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**(2010) 03 CHH CK 0052**  
**In the Chhattisgarh High Court**  
**Case No : Criminal Appeal No. 404 of 1991**

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

APPELLANT

Vs

Hinsaram and Others

RESPONDENT

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**Date of Decision :** 09-03-2010

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 109, 302, 34, 498A

**Citation :** (2010) 3 CGLJ 1

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

**Bench :** Full Bench

**Advocate :** Sudhir Bajpai, for the Appellant; P.K.C. Tiwari and Pradeep Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sunil Kumar Sinha, J.—Being aggrieved with the judgment of acquittal dated 11.09.1990 passed by the Addl. Sessions Judge, Khairagarh Camp at Kavardha in Sessions Trial No. 76/1987, the State has filed this appeal.

2. The facts, briefly stated, are as under:

Deceased Sushila Bai was married to Bhagwan Singh in the year 1964. It was a child marriage. Gowna was performed in the year 1974. After Gowna, she was residing in her in-laws place in village Dalpurwa. In the year 1980-81, Bhagwan Singh shifted to Ethiopia for earning his livelihood. The deceased remained in the house of Bhagwan Singh along-with the inlaws and other family members. Respondent Dropati Bai is mother-in-law. Omkar and Chameli Bai are the brother-in-law and sister-in-law (Jeth and Jethani). Respondent Kaushalya is daughter of Hinchha Ram and Respondent Jankuram is the husband of Kaushalya Bai.

The allegations are that they were treating the deceased with cruelty. The deceased was murdered in the intervening night of 3rd-4th September, 1986. After the murder, the dead body of the deceased was kept in her room in the house of the Respondents. A report was lodged by Bharatlal (P.W. 1) on the

instructions of Respondent Omkar, on which, a mere intimation (Ex.P. 1) was recorded in the Police Station on 04.09.1986. The Investigating Officer reached to the scene of occurrence; gave notice (Ex.P.2) to the Panchas and prepared inquest (Ex.P.3) on the body of the deceased. Blood stained and plain soils were seized, under Ex.P-5 from the room and nearby places where the dead body was lying. Other articles like mattress and clothes were also seized under Ex.P.7. The dead body of the deceased was sent for postmortem to Government Hospital, Kavardha, where the postmortem examination was conducted by Dr. T. K. Agrawal (P.W. 18) who prepared his report Ex.P.20-A. According to the postmortem report, the cause of death was asphyxia due to suspected smothering.

Pieces of nails and hair of the accused persons were also collected. The seized articles were sent for their chemical examination to Forensic Science Laboratory, Sagar, from where a report Ex.P.35 was received. According to FSL report, blood stains were not found on the pieces of nails and hair of the accused persons. Though human blood was confirmed on the mattress, Saree and blouse of the deceased but the origin of blood stains on the said articles could not be determined.

After completion of the usual investigation, the charge sheet was filed in the Court of Judicial Magistrate, First Class, Kavardha, who in turn committed the matter to the concerned Sessions Court from where it was received on transfer by the Additional Sessions Judge, Khairagarh, camp at Kavardha.

The trial Court framed charges Under Sections 498A and 302 IPC against the father-in-law and mother-in-law. The brother-in-law and his wife were charged Under Sections 302 and 302/34 IPC respectively. The daughter of Hinsa Ram and husband of the daughter were also charged u/s 302/34 IPC, whereas the husband of the deceased was charged Under Sections 498A and 302/109 IPC.

The Sessions Court recorded the finding that the deceased died homicidal death in her in-laws place; Respondents Janku, Kaushalya Bai and Bhagwan Singh were not present in the house on the date of incident; and the prosecution failed to establish that the Respondents were treating the deceased with cruelty and were responsible for commission of murder of the deceased. Therefore, the Respondents were acquitted of the charges framed against them.

3. Mr. Sudhir Bajpai, learned Deputy Government Advocate, appearing on the behalf of the Appellant/State argued that there were three strong circumstances against the Respondents, therefore, the acquittal of the Respondents was bad in law. He argued that the relationship between the deceased and the Respondents were not cordial and there was strong motive to cause murder of the deceased; the deceased died homicidal death; and the dead body of the deceased was found in the house of the Respondents which they could not explain.

4. On the other hand, Mr. P.K.C. Tiwari, learned senior counsel appearing on behalf of the Respondents opposed these arguments and supported the

judgment passed by the Sessions Court.

5. We have heard learned Counsel for the parties at length and have also perused the records of the Sessions Court.

6. Rikhi Ram (P.W. 12) is the father of the deceased. He deposed that Gowna was performed in the year 1974. After Gowna, for about 2-2½ years, his daughter was frequently visiting his house. However, when she lastly visited his house, no body came to take her, therefore, she remained in his house for about one year. He sent his daughter with Gaya Dau, Jagdish Dau, Gordhan Dau and Dukalu. Hinchha Ram allowed his daughter to remain in his house. She remained there for about 7-8 months. In the said period, her husband Bhagwan Singh also came from Ethiopia. Thereafter, she was called back to his house. One Rambisal, who was sent for calling his daughter, told him that wife of Hinchha Ram (mother-in-law) had said not to send his daughter and she also said deceased Sushila Bai, not to come to her place. Thereafter the deceased resided for about 3-3 1/2 years in his house and was again sent by some persons to the in-laws place. In the evening those persons returned back along-with his daughter and told that Hinchha Ram was not ready to keep his daughter. Thereafter, he himself took his daughter to her in-laws" place. At that time, Bhagwan Singh was also present. Bhagwan Singh said that he would not keep his daughter. On the next day, a Panchayat was convened. Some Ekrarnama was written. Deceased Sushila Bai and he himself denied to sign the Ekrarnama. He returned back to his house with his daughter. After one day, Bhagwan Singh, Itwari, Ram Kinker, Mangal Singh and one Rautain (lady member) came to his house for taking his daughter and she was taken by them in the evening. After one year of the said incident, Bharat (P.W. 14) brother of the deceased) had gone to bring the deceased on the occasion of Pola festival, but the Respondents did not send the deceased. Bharat told him that the deceased was telling him that her in-laws use to treat her with cruelty and they abuse her. She wanted to come with Bharat but Hinchharam and his wife came to the door and stopped her and they did not allow her to go with Bharat. In the next morning at about 10 a.m., Basant, servant of Hinchharam, came to their house and informed that his daughter has died. On this, he alongwith his son and other members of the village went to the house of Hinchha Ram and saw the dead body.

7. P.W. 14 Bharatlal deposed hat he had gone to Dalpurwa for bringing the deceased but she was not allowed to come with him. It was the occasion of Pola festival. He deposed that Hinchharam and his wife Dropadi Bai came to the door and did not allow her to go with him. His sister was telling that the father-in-law, mother-in-law, Jeth Omkar Prasad and other members of the family use to harass and abuse her. As per his cross examination vide Para 6, there are some material omissions in his Police Case Diary statements (Ex.D-2).

8. The Sessions Judge has referred to the cross-examination of Rikhi Ram (P.W. 12) vide paras 21 and 22 and has held that there was hardly any evidence of treating the deceased with cruelty by the husband or the other Respondents. The

Sessions Judge has also referred to Para 26 of his cross-examination, in which, he admitted that his daughter-in-law belonging to village Anchhi used to visit the inlaws place of deceased Sushila Bai. She used to meet Sushila Bai, but Sushila Bai never disclosed to her about treating her with cruelty by the Respondents. He also said about an incident that he met Sushila Bai in a social meeting in village Dalpurwa but she did not tell him about treating her with cruelty by the Respondents. The Sessions Judge has also dealt with the contents of some letters (Ex. 13/B1, 13/B2, 13/A1 and 13/A2) and has held that the contents of those letters would also not constitute mental cruelty against the deceased.

9. We find that after considering the entire evidence available on record, the Sessions Judge has held that it was not established that the deceased was treated with cruelty by the Respondents. Therefore, there does not appear to be any strong motive for the Respondents to commit murder of the deceased in their house.

10. No doubt the death of the deceased was homicidal in nature. The defence has also not disputed that it was a homicidal death. It was argued that the accused persons have not explained as to how the homicidal death took place in their house. We find that the Sessions Court has recorded a finding that Respondent Janku Ram and his wife Kaushalya Bai, daughter and son-in-law of Hinchha Ram, were not present in the house of Hinchharam in the festival night and it is also an admitted position that the husband of the deceased i.e., Respondent Bhagwan Singh was also in Ethiopia. After considering the entire evidence on record, we find that there is no infirmity in such finding.

11. The learned sessions Judge has considered the evidence of Bharatlal (P.W. 1) who deposed that the house of the Respondents was a Pukka house and a Kotha (place for keeping cattle) was attached to their house. The Kotha was in dilapidated condition and there was a way for making entry in the court-yard of the house. He further admitted that if a person comes in the courtyard, he would have easy access to the room of the deceased or the other rooms of the house. The Sessions Court held on the evidence of this witness that any body could have access to the house of the Respondents. P.W. 1 has also admitted in Para 7 of the cross-examination that there was house breaking and a whole was made in the room of deceased Sushila Bai, for which a report was also lodged and boxes etc. were found out side the house which were seized by the Police. The Sessions Judge further observed in para 19 that the investigating officer D.N. Sharma (P.W. 23) has also admitted these facts. The boxes, which were seized out side the house, were handed over on Suprudnama by the Police. The Sessions Judge has further observed vide Para 19 that D.N. Sharma (P.W. 23) has prepared spot map (Ex.P-26) and has admitted in the cross-examination, vide para 25, that in the north-west portion, just beside point No. 9 in the map, there is an indication of some Rughan but what was the real position of Rughan has not been mentioned. The Sessions Judge has further observed in this paragraph that some ornaments were also not present on the body of the deceased and this was

informed to the Police Officer also. He has referred to various paragraphs of the evidence of Mangal Singh (P.W. 21) and Shiv Kumar (P.W. 22). He has also referred to the evidence of Dr. T. K. Agrawal (P.W. 18) who admitted in his cross examination vide para 8 that he found injuries on the chest of the deceased and buttons of the blouse were also not there, therefore, a possibility of an assault for committing sexual offence may be there. It is in these circumstances, the Sessions Judge did not give much importance to the solitary circumstance that the dead body of the deceased was found in the house of the Respondents and it was a homicidal death.

12. In *Subimal Sarkar Vs. Sachindra Nath Mondal and Others*, the Supreme Court held that the prosecution proved that there was demand of dowry because of which there used to be quarrels; on the date of incident the brother in law of the deceased along-with some other persons was seen carrying the body of the deceased which he claimed was being taken to the hospital for treatment and that the deceased died of strangulation. The prosecution, though succeeded in proving the motive, failed to establish the necessary link in the circumstantial evidence. The Supreme Court further held that motive by itself would not be sufficient to base a conviction. All the links in the chain of circumstances have to be established by the prosecution so as to prove that in all probability it was only the accused persons who could have committed the crime.

13. In *Budh Singh and Others Vs. State of U.P.*, the Apex Court held vide para 9, that in a matter of appeal against acquittal, the High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although the view of the Appellate Court is a more probable one. However while dealing with a judgment of acquittal, it is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. It is also entitled to consider as to whether in arriving at a finding of fact the trial Court has failed to take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny of the Appellate Court.

14. In *V.N. Ratheesh Vs. State of Kerala*, the Apex Court held that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Apex Court said that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The Apex Court further said that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilt is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty

is cast upon the Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The Apex Court referred to the decision rendered in the matter of Bhagwan Singh and Ors. v. State of Madhya Pradesh 2002 (2) Supreme 567. It was further held that the principle to be followed by Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

15. In Ramesh Babulal Doshi Vs. State of Gujarat, the Apex Court said that "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions".

16. We have gone through the entire evidence on record with a view to find out as to whether the views of the Sessions Court were perverse or otherwise unsustainable. After going through the entire evidence available on record, we do not find any compelling and substantial reasons to interfere with the judgment of acquittal. It is not a case in which the judgment may be said to be unreasonable or a case in which relevant and convincing materials have been eliminated in the process of appreciation.

17. For the foregoing reasons, we do not find any substance in the appeal. The appeal filed by the State, therefore, is liable to be dismissed and is hereby dismissed.