

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 887 of 2010**

1. Budhan S/o Rupau Majhwar S/o Rupau, Aged about 40 years, Resident of village Dhodidih, Thana Kamleshwarpur, District Sarguja, CG

---- Appellant**Versus**

1. State Of Chhattisgarh, through Officer-in-charge, Police Station Kamleshwarpur, District Sarguja, CG

---- Respondent

For Appellant	-	Shri B.P. Rao, Advocate.
For Respondent	-	Shri Arvind Dubey, PL.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice C.B. Bajpai****Judgment On Board by Pritinker Diwaker, J****23 /11/2015**

This appeal has been filed against the judgment of conviction and order of sentence dated 13.10.2010 passed by the Sessions Judge, Sarguja, in Sessions Trial No. 265/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000, plus default stipulation.

2. Facts of the case in short are that on 7.4.2009 at about 3 pm the accused/appellant caused number of injuries to his wife Sukhmanti Bai with the help of a stick and piece of stone and then brought her home in injured condition where she succumbed to the injuries sustained by her in the intervening night of 7.4.2009 and 8.4.2009. Further case of the prosecution is that Naihar Sai (PW-2)

had, for the whole night, guarded the body of the deceased in her house where the accused/appellant was also present. At the instance of Parashuram (PW-3) - an eyewitness to the incident, *merg* intimation Ex. P-5 and FIR Ex. P-4 were registered against the accused/appellant for the offence under Section 302 IPC. Inquest was conducted on 9.4.2009 vide Ex. P-10 and thereafter dead body was sent for postmortem examination which was conducted by Dr. R.S. Singh (PW-1) vide report Ex. P-1. The doctor conducting the postmortem examination noticed as many as ten injuries on the body of the deceased and opined the cause of death as coma due to head injury and the death was homicidal in nature. After investigation, challan was filed under Section 302 IPC followed by framing of charge accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 07 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits that all the eyewitnesses to the incident namely Naihar Sai (PW-2), Parashuram (PW-3) and Rambai (PW-4) have not supported the case of the prosecution and have been declared hostile. He submits that even the seizure of stone and club made under Ex. P-11 and P-12 respectively does not support the case of the prosecution as the FSL report is negative. According to the counsel for the accused/appellant, the deceased died in her house on account of

the injury sustained by her as a result of fall on a piece of stone while returning with the accused/appellant in a drunken state and the appellant is not the assailant.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the injuries might have been received by the deceased outside but as the death has taken place inside the house and no reasonable explanation has been offered by the accused/appellant regarding the same, his conviction under Section 302 IPC is fully justified. Likewise, he submits that as the dead body was found inside the house of the appellant, non-supportive conduct of the eyewitnesses to the incident hardly makes any difference to the case of the prosecution. During argument, he referred to the statement of the doctor conducting postmortem examination wherein it is categorically stated that as many as 10 injuries were noticed by him on the body of the deceased and the death was homicidal in nature. State counsel goes on to argue that the stand of the accused/appellant that the incident took place while he and the deceased were returning in a drunken state becomes falsified because the doctor conducting postmortem examination has clearly stated that he did not notice any smell of liquor at the time of postmortem examination. In totality, the State counsel lends full support to the judgment impugned being just and proper and based on correct appreciation of the material on record.

7. Heard counsel for the parties and perused the evidence available on record.

8. Naihar Sai (PW-2) – one of the eyewitnesses to the incident though has not supported the case of the prosecution and has been

declared hostile yet he has admitted the recording of his case diary statement Ex. P-3. Likewise, another eyewitness Parashuram (PW-3) has also not supported the case of the prosecution but has admitted the lodgment of *merg* intimation Ex. P-5 and FIR Ex. P-4 by him. In paragraph No. 9 of his deposition, this witness has further admitted that when the police had come to the village in connection with investigation, the body of the deceased was in the house of the appellant but he expressed his ignorance as to who brought it from the spot. Rambai (PW-4) yet another eyewitness to the incident has also turned hostile having not supported the case of the prosecution. Dr. R.S. Singh (PW-1) is the witness who conducted the postmortem examination on the body of the deceased and gave his report Ex. P-1. According to this witness, he noticed as many as ten injuries on the body of the deceased such as lacerated wound on the lower part of right eye, left cheek and lower lip as well as contusions over left eye; abdomen, both breasts, back, thigh and left knee, and opined the cause of death as coma due to head injury, and the death was homicidal in nature. The query No.2 - whether the injuries present on the body of the deceased could be caused by the club produced before him, has been answered by this witness in the affirmative. Like query No.3 - whether the injuries present on the face and in the periphery of the eyes of the deceased could be caused on account of being abruptly hit by the sharp pointed stone and whether the same could result in the death, was also answered in the affirmative. This witness however has denied the fact that the injuries No. 5 to 7 i.e. contusion on abdomen and both breasts could be caused by friction on account of coming into close contact with shrubs. This witness has also denied the fact that the deceased had consumed liquor,

rather he has stated that at the time of postmortem examination he did not notice any symptom of her being in a drunken state. Khora (PW-5) has also not supported the case of the prosecution and has been declared hostile. Shiv Balak (PW-6) is the Sarpanch of the village who has stated that on the date of incident at about 10 am the police had come to him and informed that the accused/appellant had killed the deceased and that on being asked by the police he had gone to the house of the accused/appellant. According to this witness, at the relevant time body of the deceased was lying inside her house and was taken out little later by the police people. In cross examination this witness has stated that on being asked, the accused/appellant had disclosed to him that prior to incident he and his wife (deceased) both had consumed liquor and after getting back home she fell asleep, but he feigned his ignorance as to how she died. J.S. Maravi (PW-7) is the investigating officer who has duly supported the case of the prosecution.

9. Of course, all the eyewitnesses to the incident have not supported the case of prosecution and have been declared hostile. However, there are other things also on record which are required to be seen for arriving at a substantive conclusion in this case, and the non-supportive attitude of the important witnesses and their turning hostile cannot be made the sole basis to proceed with the case towards the conclusion of guilt or innocence. We thus proceed with the entire material on record with every care and caution at our command.

10. Having indulged ourselves in the thorough scrutiny of each and every leaf tugged to record one important thing that body of the deceased was found inside the house of the appellant, has

come to the surface. It is not in dispute that at the relevant time the accused/appellant was the only surviving inmate of the said house and if it is so, it was his bounden duty to explain properly and convincingly as to how all this had happened. It is not that the accused kept mum and did not try to explain the death of his wife, but the whole explanation offered by him appears afar from the truth and full of deviations. In stead of being fair while explaining the things, he has taken support of equivocation saying so many things such as - the death was the result of injury sustained by her on account of fall on a stone or on the roots of the tree etc., which, sorry to say, does not fit to the factual and legal firmament of the case. The doctor (PW-1) conducting the postmortem examination has categorically stated that he noticed as many as ten injuries on the body of the deceased and opined the death to be homicidal in nature. Thus once the death is proved to be homicidal, the accused/appellant must have come forward with a plausible explanation as to how it occurred because apart from him there was no third person in the house at the relevant time. While answering questions No. 4 ,6, 18 and 19 put to him at the time of recording the statement under Section 313 Cr.P.C. the accused/appellant has admitted that the body of the deceased was inside his house and was taken out by the police. Further, while giving answer to question No. 8 the accused/appellant has stated that it is he who had informed the Sarpanch (PW-6) that after consuming liquor his wife had fallen down and thereupon he had come to see her and was sent to the police station to lodge the report, but if the statement of Sarpanch (PW-6) is seen, it is apparent that no such information was given by the accused/appellant to him rather he came to know about the

incident through police and on being asked by the police people he went to the house of the appellant where inquest was conducted and other formalities were completed. Further, the statement of the accused regarding consumption of liquor by the deceased prior to death also appears to be false as the doctor conducting postmortem examination has categorically stated that he did not notice any smell of liquor. Likewise, answering question No. 52 the appellant has stated that the cause of death of the deceased was her fall on the roots of the tree but while answering question No. 54 he had assigned the reason for death as receiving the injury after being slipped and hit by a stone. Even assuming the story developed by the accused that the deceased died on account of the injuries sustained by her on account of fall in the roots of the tree or on a piece of stone to be true, it should have been his first and foremost duty to take her to the hospital for treatment after she sustained injuries or in the event of death the information should have been given to the police. Alas! nothing like this has been done by him.

11. Thus from the material collected by the prosecution it is proved that the death of the deceased was homicidal in nature and the dead body was recovered from the house of accused/appellant. Undisputedly, the house of the accused/appellant where body of the deceased was found was in the occupation of the two only (deceased and the accused) but still no reasonably convincing explanation has been offered by him as to how the death of the deceased took place, rather he has tried to make out the defence that on account of fall in the roots of the tree or as a result of being hit against a stone she suffered injuries which ultimately resulted in her death. Another stand taken by him that prior to the incident

the deceased had consumed liquor also loses its significance in view of the categorical statement of the doctor that at the time of postmortem examination no smell of liquor emanated from her mouth. The overall conduct of the accused/appellant in taking varying stands to justify his act creates a strong doubt against him. In the cases involving house murder, it has time and again been held by the Apex Court that it is the inmate(s) of the house who has to offer satisfactory explanation as to how the death occurred but in this case in stead of discharging his legal burden, the accused/appellant remained indulging in an unsuccessful bid of equivocation, which is not permissible in law.

12. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is already in custody and hence no order regarding surrender etc. is needed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(C.B. Bajpai)
Judge