

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.687 of 2009

Bhuwanlal Suryavanshi, s/o Budhram Suryavanshi, aged about 60 years, Occupation – retired servant, r/o vilage-Nariyara, PS-Pamgarh, District- Janjgir-Champa (CG)

– Appellant

Versus

State of Chhattisgarh, through-Police Station – Pamgarh, District Janjgir-Champa (CG)

– Respondent

For Appellant : Shri Ajay Ayachi, Advocate & Smt Savita Tiwari, Advocate appointed by the High Court Legal Aid Committee

For Respondent / : Shri Roshan Dubey, Panel Lawyer
State

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

JUDGMENT

25/03/2015

Per **T.P. Sharma, J.:-**

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 23.09.2009 passed by the Additional Sessions Judge, Janjgir-Champa in Sessions Trial No.121 of 2009, whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of his wife- Sukhbai, the trial Court has convicted the appellant under Section 302 IPC and sentenced him to undergo

imprisonment for life and fine of Rs.500/-, in default, additional RI for six months.

- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, the appellant and his wife-Sukhbai were residing under same roof. She was denying for sexual relationship since last one year. The appellant was unhappy with the attitude of the deceased. On 05.03.2009 at about 5 am, the appellant demanded for intercourse, for which the deceased refused. Then, the appellant got annoyed and caused multiple injuries to the deceased by carpenter axe (*basula*). When the villagers came to know about the incident, they gathered near the house of the appellant. They saw that the appellant has closed the door from inside, he was shouting that he has killed his wife and also shouting that after arrival of the police only he will open the door. Badri Prasad Rathore (PW-3) went to police station Pamgarh and lodged FIR vide Ex.P/12 and morgue vide Ex.P/11. Police recorded Rojnamcha vide Ex.P/14C and proceeded to the spot for verification. When the Police reached to the spot along with *Panchas* on 05.03.2009, at that time, the room was closed from inside. Some person

informed the appellant that police had come, then the appellant opened the door and came out. He was trembling. Injured dead-body of the deceased was found inside the house of the appellant. One bloodstained carpenter axe was lying on the spot.

- 4) After summoning the witnesses vide Ex.P/8, inquest over the dead body of the deceased was prepared vide Ex.P/9. Spot map was prepared by the Police vide Ex.P/1. Patwari prepared spot map vide Ex.P/20. Dead body of the deceased was sent for autopsy to the Primary Health Centre, Pamgarh. Dr.D.C.Chaudhary (PW-6) conducted autopsy vide Ex.P/17 and found following injuries and symptoms :-

- i) Head and face were stained with blood;
- ii) Abrasion over the at Supra Sternal area of $3\frac{1}{2} \times \frac{1}{2}$ cm ;
- iii) Both the eyes were black;
- iv) Bleeding from nose;
- v) Two abrasions of $2 \times \frac{1}{2} \times 1\frac{1}{2}$ cm over Supra Sternal area;
- vi) Lacerated wound on the right side of neck of $3 \times \frac{1}{2}$ cm;
- vii) Lacerated wound on the left side of neck of 4×1 cm;
- viii) Lacerated wound over right side of the fore-head of $1 \times \frac{1}{2}$ cm;
- ix) Contusion over neck of 3×1 cm;
- x) Internal vessels of neck were found cut;
- xi) Fracture of frontal bone and trachea.

Mode of death was shock and death was homicidal in nature.

- 5) During the course of investigation, the appellant was taken into custody. He made disclosure statement of carpenter axe

(*basula*) vide Ex.P/2 and the same was recovered at his instance vide Ex.P/3.

- 6) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate, Janjgir-Champa, who in turn, committed the case to the Court of Sessions, Janjgir-Champa from where the Additional Sessions Judge received the case on transfer for trial.
- 7) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as nine witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question. He also has examined defence witnesses Mejhuram Suryavanshi (DW-1), Ghanaram (DW-2) and Gorelal (DW-3) and has tried to prove that at the time of the incident, when he had gone to pond for bathing, some miscreant came and committed robbery of Rs.1,25,000/- from his house and the miscreant fled from the house of the appellant. The appellant was called by the children of the villagers, then he came to his house. He was badly shocked and was trembling.

- 8) After providing opportunity of hearing to the parties, the trial Court has convicted & sentenced the appellant as aforementioned.
- 9) We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 10) Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Tarikesh Pandey (PW-7), Constable. As per his evidence, he was posted as Constable in Police Station Pamgarh. Police Station Pamgarh received information against the appellant that the appellant has killed his wife and has closed the room from inside. Then he proceeded to the spot. When he came to the spot, at that time, the room of the house of the appellant was closed from inside. Villagers were present on the spot. They informed that Police had come. Thereafter, the appellant had opened the door. He was trembling and on being asked, he stated that, he has killed his wife. They went inside the room, where they saw injured dead body of the deceased, wife of the appellant. *Panchnama* was prepared and the dead body was sent for autopsy to Pamgarh. Defence has cross-examined this witness at length. In his detailed cross-examination, he has specifically deposed that he was on duty; after receiving the information, he came to the place of incident and the room of

the house of the appellant was closed from inside. Prosecution has also cross-examined other witnesses, especially, Parasram Nirala (PW-1), son of the appellant and Manoj Kumar Banjare (PW-2), but their evidence does not inspire confidence and is not trustworthy. As per evidence of defence witnesses, the appellant has gone to pond for taking bath, meanwhile, some miscreant came to the house, committed robbery of Rs.1,25,000/- and after committing murder of wife of the appellant, fled from the spot. The incident was informed to the appellant by some children, who were present near the pond, then he came to his house. Defence witnesses Mejhuram Suryavanshi (DW-1), Ghanaram (DW-2) and Gorelal (DW-3) have specifically deposed that at the time of the incident, the appellant was not present in his house, some other miscreant has committed the offence. Even he has withdrawn Rs.15,000/- from the Bank to visit Puri along with the deceased. This evidence shows that the appellant has not committed homicidal death, amounting to murder of his wife- Sukhbai.

- 11) On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that the evidence of Tarikesh Pandey (PW-7) is sufficient for drawing inference that the appellant has caused homicidal death of the deceased.

- 12) In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the parties.
- 13) In the present case, homicidal death as a result of fatal injuries found over the body of deceased- Sukhbai has not been substantially disputed on behalf of the appellant. Even otherwise, it is also established from the evidence of Parasram Nirala (PW-1), Tarikesh Pandey (PW-7), FIR (Ex.P/12), Morgue Intimation (Ex.P/11), Dr.D.C.Chaudhary (PW-6) and autopsy report (Ex.P/17), that death of deceased- Sukhbai was homicidal in nature.
- 14) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of Tarikesh Pandey (PW-7), Constable, who has specifically deposed that somebody has informed to the Police Station Pamgarh that the appellant has committed murder of his wife and closed the door from inside, then he came to the spot, he saw the room was closed from inside, then persons present, informed the appellant that Police came, thereafter, the appellant opened the door. He went inside the room of the appellant, where he saw the injured dead body of the deceased. Defence has cross-examined this witness at length. But has not been able to elicit anything to discredit his testimony that the appellant has not assaulted the

deceased. *Interalia*, his evidence finds corroboration from promptly lodged FIR (Ex.P/12). Other witnesses have tried to depose that some miscreant came and committed robbery of Rs.1,25,000/- and committed murder of the deceased. Thereafter, the miscreant fled from the house of the appellant. Specifically, defence of robbery of Rs.1,25,000/- has been taken by the appellant in his examination under Section 313 of the Code. He has examined defence witness Gorelal (DW-3), who has deposed that the appellant has booked ticket for Puri visit for himself and his wife- Sukhbai and Ex.D/2 shows that the ticket has been cancelled on 06.03.2009. This witness further deposed that Rs.15,000/- were withdrawn from the Passbook of the appellant on 03.03.2009 for Puri visit, which finds corroboration from the document (Ex.D/3C) which shows that he has withdrawn Rs.15,000/- for travelling on 03.03.2009, i.e., two days before the incident. As per the defence, robbery of Rs.1,25,000/- has been committed on 05.03.2009. As per defence taken by the appellant and deposition of his witnesses, the appellant has withdrawn Rs.15,000/- on 03.03.2009, which shows that the appellant was not having huge quantity of money on or before 03.03.2009. But, as per defence of the appellant, robbery of Rs.1,25,000/- has been committed by the miscreant from his house. Evidence of Gorelal (DW-3)

relating to withdrawal of Rs.15,000/- on 03.03.2009 falsify the defence of robbery and presence of Rs.1,25,000/-, *interalia*, evidence of Tarikesh Pandey (PW-7) finds corroboration that the appellant has killed his wife inside the room, after bolting the door from inside. As per his evidence, the appellant and deceased were present in one room at about 5 am. Deceased was found dead as a result of fatal injuries. Appellant was under obligation to offer an explanation under Section 106 of the Evidence Act that who has caused injuries, but he has failed to offer any explanation. In these circumstances, only inference would be possible that the appellant was author of the crime and none else.

- 15) Aforesaid circumstances, evidence and non-explanation of the appellant are sufficient to hold that the appellant has committed homicidal death of the deceased.
- 16) As regards the question of motive, in case of direct evidence motive loses its importance. Even otherwise, motive is only an aid in criminality and can be inferred on the basis of nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only the person concerned would be in a position to explain that what was his intention or motive behind commission of any act.

- 17) In the present case, as many as nine injuries, specially, multiple injuries on the neck of the deceased have been noticed by the doctor, which shows that the appellant acted in inhuman manner and has caused merciless death amounting to murder of his wife- Sukhbai.
- 18) After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned.
- 19) On close scrutiny of the evidence, it reveals that the appellant has caused homicidal death amounting to murder of deceased Sukhbai. We do not find any illegality and infirmity in the judgment impugned.
- 20) Consequently, the appeal, being devoid of merit, is liable to be dismissed and is hereby dismissed.

JUDGE

JUDGE