

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.174 of 2003

Shobhit Ram, aged 30 years, S/o Ankalu, R/o Kanapor, Lakhanpuri, P.S. Charama,  
District Kanker (C.G.)

---- Appellant

Versus

The State of Chhattisgarh, Through P.S. Charama, District Kanker (C.G.)

---- Respondent

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For Appellant: Miss Sofia Khan, Advocate.

For Respondent / State: Mr. Neeraj Jain, Government Advocate.

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Hon'ble Shri Justice T. P. Sharma and  
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board

21/04/2015

T.P. Sharma, J: -

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 4-10-2002 passed by the 1<sup>st</sup> Additional Sessions Judge, Kanker, in Sessions Trial No.127/2002, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Ishwari Bai and concealing the evidence of criminal case, convicted the appellant under Sections 302 & 201 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.500/-, in default of payment of fine to further undergo RI for six months and RI for 3 years & fine of Rs.500/-, in default of payment of fine to further undergo RI for six months, respectively.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant, and thereby committed an illegality.
3. As per case of the prosecution, unfortunate deceased Ishwari Bai – wife of the appellant, was residing with the appellant under same roof, in the intervening night of 24-10-2001 and 25-10-2001, unfortunate deceased Ishwari Bai was present with the appellant, at about 3 a.m., the appellant came out from his house and shouted that some persons have entered in his house and committed robbery of Rs.16,000/- and tops of ears of his wife, then villagers went to the house of the appellant where they found the body of the deceased lying. Surajlal (PW-1) went to Police Station

Charama and lodged FIR vide Ex.P-1 which has been recorded for the offence punishable under Sections 460 & 380 of the IPC, thereafter, they found that the deceased died. Morgue was recorded vide Ex.P-2.

4. The Investigating Officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-4, prepared inquest over the dead body of the deceased vide Ex.P-5. Spot map was prepared vide Ex.P-2. Bloodstained cloth was recovered from the spot vide Ex.P-9.
5. Dead body was sent for autopsy to Primary Health Centre, Charama vide Ex.P-23. Dr. Ranjana Gupta (PW-9) conducted autopsy vide Ex.P-14 and found following injuries and symptoms: -
  1. Body was in supine position on ground with face turned towards left.
  2. Eyes were closed. Tongue slightly protruded. Bleeding from nostril, mouth and both ears. Face congested. Lower leg and upper left slightly pale. Rigor mortis present at both upper and lower leg. No mark of injury found on body.
  3. Several finger marks found on left side of neck, anteriorly obliquely downward, one below the other and one thumb like impression found right side of neck.
  4. Outer edge of impression placed on left side show crescentic shape injury of skin with dried blood.

Mode of death was asphyxia on account of throttling and death was homicidal in nature.

6. During the course of investigation, the appellant was taken into custody, he made disclosure statement of Rs.16,000/- and tops of ear of the deceased vide Ex.P-7. Pair of golden ear tops and Rs.14,500/- were recovered from Sop Singh (PW-4) at the instance of the appellant vide Ex.P-8. Panchnama was prepared vide Ex.P-10. Sealed clothes of the deceased were seized vide Ex.P-21. Seized articles were sent for chemical examination vide Ex.P-28. Nails of the appellant were cut and sealed. Presence of blood on nails of the appellant has been affirmed vide Ex.P-29. Statements of the witnesses were recorded under Section 161 of the CrPC.
7. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Kanker, who committed the case to the Court of Sessions, Jagdalpur from where learned 1<sup>st</sup> Additional Sessions Judge, Kanker, received the case on transfer for trial.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 15 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.

9. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on circumstantial evidence, but the prosecution has failed to prove the complete chain of circumstances that the deceased died in the house of the appellant, but the appellant informed the villagers that three masked men entered in his house and committed robbery which was plausible explanation offered on behalf of the appellant and which has not been accepted by the trial Court, and thereby the trial Court has committed an illegality.
12. On the other hand, learned State counsel opposed the appeal and submitted that the appellant has offered false explanation and aforesaid money and tops have been recovered from Sop Singh (PW-4) – brother of the appellant, at the instance of the appellant. These evidence are sufficient to prove the guilt of the appellant. Therefore, while convicting and sentencing the appellant, the trial Court has not committed any illegality.
13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death of deceased Ishwari Bai as a result of fatal injuries found on her body has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Surajlal (PW-1), morgue Ex.P-2, FIR Ex.P-1, evidence of Sop Singh (PW-4), Dr. Ranjana Gupta (PW-9) and autopsy report Ex.P-14, that death of deceased Ishwari Bai was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, as per evidence of Surajlal (PW-1), Prabhuram (PW-2) and Hemlal (PW-3), at the time of incident, the appellant called them and informed that three masked men have entered into his house and have committed robbery of Rs.16,000/- and golden ear tops of his wife, the deceased, then they went to the house of the appellant where they saw the body of the deceased lying in the house of the appellant. Surajlal (PW-1) went to the police station and lodged FIR.
16. Sop Singh (PW-4) has deposed that the appellant has handed over Rs.16,200/- to him and ear tops of his wife which were seized by the police. This shows that the appellant has made false explanation that three persons have committed robbery of Rs.16,000/- and pair of ear tops.
17. Giving false explanation by the appellant and death of the deceased inside the house

of the appellant without explanation in terms of Section 106 of the Evidence Act by the appellant are sufficient to establish the fact that only the appellant was the author of the crime and none else and that the appellant has committed homicidal death of his wife and also concealed the evidence of criminal case.

18. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.

19. Consequently, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

20. The appellant is on bail. He shall immediately surrender before the trial Court for serving remaining sentence and the trial Court shall take all necessary steps for sending the appellant to jail to serve remaining sentence.

Sd/-  
JUDGE  
(T.P. Sharma)

Sd/-  
JUDGE  
(Inder Singh Uboweja)