

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 468 of 2011

- Ram Sai, S/o Shiv Lal Rajwar, Aged about 50 years, Occupation - Agriculturist, R/o Village - Rakeli, Police Station - Darima, District - Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station - Darima, District - Surguja (CG)

---- Respondent

For appellant : Shri K.K. Singh, Advocate.

For Respondent/State : Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice C.B. Bajpai,

Judgment On Board by Justice Pritinker Diwaker

30/10/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 30.4.2011 passed by the Sessions Judge, Surguja (Ambikapur), in S.T.No.230/09 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.2000/- and in default thereof to suffer additional R.I. for six months.

02. In the present case, name of the deceased is Moharmania, wife of the accused/appellant. As per the prosecution case, the appellant used to suspect the character of his wife/deceased and after some dispute he had started living separately nearby the house of the deceased. Deceased Moharmania was living along with her two sons Rajendra (PW-1), Surendra (PW-5) and Sheela (PW-2), wife of Rajendra. It is

alleged that in the intervening night of 1st & 2nd April, 2009 the accused/appellant came to the house of the deceased and after beating committed her murder by throttling. The incident was witnessed by PW-2 Sheela and according to her as there was no male member in the family at that time, she got scared after seeing the incident and remained inside her room and on the next morning only after arrival of her husband Rajendra disclosed the entire incident to him. On 2.4.2009 at the instance of Rajendra (PW-1) Dehati Merg Intimation (Ex.P/1) and Dehati Nalishi (Ex.P/2) were recorded in which it is alleged by Rajendra that his father i.e. the accused/appellant has committed murder of his mother Moharmania. On the basis of merg enquiry, FIR (Ex.P/2A) was registered against the accused/appellant under Section 302 of IPC. Inquest over the body of the deceased was prepared vide Ex.P/8. Postmortem on the body of the deceased was conducted by PW-3 Dr.B.L. Koushal vide Ex.P/5 who opined that the cause of death was asphyxia due to homicidal throttling. After investigation charge sheet was filed against the accused/appellant under Section 302 of IPC and accordingly charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. The appellant examined five witnesses in his defence.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that as the deceased was not having good character, the accused/appellant was living separately in a different house and was having no relation with the deceased.

(ii) that partition in the family had already taken place and as two sons of the deceased namely Rajendra (PW-1) and Surendra (PW-5) as well as Sheelabai (PW-2), wife of Rajendra, were keen to grab the property of the appellant, it is they who after committing murder of the deceased have falsely implicated the appellant. Even when the appellant was in jail for about 2 years, neither his two sons nor his daughter-in-law (PW-2) bothered to take care of welfare of the appellant or visited the jail even once to meet him.

(iii) that after arrest of the accused/appellant his two sons and daughter-in-law have taken possession of his property, which itself shows that either it is his sons or daughter-in-law who committed murder of the deceased.

(iv) that PW-2 Sheelabai has been cited as an eyewitness to the incident, had it been so, she would have raised hue and cry when the appellant was committing murder of the deceased but instead of doing so, she went inside her room, kept quiet in the entire night, which shows that she is not narrating truth in the Court.

(v) that the incident had taken place in the dark, there was no light and

therefore, the question of seeing the incident by PW-2 does not arise.

(vi) that situation of the room from where the incident is alleged to have been seen by PW-2 is as such from where nobody can see any such incident.

(vii) that the defence witnesses have categorically stated that the accused/appellant was not present in the house of the deceased and as the deceased was having illicit relation with some other person, the accused/appellant had literally deserted her.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that the evidence of PW-2 Sheelabai, eyewitness to the incident, appears to be very natural. There was no male member in the house at the time of incident, after seeing the accused/appellant beating the deceased when she interrupted she being threatened away by the appellant went inside her room and from there she witnessed the entire incident and next morning she found her mother-in-law dead and then narrated the entire incident to her husband Rajendra (PW-1) after his return. In the facts and circumstances of the case, the conduct of this witness appears to be natural.

(ii) that the defence witnesses have not seen the occurrence, they have merely stated about the business and character of the deceased but on the basis of such evidence, it cannot be said that the accused/appellant has been falsely implicated.

(iii) that there is no evidence on record to show that it is two sons and

daughter-in-law of the deceased who killed her. Merely on the ground that two sons and daughter-in-law of the appellant did not visit him in the jail even once, it cannot be presumed that they have falsely implicated him or it is they who committed murder of the deceased. The entire incident was witnessed by PW-2, who subsequently narrated the same to PW-1 and PW-5, and therefore, they might have decided not to have any relation with the murderer of their mother/mother-in-law and that is why did not meet him in jail.

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

08. PW-2 Sheelabai is the sole eyewitness to the incident. She has stated that her mother-in-law deceased Moharmania was living in her house along with her husband Rajendra, two children and brother-in-law Surendra. She has stated that the accused/appellant was living separately along with his mother. On the date of incident she was there in the house along with her two children and deceased Moharmania, her husband had gone to Ambikapur for his livelihood whereas her brother-in-law Surendra had gone to the house of her relative in some other village. At about 10-11 in the night after hearing the sound of cry of her daughter Seema who was sleeping with the deceased when she went to see her, she did not find the deceased there and then she heard her cries, "*she will not survive*", coming from outside and when she went there she saw the accused/appellant beating the deceased. She asked him not to do so, however, she was threatened by the appellant to go away from there otherwise she too would be beaten and then she went inside the room along with her daughter. She has

stated that in the entire night she could not sleep on account of fear, the door of her house from the courtyard side was open, after committing murder of the deceased the accused/appellant brought her dead body and kept the same on the cot and then left the place. While going back the accused/appellant had first bolted the door from inside and then had crossed the fence by using ladder. She has stated that in the morning she found her mother-in-law dead, she started weeping and upon hearing her cry, her neighbours came and they also saw the dead body. She sent information to her husband and her brother-in-law through one Ramchander and after their arrival she narrated the entire incident to them. She has further stated that earlier also during rainy season the accused/appellant had beaten the deceased but elderly people of the village intervened in the matter and pacified the dispute.

In the lengthy cross-examination she remained very firm but for minor contradictions from her case diary statement. Number of questions were put to this witness to establish the defence that she could not have seen the incident from her room but if her overall statement is taken into consideration it is apparent that she had seen the accused/appellant beating and killing the deceased. If the Court statement of this witness is compared with her diary statement (Ex.D/2) it is apparent that sum and substance of both the statements are same and she remained consistent in the Court while deposing about the act of the appellant. In para-14, she has categorically stated that at the time of incident the street light was not on, but it was a moonlit night and it was not dark there.

09. PW-1 Rajendra Ram, husband of Sheelabai (PW-2) and son of

accused/appellant and the deceased, has stated that the accused/appellant was living separately whereas he was living in the house along with his wife (PW-2), two children and brother Surendra. He has stated that his house is adjacent to the house where the accused/appellant was living. On the date of incident he had gone to Ambikapur whereas his wife, children and mother were in the house, on the next morning after receiving information he came to the house and saw the dead body of his mother lying on the cot. He has stated that at his instance Dehati Merg, Merg Intimation and FIR were recorded and other formalities were completed by the police. He has further stated that quite often the accused/appellant used to quarrel with his mother. He has denied the suggestion that his mother was having illicit relation with one villager Lalram. He has also stated that on the date of incident his brother Surendra was not in the village and had gone to other village.

10. PW-3 Dr. BL Koushal conducted postmortem on the body of the deceased vide Ex.P/5 and noticed following injuries:

1. 12 to 14 red-brownish bruise and scratch marks of nail on right side of neck over thyroid cartilage on lateral side,
2. two scratch marks of nail on left side of neck,
3. two scratch marks over chick left side.
4. one scratch mark over right side of face.

All above marks were measuring $\frac{1}{2}$ cm to 2 cm.

5. contusion in the middle of nose measuring 0.5x1 cm.
6. contusion of size 0.5x0.5 cm on right forehead.
7. contusion of size 1x0.5 cm on face near right eye.

All above contusions were caused by some hard and blunt object.

8. multiple abrasions on both the knees.

In his opinion, cause of death was asphyxia due to homicidal throttling.

11. PW-4 Ramchandra Rajwar, neighbour of the deceased and the accused/appellant, has been declared hostile. PW-5 Surendra, son of the accused/appellant and the deceased, has stated that he was living along with the deceased, his brother Rajendra and his family. On the date of incident he had gone to other village. On the next morning he received information from one Ramchandra about the incident which had taken place in his house. When he reached the house, he came to know about death of his mother. On being asked from his sister-in-law (PW-2) as to how the incident had taken place, she informed him that in the night the accused/appellant quarreled with the deceased and after beating her committed her murder by throttling. He has further stated that PW-2 also informed him that she had though asked the appellant not to quarrel but she was threatened by the appellant as a result of which she went inside the house. He has stated that earlier also on many occasions, the appellant had beaten his mother after consuming liquor. On one occasion the appellant had also assaulted the deceased by spade and it is he who saved the deceased, on which the appellant told him as to why he saved her. He has stated that on earlier occasion the accused/appellant had also assaulted him by axe, however, upon intervention of the villagers, he did not lodge the report. PW-6 Shobhnath and PW-7 Manohar Ram have turned hostile and not supported the prosecution case. PW-8 Nikolas Xalxo, investigating officer, has duly supported the prosecution case.

12. DW-1 Budabai, mother of the appellant, has stated that on the date of incident when PW-2 Sheelabai was working in her house, she enquired from her about the deceased who informed her that she is

sleeping and in the morning, on hearing the cries of PW-2 when she reached her house, she found Moharmania lying dead on the cot. She has stated that PW-2 informed her nothing about the incident that it is the accused/appellant who had killed the deceased. She has also stated about partition of the family property, business of the deceased and the fact that the accused/appellant was living in a separate house.

13. DW-2 Leelavati, sister-in-law of the accused/appellant in relation, is a witness to inquest Ex.P/8, which described the geographical situation of the house of the deceased, and has also tried to prove the relations between the accused/appellant and the deceased. DW-3 Alam Sai appears to be neighbour of the accused/appellant and the deceased. He has stated that he had never heard any sound of quarrel from the house of the deceased. He has also stated that the deceased used to prepare and sell countrymade liquor. Almost similar statements have been made by DW-4 Buchan and DW-5 Jawahir.

14. Close scrutiny of the evidence makes it clear that the accused/appellant used to suspect the fidelity of the deceased and on account of that he after deserting her was living in a separate house nearby the house of the deceased. In the intervening night of 1st & 2nd April 2009 the accused/appellant came to the house of the deceased, and after beating committed her murder by throttling. At that time, the other inmates of the house i.e. PW-1 Rajendra and PW-5 Surendra were not there but PW-2 with her daughters was there. According to PW-2 on hearing the cries of her daughter Seema who was sleeping with the deceased when she went to see her, she did not find the deceased there and then heard someone crying, "*she will not survive*",

coming from outside and when she went there she saw the accused/appellant beating the deceased. Though she asked the accused/appellant as to why he is beating the deceased, however, on account of being threatened by him she went away to her room along with her daughter and from there she witnessed the appellant beating the deceased, committing her murder by throttling and running away from the house by scaling the wall. In the morning, hearing her cries her neighbours came and on return of her husband and brother-in-law she narrated the entire incident to them. Though there is some variation in the statement of this witness from her case diary statement but the same are not of such a significance to render her entire evidence doubtful. Her version stands fortified from the evidence of PW-1 Rajendra and PW-5 Surendra. There is evidence that in the past on several occasions the accused/appellant had also beaten the deceased and upon intervention by the villagers, the matter was not reported. Medical evidence also lends support to the version of PW-2 Sheelabai. There is no reason for this Court to disbelieve her statement.

15. We further find no substance in the argument of the appellant that the incident could not have been seen by PW-2 considering the geographical condition of the house. She has categorically stated that upon hearing the sound of weeping of her daughter when she went there she found the appellant beating the deceased in the veranda and on being threatened by the appellant she went inside her room. We further find no substance in the argument of the appellant that it was a dark night, there was no light at the place of occurrence and therefore,

there was no occasion for PW-2 to see the incident. On suggestion being made to this effect, PW-2 has categorically stated in para-14 that though the street light was not on, it was moonlit night and there was light. This apart, we have also verified the position of the moon from the Internet according to which on the date of incident there was 49.2% illumination. Though the defence witnesses have made an attempt to establish that the deceased was a lady of easy virtue, involved in the business of preparing and selling countrymade liquor etc. but merely on this basis it cannot be said that the accused/appellant has not committed the offence, especially in view of ocular and medical evidence unerringly pointing towards his guilt.

16. For the reasons stated above, we are of the considered opinion that the prosecution has been successful in proving the guilt of the accused/appellant on the basis of evidence adduced by it beyond all reasonable doubt and as such, the trial Court was fully justified in convicting the appellant under Section 302 of IPC relying upon those evidence. There is no illegality or infirmity in the judgment impugned warranting interference, the same is hereby affirmed. The appeal being without any substance is liable to be dismissed and is thus dismissed. As the accused/appellant is already in jail, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge