

**HIGH COURT OF MADHYA PRADESH : JABALPUR****Criminal Appeal No.2226/2006****Devi Singh****Versus****The State of Madhya Pradesh.**

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**CORUM:****Hon'ble Shri Justice Hemant Gupta, Chief Justice.****Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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Smt. Saroj Dehariya, *Amicus Curiae* for the appellant.

Smt. Namrata Agarwal, Government Advocate for the respondent/State.

<i>Whether approved for reporting ?</i>	<i>Yes</i>
<i>Law laid down</i>	<i>In a case of circumstantial evidence the prosecution has to establish that there must be a chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.</i>
<i>Significant paragraph Nos.</i>	<i>11</i>

**JUDGMENT****(Jabalpur, dated:31.01.2018)****Per : Vijay Kumar Shukla, J.-**

1. In the present appeal, a challenge has been made to the order of conviction and sentence dated 12.10.2006 passed by Third Additional Sessions Judge, Fast Track Court, Shahdol in Sessions Trial No.125/2006 whereby the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to R.I. for life and fine of Rs.100/- in default of payment, R.I. for one month and also convicted under Section 201 of the Indian Penal Code and sentenced to R.I. for two years and fine of Rs.100/- in default, further R.I. for one month.

2. The prosecution case is that on 21.01.2006 at about 11.00 pm, the appellant was sleeping inside his house. His mother Budwariya Bai came to him in a nude condition and kissed him, the appellant woke up and raised an alarm. His sister-in-law Seeta Bai (PW-4) was also inside the house. Budwariya Bai the deceased caught hold her and tried to burn

her. It is alleged that at this stage, the appellant throttled Budwariya Bai and then put oil and haldi on her person and led her on a caught. It is further alleged that on the advise of the villagers, he went to the police station where he lodged FIR (Ex.P-14). The appellant is son of the deceased and he lodged an FIR to the police station on 23.01.2006 informing about the incident that his mother in a condition of fit of epilepsy came in a nude condition and then tried to burn his sister-in-law then he took her to her room but on Sunday, she was found to be dead and her dead body was on outdoor fire.

3. The prosecution case is based on the circumstantial evidence as there is no direct evidence against the appellant. The Investigating Officer (PW-8) Ramkrishna Mishra deposed that the accused had given the intimation in the police station about the death of his mother due to burning. A marg intimation was recorded vide (Ex.P-13) and thereafter, the FIR was registered (Ex.P-14). It is further stated by him that the dead body was recovered on the statement of the accused and he had prepared dead body panchnama (Ex.P-2) and was sent for the postmortem on 24.01.2006. Dr. J.B.

Malaiya (PW-3) stated that he had conducted autopsy of the dead body and there were some external scratches injuries on the forehead of the deceased and on her face. Some injuries were also found on the face and neck of the deceased. All the injuries were found to be antemortem and there were burn signs on the dead body. On the internal examination, he found that the deceased had died due to asphyxia due to blockage of air passage by throttling or suffocation. The nature of the death is homicidal.

4. The counsel for the appellant submitted that the prosecution could not prove the case beyond the doubt and the chain of the circumstantial evidence is not complete. Merely because the dead body was found in the house and the cause of the death is throttling, the appellant cannot be held guilty for the murder of the deceased.

5. The Government Advocate for the respondent/State submitted that the incident had taken place in the house where the accused was also residing. Admittedly, the appellant was residing in the said house and there is no explanation by him

regarding the death of the deceased.

6. Admittedly, the intimation was given by the accused to the police by lodging an FIR which cannot be used against the accused. Further, there is no other evidence except two circumstances that the dead body was recovered from the house and the cause of death was not burning but throttling.

7. The prosecution witness (PW-4) Seeta Bai has not supported the prosecution case. She has also stated that her mother-in-law was a patient of epilepsy and she tried to burn her and at that time, she was saved by the accused. She stated that she received burn injuries and thereafter, she was taken to her bed.

8. The prosecution witness (PW-2) Madan Singh has also stated in para-4 that accused had informed him that his mother came in a nude condition in the night and tried to burn his sister-in-law.

9. The Trial Court has drawn an inference in para-13

against the appellant on the basis of certain omissions in the FIR and further that no document has been produced regarding the treatment of the epilepsy. The FIR lodged by the accused cannot be used against him and further in a rural area, the epilepsy is not considered to be a disease which is got treated by the doctors etc. Even otherwise, the non production of the treatment papers cannot be inferred adversely against the appellant. The prosecution has failed to prove its case beyond the doubt as the chain of circumstance has to be complete. In the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 Supreme Court Cases 116** the Apex Court has held as under:

The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

1. The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;
2. The facts so established should be consistent with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except

the one to be proved; and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The judgment passed in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra (supra)** has further been relied by the Apex Court in the case of **H.D. Sikand (dead) through Lrs Vs. Central Bureau of Investigation and another [2017 (2) MPLJ (Cri.) (S.C.) 4]** and held that if the chain is not complete, the accused is entitled to the benefit of doubt.

**10.** In the present case on consideration of facts and evidence, we find that the prosecution has not proved the conditions to establish circumstantial evidence to prove the guilt of the accused. We, therefore, extend the benefit of doubt to the accused and the appeal is **allowed**. The appellant is acquitted. He shall be released forthwith, if not warranted in any other case.

11. Before parting, we must put on record our unreserved appreciation for the valuable assistance rendered by the learned *amicus curiae*. The High Court Legal Services Authority shall remit fee of Rs.4000/- (Rs. four thousand) to the *amicus curiae* who assisted this court.

**(HEMANT GUPTA)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**