceased died on account of burn injuries and the death was homicidal;
- (ii) The appellant alone was present with the deceased just prior to the incident;
- (iii) When the neighbours gathered at the place of occurrence just after the incident, the appellant was not found there;
- (iv) The appellant also did not turn-up even after the incident; &
- (v) The appellant had motive to commit murder of the deceased as she was being harassed by the deceased in the above manner.

3. Mrs. Renu Kochar, learned counsel appearing on behalf of the appellant, argued that the above circumstances were not fully established; the circumstances were capable of being explained; there was ample evidence to show that the appellant was not present in the house at or about the time of the incident; even the mother and sister of the deceased have stated that the appellant had left the house prior to the incident; the chain of circumstantial evidence is not complete, and thus, the conviction vitiates.

4. Mr. Arvind Dubey, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Session Court.

5. We have heard learned counsel for the parties at length and have also perused the records of the sessions case.

6. Admittedly, there is no direct evidence in this case and the case of the prosecution is based on circumstantial evidence. In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have to be fully established and all the circumstances so established should be of conclusive nature and tendency. They must point only towards the guilt of the accused. The circumstances should not be capable of being explained and the chain of the circumstantial evidence must be so complete as not to leave

any reasonable ground for the belief consistent with the innocence of the accused. This is what the Supreme Court said in many cases. Therefore, we ought to be satisfied that the circumstances on which the prosecution relies leave no option but to hold that the crime imputed to the appellant has been established beyond a reasonable doubt.

7. Chandralata (PW-6) is mother of the deceased. She deposed that "The deceased was a driver. He used to assault his wife and children after drinking liquor. On the fateful day, in the morning, he had broken the household articles and had consumed liquor by selling them in the market. After returning to the house, he started assaulting his wife and children. She (Chandralata) was also being assaulted by the deceased. The deceased was saying to sell the ancestral house and to give him money. On this, she went to P. Mashih (PW-7), Pushpalata @ Pushpa (PW-5), Daoood (PW-9), Nofil (PW-3) and Thakur and called them to her house. They tried to convince the deceased saying that they will talk in the evening. When these persons had visited, the appellant, her other daughter-in-law, grand-sons and grand-daughters were also present in their house. The deceased was in heavily drunken condition. They suggested that the deceased should be put in the room. The deceased was made to lay down on a cot in the room and the door of the room was closed from outside by chain (sankal). Thereafter the sankal was opened. All the family members, then, went to the house of Sunita (PW-1) which is situated near their house". Chandralata (PW-6) was declared hostile by the Public Prosecutor. In the cross-examination by the Public Prosecutor, she denied that at the time of the incident, the appellant was present in the house along with the deceased. She deposed in clear words that the appellant was not at all present in the house at the time of incident. She categorically explained that when all the persons went to the house of Sunita (PW-1), the appellant had also gone with them and from the house of Sunita (PW-1) she went to her parent's place. She gave clear evidence in Para-12 of the cross-examination by Public Prosecutor that she had not seen the appellant at the place of occurrence. In further cross-examination, she denied the suggestion of the Public Prosecutor that when they had left the place of occurrence for going to the house of Sunita (PW-1), the appellant did not accompany them and she remained with the deceased in her house. In further cross-examination by the defence, she admitted in Para-20 that when the deceased started beating her and the appellant, the neighbours suggested her to go to the house of her son, and they also suggested the appellant to go to her parent's place, and then, the appellant had left their house and had gone to her parent's place. She admitted in Para-22 that when she heard about smoke coming out from her house, she immediately rushed there and found that Mr. G.S. Bambra (PW-17-Sub-Inspector) was present there and door was broken and it was found that her son (deceased) had died on account of burn injuries. And after seeing that the deceased had died in the above manner, she had gone to search the appellant.

8. Sunita (PW-1) is daughter of Chandralata (PW-6). Thus she is sister of the deceased. Her house is situated after 2-3 houses from the house of her mother

in which the appellant and the deceased were residing. She was working as a Nurse. She deposed that her 3 brothers and their wives along with her mother were residing together in their ancestral house. The deceased was her elder brother. On the fateful day, in the morning, she had seen that the deceased had broken the house-hold articles, bicycle & tin-chairs and had spread them in the courtyard. The younger son of the deceased namely Vineet was weeping. He made complaint to her. When she tried to advise her brother (deceased), he told that he is not getting any job, therefore, his life has become meaningless and his death is sure within 4-8 days. Therefore, he took the above articles on a thela. She also returned to her house. At about 12-1.00 in the Noon her mother came to her house and said that the deceased has come after drinking liquor and is quarrelling with her. Considering the above situation, she went to the house of the deceased. After sometime, her mother and other brothers and sister-in-laws also came to her house. Thereafter, somebody told that smoke is coming out from the house of her mother. Many persons gathered in front of the house. She does not know as to where was the appellant. In fact, at that time, she had not seen the appellant. Police persons came there and Mr. G.S. Bambra (PW-17) told her that the deceased had died out of burn injuries. In Para-8 of her examination-in-chief, she clearly deposed that when they noticed that the smoke was coming out from her mother's house, at that time the appellant was not present at the place of occurrence. She admitted in Para-9 of her cross-examination that on the date of incident, in the morning, the deceased had said to his mother that, she should give him partition of the house, otherwise he will kill her and he will also die. Her mother had told her that the deceased had said that if he is not giving partition, he will set entire house on fire and he will burn himself and die.

9. Pushpalata (PW-5) is aunt of the deceased. She was also present in the morning in the house of the deceased. She deposed that the deceased was in heavily drunken condition. All the persons gathered there, were trying to convince him saying that they will talk after he becomes free from intoxication. Thereafter all the persons went to their houses. She deposed in clear words that she had advised the appellant to go to her parent's place. The appellant, thereafter went to her parent's place. She had come out from her house along with them. After one hour, they heard that Munna (deceased) had died out of burn injuries. Then she reached to the place of occurrence. She cannot say that whether the appellant was present there or not. The door was already opened by the police. In cross-examination, she stated that the parent's place of the appellant is situated at a distance of 2 furlongs from her matrimonial house. She clearly admitted that the appellant had already gone to her parent's place along with her children.

10. Nofil (PW-3) also deposed that on the fateful day the deceased was in heavily drunken condition and was abusing his family members. He admitted the presence of above persons in the morning. They were trying to convince the deceased. At that time the appellant was also present in the house. He also admitted presence of Pushpalata (PW-5). He says that after giving advised to the

deceased, he had left the place of occurrence. In fact, he is witness of panchnama which he has testified.

11. Daood (PW-9) is husband of Pushpalata (PW-5). He has also deposed that the appellant had already left the house of the deceased prior to the incident. She had left the matrimonial house in his presence.

12. In appreciation of evidence of above witnesses, we find that all the witnesses have admitted that the deceased was in heavily drunken condition and after the incident of quarrel and assault in the morning he was made to sleep in the room. We further find on the appreciation of evidence of Chandralata (PW-6), Pushpalata (PW-5) and Daood (PW-9) that when they saw that the situation was not under control, the appellant was advised to go to her parent's place, and on such advised, the appellant had left the house of the deceased. All above witnesses are relatives of the deceased. Chandralata (PW-6) is mother, Pushpalata (PW-5) is aunt (buwa), Sunita (PW-1) is sister and Daood (PW-9) is uncle (Fufa) of the deceased. Pushpalata (PW-5) and Daood (PW-9) have deposed in clear words that the appellant had left the house of the deceased prior to the incident. Other witnesses have also not deposed about the presence of the appellant at the time of the incident. Therefore it was not proved that the appellant was present in the house with the deceased at the crucial time of the incident.

13. The learned Session Judge has held that when the neighbours gathered after the incident, the appellant was not found there. How it shall be incriminating? If the appellant had already left the house prior to the incident and had gone to her parent's place, how she can remain present just after the incident when neighbours and police party gathered there. We do not find this circumstance to be incriminating against the appellant.

14. The Session Judge has held that the appellant also did not turn-up even after the incident. This circumstance is capable of being explained. There may be many reasons for her not immediately turning-up to her matrimonial house. It is not established as to when she got information about death of her husband. This is not the case of the prosecution that even after giving information to the appellant, she did not turn-up to her matrimonial house. In absence of any positive evidence that the appellant intentionally did not turn-up to her matrimonial house on account of guilty mind, the above circumstance shall also not be incriminating.

15. The learned Session Judge held that since the deceased used to harass the appellant, therefore, the appellant had a motive to commit murder of the deceased. The appellant was residing with the deceased. She was married with the deceased 13-14 years back. They had 4 children out of the wed-lock. The deceased was a driver. He was in habit of drinking liquor. There is evidence that he used to harass the appellant and his mother after consuming liquor. In fact, the deceased wanted that her mother should sell the ancestral house and give

money in lieu of his share in the house. In the above factual scenario, it appears to be quite unreasonable to hold that only on account of casual harassment by the deceased to the appellant after consuming liquor, the appellant would keep grudge against the deceased and she would commit murder of the deceased. Anyone, who could have been seriously affected by conduct of the deceased would have been his mother. We are of the view that the casual harassment by the deceased to the appellant after consuming liquor does not appear to be sufficient to commit such a heinous offence like murder. We, therefore, do not approve the above finding relating to the "motive" set-forth by the prosecution.

16. We further note that the finding in relation to the homicidal death is also shaky. Dr. Arvind Neralwar (PW-10), who performed autopsy, did not opine that the mode of death was homicidal. The learned Session Judge has recorded above finding solely on the evidence that the door of the house was found closed from outside by chain (sankal) when the police party reached to the place of occurrence. Chandralata (PW-6) has deposed that when the deceased started behaving violently after consuming liquor, the neighbours and other relatives including Sunita (PW-1), Pushpalata (PW-5) and Daood (PW-9) came to her house and the deceased was made to lay down on the cot in the room, and thereafter the door was closed from outside by putting chain (sankal) on the door. Though she deposed further that the door was later on opened, but her above evidence creates a doubt as to whether in fact the door was closed from outside at the time of incident? Mr. G.S. Bambra (PW-17) has prepared mauka-panchnama (Ex.-P/8). Nofil (PW-3), P. Mashih (PW-7) and Daood (PW-9) are the witnesses of panchnama (Ex.-P/8). In the panchnama (Ex.-P/8) it has been mentioned that the door was closed from outside. However, in their evidence, Nofil (PW-3) did not depose about the position of the door. P. Mashih (PW-7) deposed in clear words that the door was closed from inside and Daood (PW-9) deposed that when he reached to the place of occurrence, the door was already opened by the police. Therefore, the finding in relation to the fact that the door was closed from outside by sankal cannot be sustained, and on this account the finding of the Session Judge, that the death was homicidal becomes shaky.

17. In *Nesar Ahmed and Another Vs. State of Bihar*, (2001) 9 SCC 376, the deceased died of burn injuries in the house of the appellants. The Supreme Court, while considering the matter, held that in such a case it is absolutely essential to first consider whether the prosecution has led any unimpeachable evidence to show that the appellants were present in the house where the deceased died as a result of burn injuries at the crucial time. If it is found that the presence of the appellants at the crucial time has not been established in the house, all other circumstances would not complete the chain of circumstantial evidence to lead to any irresistible conclusion consistent only with the hypothesis of guilt of the appellants and inconsistent with their innocence.

18. In the instant case, as we have already held, presence of the appellant at the crucial time has not been established in her house. On the contrary it comes in

the evidence that she had left her matrimonial house prior to the incident in presence of Pushpalata (PW-5) and Daood (PW-9). For the foregoing reasons, the appeal is allowed. The conviction and sentence awarded to the appellant u/s 302 IPC are set-aside. She is acquitted of the charges framed against her. It is stated that the appellant is on bail. Her bail bonds are cancelled and surety stands discharged.