

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 422 of 2010

1. Vedram Sahu S/o Sitaram Sahu Aged About 28 Years R/o Village Sirri, Chowki, Birejhar, District Dhamtari Chhattisgarh.

---- Appellant

In Jail

Versus

1. State Of Chhattisgarh Through : Station House Officer, Police Station : Kurud, District : Dhamtari Chhattisgarh.

---- Respondent

For appellant : Shri Bharat Rajput, Advocate
For Respondent/State : Shri Ashish Shukla, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board by Justice Pritinker Diwaker

07/09/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 1.4.2010 passed by the Additional Sessions Judge (FTC), Distt. Dhamtari in S.T.No.02/10 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.500/-, in default thereof to undergo additional RI for one month.

02. As per the prosecution case on 11.9.2009 the accused/appellant consumed liquor along with his friend Ghanshyam, when the appellant came back to his house with Ghanshyam, his wife Rameshwari (deceased) insulted Ghanshyam. It is alleged that after some time

Ghanshyam left the house of the accused/appellant but out of anger the accused/appellant at about 8.30 pm committed murder of his wife by pressing her neck. Thereafter, the accused/appellant took the deceased with the help of PW-6 Madhav and one Satyanarayan to village doctor PW-1 Janakram Kumbhkar, but considering her serious condition the doctor asked the accused/appellant to take her to some private big hospital. However, while taking the deceased for treatment to some other hospital she expired on the way on 12.9.2009 at 7 pm. Merg intimation (Ex.P/6) was recorded at the instance of accused/appellant on 12.9.2009 at 7 am and after merg inquiry FIR (Ex.P/7) was registered on 13.9.2009 against the accused/appellant under Section 302 of IPC. Postmortem on the body of the deceased was conducted by Dr.Pankaj Nagarchi (PW-7) vide Ex.P/2. On external examined he noticed dribbling of saliva from right side of mouth, dry saliva on right side of shoulder, face cynosed, both hands clenched and finger nail cynosed, stool and urine passed, nail mark on right wrist and right ankle, head was moving easily, contusion below right ear and one another contusion just below it. On internal examination he found bruises of laryngeal mucus membrane trachea compressed, hyoid bone compressed, 3rd and 4th cervical vertebra slightly displaced from side, lungs congested with hemorrhage. In his opinion, the cause of death was asphyxia due to throttling and cervical bone dislocation and the nature of death was homicidal. After investigation charge sheet was filed against the accused/appellant and accordingly charge under Section 302 of IPC was framed.

03. So as to hold the accused/appellant guilty, the prosecution

examined as many as 13 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which though he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication but admitted his presence in his house at the time of incident.

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 there is no eyewitness to the incident and the accused/appellant has been convicted solely on the basis of circumstantial evidence which is not of such a nature based on which his conviction could be sustained.

(ii) even if the entire prosecution case is taken, at best the accused/appellant can be held guilty under Section 304 Part-II of IPC because the incident occurred all of a sudden, without any premeditation, in the heat of passion when the accused/appellant was provoked by the deceased and as such he had no intention to committed her murder. Therefore, after holding him guilty under Section 304 Part-II of IPC, he may be sentenced to the period already undergone by him as he has already completed more than six years of jail sentence.

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

strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court. He submits that dead body of the deceased was found inside the house of the accused/appellant, after assaulting the deceased the accused/appellant himself took her to the village doctor (PW-1) with the help of PW-6 Madhav and one Satyanarayan and the witnesses have duly supported the prosecution case. Lastly it has been argued that PW-9 Dharmu Sahu and PW-10 Yashoda Sahu, father and mother of the deceased, have also stated that the accused/appellant used to quarrel with the deceased, he had sold her ornaments and also used to ask the deceased to leave his house and go to her parents' house along with children.

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

08. PW-1 Janakram Kumbhkar, village doctor, has stated that on the date of incident at about 9 pm the accused/appellant had brought the deceased to his house along with Madhav Nirmalkar (PW-6) and one Satyanarayan and considering her serious condition he referred the patient to some private big hospital. He has stated that the pulse rate of wife of the appellant was very slow and on way to hospital she expired. PW-6 Madhav Nirmalkar has duly supported the statement of PW-1. He has further stated that he was informed by the accused/appellant that the deceased had consumed something and fallen unconscious due to fall. PW-2 Ghanshyam, friend of the accused/appellant, has stated that he consumed liquor along with the appellant. He has further stated that when he was abused by the deceased the accused/appellant had asked his wife not to abuse him,

he (PW-2) is his friend and after some time he would go. Thereafter, he and the accused/appellant further consumed liquor in a hotel. However, this witness has been declared hostile. PW-7 Dr. Pankaj Nagarchi conducted postmortem on the body of the deceased on 12.9.2009 vide Ex.P/2 and noticed following injuries:

On External Examination:

Dribbling of saliva from right side of mouth, dry saliva on right side of shoulder, face cynosed, both hands clenched and finger nail cynosed, stool and urine passed, nail mark on right wrist and right ankle, head was moving easily, contusion below right ear and one another contusion just below it.

On Internal Examination:

Bruises of laryngeal mucus membrane trachea compressed, hyoid bone compressed, 3rd and 4th cervical vertebra slightly displaced from side, lungs congested with hemorrhage.

In his opinion, the cause of death was asphyxia due to throttling and cervical bone dislocation and the nature of death was homicidal.

09. PW-8 Shambhuram, Patwari, prepared spot map (Ex.P.3). PW-9 Dharmu Sahu and PW-10 Yashoda Sahu, father and mother of the deceased, have stated that the accused/appellant had sold the ornaments of the deceased and after consuming liquor he used to quarrel with the deceased. PW-11 Churaman Sahu has also stated that there used to be quarrel between the accused/appellant and the deceased. PW-12 Manish Mishra is a witness to inquest Ex.P/5. PW-13 K. Pradhan, investigating officer, has duly supported the

prosecution case.

10. Close scrutiny of the evidence makes it clear that on the date of incident i.e. 11.9.2009 the accused/appellant consumed liquor along with his friend Ghanshyam and when the appellant came back to his house with Ghanshyam, the deceased insulted Ghanshyam, which was objected by the appellant. Thereafter, the appellant and Ghanshyam again consumed liquor in a hotel and then the appellant returned to his home with one quarter liquor. According to the appellant, on being asked his wife/deceased served him food and made drink, she took first drink, however, while taking another it fell down and she also fell unconscious whereupon the appellant took her to doctor. From the above, it is clear that on the date of incident only the appellant and the deceased were in the house. Evidence goes to show that there used to be quarrel between both of them, the appellant had sold her ornaments and also used to ask her to live with her parents along with the children. As per the medical evidence, cause of death of the deceased was asphyxia due to throttling and dislocation of cervical bone. In such a case, the corresponding burden was on the accused/appellant to explain as to how the deceased sustained that injury. Though in his statement under Section 313 of Cr.P.C. he has stated that his wife/deceased on account of consumption of liquor fell unconscious, but in view of the ocular and medical evidence on record, the said explanation stands falsified. Thus, in the totality of facts and circumstances and the evidence adduced by the prosecution, it can safely be inferred that it is the accused/appellant who being enraged by the conduct of his wife as she had abused his friend Ghanshyam and

further, on account of her falling down the liquor, pressed her neck with such a force leading to fracture of cervical bone and thereby committed her murder. Considering the nature and extent of injury, the manner in which the offence was committed and the conduct of the accused/appellant, by no stretch of imagination it can be concluded that the act of the accused/appellant is covered by any of the exceptions to Section 300 of IPC. The findings recorded by the trial Court are based on proper appreciation of the evidence adduced by the prosecution warranting no interference by this Court.

11. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The accused/appellant is reported to be in jail, therefore, no further order is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge