

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 55 of 2010

1. Lelavati, W/o Late Shivprasad Cherwa, aged about 30 years, R/o Village Musra, P.S. Manendragarh and District Korla (CG)

---- Appellant

In Jail

Versus

1. State Of Chhattisgarh, Through PS Manendragarh, Distt. Korla (CG)

---- Respondent

For appellant : Smt. Kiran Jain, Advocate
For Respondent/State : Shri Ramakant Pandey, PL

**Hon'ble Shri Justice Pritinker Diwaker, &
Hon'ble Shri Justice I.S. Uboweja, JJ**

Judgment On Board

07/07/2015:

Per Pritinker Diwaker, J

This appeal arises out of the judgment of conviction and order of sentence dated 30.11.2009 passed by the Additional Sessions Judge, Manendragarh, Distt. Korla in S.T.No.58/09 convicting the accused/appellant under Section 302 of IPC and sentencing her to undergo imprisonment for life, to pay a fine of Rs.1000/- and in default thereof to undergo two months' R.I.

02. In the present case, name of the deceased is Shivprasad, husband of the appellant. As per the prosecution case, the appellant and acquitted accused Chandulal were having illicit relation and in the evening of 8.3.2009, the appellant, acquitted accused Chandulal and

deceased Shivprasad consumed liquor together and on the next day dead body of Shivprasad was found in his room. FIR (Ex.P/15) was lodged by PW-3 Rangu against the appellant and acquitted accused Chandulal for the offence under Section 302/34 of IPC and at his instance merger intimation Ex.P/16 was also recorded on 9.3.2009. Inquest Ex.P/3 was conducted on the body of the deceased on 9.3.2009. Postmortem on the body of the deceased was conducted on 9.3.2009 by PW-8 Dr. PS Kurre vide Ex.P/12 wherein he noticed abrasion around the neck and the chest, one lacerated wound below the left ear and opined that the cause of death was asphyxia due to obstruction of respiratory passage by throttling and the death was homicidal in nature. After investigation charge sheet was filed against the accused persons under Sections 302/34 of IPC and accordingly charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Chandulal convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(I) once on the same set of evidence co-accused Chandulal has been

acquitted, under no circumstance the appellant could have been convicted under Section 302 of IPC.

(ii) that there is absolutely no evidence as to how the deceased was killed by the appellant.

(iii) that testimony of Heeramati (PW-1), so-called witness of last seen, is not reliable as she is not consistent while deposing in the Court.

(iv) that though from the appellant seizure Ex.P/5 was made by which broken bangles and her watch were seized, but the said seizure has no connection with the commission of the offence and there is also no FSL report on record.

(v) the possibility that some third person committed murder of the deceased and left the house cannot be ruled out.

(vi) that even if the entire prosecution case is taken as it is, the appellant cannot be convicted under Section 302 of IPC because as per evidence adduced by the prosecution, on the previous night the appellant, the deceased and the acquitted accused had consumed liquor together and therefore, the appellant was not within her senses, she was not able to understand the consequences of her act, there was no intention on her part to commit murder of the deceased and in these circumstances, at best she can be held liable to be convicted under Section 304 Part-I or II of IPC.

Reliance has been placed on the judgment of the Apex Court in the matters of ***Arun Bhakta @ Thulu Vs. State of West Bengal*** reported in ***2009(2) CCSC 612 (SC)***.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in

accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He submits that once the dead body has been found inside the house of the appellant and the deceased, it is for the appellant to explain as to how the dead body has been found there. Though the appellant has tried to explain the said circumstance in her statement under Section 313 of Cr.P.C., however, no evidence has been adduced by her to substantiate the same and if the said explanation is seen in the light of evidence of the prosecution witnesses, it does not inspire confidence of the Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Heeramati, neighbour of the appellant and the deceased, while supporting the prosecution case has stated that a day prior to the incident she saw the appellant, the acquitted accused and the deceased consuming liquor together in the house of the appellant and till 4 pm they were sitting together and having their drinks and thereafter, the deceased was not seen. On the next day, Rambai, sister-in-law of the deceased, informed her that Shivprasad has been killed and when along with other villagers she went to the house of the appellant, she saw the dead body of Shivprasad lying in the room. She has stated that since last about one year the acquitted accused used to visit the house of the appellant on account of which the appellant and the deceased used to quarrel and the deceased always used to tell the appellant if she wants to live with the acquitted accused she can live with him. She has further stated that when the police asked the

appellant as to how she killed the deceased it was informed by the appellant that at that time she was over-intoxicated and therefore, cannot tell as to how she killed the deceased. She has further stated that brothers of the deceased used to say that the appellant is not of good character.

09. PW-2 Rajkumari is another neighbour of the appellant and the deceased. She has stated that upon coming to know about death of the deceased from Chandulal when she went to the house of the appellant she saw dead body of the deceased lying in the room. She has stated that earlier a village meeting was called to discuss the relation between the appellant and the acquitted accused and in the said meeting they were made to understand and advised to live properly and not to have any relation. She has further stated that in the presence of villagers when the police enquired from the appellant as to how she killed the deceased, the appellant informed that as she was in drunken condition, she is not aware as to how she killed the deceased.

10. PW-3 Rangu, real brother of the deceased, is lodger of FIR (Ex.P/15) and merged intimation (Ex.P/16). He has stated that upon receiving information about death of the deceased when he went to the house of the appellant along with Panch, Sarpanch and other villagers, he saw dead body of the deceased inside the house and the door was locked from outside which was opened by the appellant. He has stated that the appellant, the deceased and the acquitted accused were in the habit of consuming liquor together excessively, they were made to understand by the village Panchayat also but they did not correct themselves and the appellant and the deceased always used to

quarrel. He has further stated that when the police asked the appellant as to how she killed the deceased she informed the police that she cannot tell as to how she killed the deceased because she was heavily intoxicated. He has further stated that house of the acquitted accused is ½ km away from the house of the appellant and the deceased.

11. PW-4 Dayapal is a witness of inquest Ex.P/3, seizure Ex.P/5 & P/6. He has stated that from the place of occurrence broken bangles of the appellant and watch were seized. The appellant and the acquitted accused were having illicit relation for which Panchayat meeting was called where they were made to understand but they did not follow the direction of the Panchayat. This witness has also stated that the appellant, the deceased and the acquitted accused used to consume liquor together and then to create nuisance in the village. He has stated that at times when objections were raised by the villagers, the appellant, the deceased and the acquitted accused used to consume liquor in the house of acquitted accused Chandulal. PW-5 Motelal is seizure witness of Ex.P/5 and P/6. PW-6 Ramnarayan is a villager. He has also stated that the appellant, the deceased and the acquitted accused always used to consume liquor together. He has further stated that the appellant and the acquitted accused were having illicit relations, for which Panchayat meeting was convened where they were made to understand but they did not follow the advise of the Panchayat. PW-7 Premlal has turned hostile and not supported the prosecution case. However, he has stated that the appellant and the deceased used to quarrel after consuming liquor. PW-8 Dr. PS Kurre conducted postmortem on the body of the deceased on 9.3.2009 vide

Ex.P/12 and noticed abrasion around the neck and the chest, one lacerated wound below the left ear. He opined that the cause of death was asphyxia due to obstruction of respiratory passage by throttling and the death was homicidal in nature. PW-9 Surajprasad Kispotta, Patwari, prepared spot map Ex.P/2. PW-10 Prembai recorded FIR (Ex.P/15), merged intimation (Ex.P/16) and filed the Challan. PW-11 C.S. Sidar did major part of the investigation. PW-12 Bahoran, who is a villager, though has been declared hostile but stated that the appellant, the deceased and the acquitted accused used to consume liquor together.

12. Close scrutiny of the evidence makes it clear that in the night intervening 8/9th March, 2009 it is the accused/appellant who after consuming liquor with acquitted accused Chandulal, committed murder of the deceased. The dead body was found in her house, which was locked from outside and later on opened by her. From the evidence of PW-1 Heeramati it is apparent that till previous evening she had seen the appellant, the deceased and the acquitted accused together consuming liquor and thereafter, the deceased was not seen. Thus, PW-1 Heeramati is a witness of last seen and has duly supported the prosecution case.

13. It has also come in the evidence of the witnesses that the appellant and the acquitted accused were having illicit relation which was objected by the villagers; village meetings were also called to make them understand but they did not pay any heed to such advice/direction of the Panchayat. The evidence also goes to show that there used to be quarrel between the appellant and the deceased over

this illicit relationship. Further, the evidence also reflects that in the presence of villagers the police had enquired from the appellant as to how she killed the deceased whereupon the appellant informed the police that as she had consumed excessive liquor she cannot tell as to how she killed the deceased.

14. When an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation. In the present case, though the appellant in her statement under Section 313 of Cr.P.C. has tried to explain the said circumstance, however, no evidence has been adduced by her to substantiate the same and if this explanation is seen in the light of evidence of the prosecution witnesses, it does not inspire confidence of

the Court. Hence this circumstance also goes against the appellant. As regards the judgment relied upon by the appellant, the same being distinguishable on fact is of no help to the appellant. All the circumstances if taken cumulatively unerringly point towards the guilt of the appellant.

15. For the reasons aforestated, we are of the opinion that the prosecution has been able to prove guilt of the appellant on the basis of circumstantial evidence beyond reasonable doubt. The findings recorded by the trial Court are based on proper appreciation of the evidence on record warranting no interference.

16. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed.

Sd/

(Pritinker Diwaker)

JUDGE

Sd/

(I.S.Uboweja)

JUDGE