

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 992 of 2011

- Smt. Prabha Bai W/o Suresh Kumar Sahu Aged About 19 Years R/o Village - Bedekona, Police Station - Sanna, Distt. Jashpur Chhattisgarh

---- Appellant

in jail

Versus

- State Of Chhattisgarh Through Police Station - Sanna, Distt. Jashpur Chhattisgarh

---- Respondent

For appellant : Shri Y.C. Sharma, Advocate.
For Respondent/State : Shri V. Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on board by Justice Pritinker Diwaker

19/11/2015

This appeal arises out of the judgment of conviction and order of sentence dated 29.9.2011 passed by Sessions Judge, Jashpur in S.T.No.11/2011 convicting the accused/appellant under Section 302 of IPC and sentencing her to undergo imprisonment for life, to pay a fine of Rs.5000/- and in default thereof to undergo three months' additional R.I.

02. In the present case, name of the deceased is Suresh Kumar Sahu, husband of the accused/appellant. It is alleged that in the night intervening 8/9th July, 2010 the deceased slapped the appellant and in

retaliation the accused/appellant gave some poisonous substance to the deceased in a glass of water saying that the same was being given to him for improving his health. After consuming the said water, the deceased felt uneasy and raised cries, on which his father (PW-2 Manglu Ram Sao), mother (PW-3 Smt. Sarita Bai), who were sleeping in the adjacent room rushed to the deceased and he informed the entire incident to them. The deceased made oral dying declaration before PW-2 and PW-3 whereas the appellant also made extrajudicial confession before the witnesses that she had given some medicine to her husband/deceased. The deceased was taken to hospital, however, on the way he expired. Merg intimation Ex.P/15 was recorded on 9.7.2010 by PW-2 Manglu Sahu. Inquest over the body of the deceased was performed vide Ex.P/10. Thereafter, the dead body was sent for postmortem which was conducted by PW-1 Dr. Anuranjan Kujur on 10.7.2010 vide Ex.P/1 and he noticed congestion of lungs, liver, spleen, kidney, larynx; blood in right chamber of the heart and opined that the cause of death was poisoning. Viscera of the deceased was also sent for FSL and as per FSL report Ex.P/14 poisonous substance - foret (organophosphorous) was found in the Articles A, B, C & D i.e. a glass of steel, a packet containing insecticide which was seized after disclosure statement of the appellant and viscera of the deceased. After completion of investigation charge sheet was filed against the appellant under Section 302 of IPC and accordingly charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused was

also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her 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 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 legally admissible evidence against the accused/appellant.

(ii) that PW-2 & PW-3 have falsely implicated the appellant as PW-3 is step-mother of the deceased and somehow she wanted to eliminate the deceased.

(iii) that the prosecution has not made any investigation as to from where the poison was brought by the appellant.

(iv) that as per prosecution case when the deceased slapped the accused/appellant, she gave poisonous substance to him. Thus, from the case of the prosecution itself it is evident that the incident occurred in a heat of passion upon a sudden quarrel and therefore, at best the appellant is liable to be convicted under Section 304 Part-II of IPC and not under Section 302.

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

(i) that immediately after the incident the deceased made oral dying

declaration before PWs-2, 3 & 7 and these witnesses have categorically supported the prosecution case.

(ii) that the extrajudicial confession was also made by the accused/appellant before PWs-2 & 3.

(iii) that on the disclosure statement of the accused/appellant Ex.P/8, seizure of glass and poisonous substance was made and as per FSL report Ex.P/14, poison was found in the seized articles and viscera of the deceased.

(iv) that in the facts and circumstances of the case and the evidence available on record, case of the accused/appellant would not fall under any of the exceptions to Section 300 of IPC because she had given poison to the deceased intentionally and as such, her conviction under Section 302 of IPC is strictly in accordance with law.

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

08. PW-1 Dr. Anuranjan Kujur who conducted postmortem on the body of the deceased has stated that death of the deceased was due to poisoning. He has further stated that viscera was sent for FSL. PW-2 Manglu Ram Sao, father of the deceased, has stated that marriage of the appellant and the deceased was solemnized about 48 days prior to the date of incident. In the night intervening 8/9th July, 2010, the accused/appellant and the deceased had gone to sleep in their room and at about 11 pm he heard cries of his son Suresh Kumar. When he along with his wife Sarita (PW-3) went there, the door was opened by the accused/appellant and then his son/deceased informed him that

the accused/appellant had given him some medicine as a result of which he is unable to see anything and is not feeling well. He has stated that when he searched that medicine, it was kept beneath the tiles and then he immediately called Balkumar and Kunjlal (PW-7). He has further stated that his son informed him that the deceased gave the said medicine by saying that after consuming the same he will put on weight and that his son was vomiting. He was first taken to Sanna hospital and from there he was referred to Jashpur hospital, however, while being taken to Jashpur he expired on the way. In para-5 he has stated that the accused/appellant made extrajudicial confession before him that on account of anger she gave the said poison to the deceased. He has further stated that the glass which was used for giving poison to the deceased was seized by the police. In cross-examination this witness remained very firm.

09. Similar statement has been made by Smt. Sarita Bai (PW-3), step-mother of the deceased. In para-2 she has stated that the deceased made oral dying declaration before her that it is his wife/appellant who has given some medicine to him. In para-4 she has stated that the accused/appellant made extrajudicial confession before her that it is she who had given poisonous substance to the deceased. She has further stated that they are agriculturists and used to cultivate ladyfinger.

10. PW-6 Mukundram is a witness of memorandum of the accused/appellant Ex.P/8, seizure Ex.P/9 and inquest Ex.P/1. Vide Ex.P/9 poisonous substance which was kept in a polythene and one steel glass used by the appellant for giving poison to the deceased

were seized. PW-7 Kunjlal has stated that the deceased informed him that the accused/appellant had given him something to drink and after consuming the same he is not feeling well. PW-8 Mukesh Kumar Singh, Police Constable, had sent the seized articles to FSL and received FSL report Ex.P/14. PW-9 Ram Sevak Paikdra, Patwari, prepared the spot map Ex.P/3. PW-10 Dwarika Shrivastava, investigating officer, has duly supported the prosecution case.

11. As per FSL report Ex.P/14, poisonous substance - foret (organophosphorous) was found in the Articles A, B, C & D i.e. a glass of steel, a packet containing insecticide which was seized after disclosure statement of the appellant and viscera of the deceased.

12. Close scrutiny of the evidence makes it clear that it is the accused/appellant who gave some poisonous substance to the deceased, as a result of which the deceased fell sick and ultimately while being taken to hospital he expired. After consuming the poison when the deceased was crying, his father and mother (PW-2 & PW-3) went to his room where the deceased made oral dying declaration that it is the appellant who gave him some medicine and after that he is not able to see anything and is not feeling well. On being called by PW-2 Mangalu Ram when PW-7 Kunjlal reached the house of the deceased, before him also the deceased made oral dying declaration. This apart, the accused/appellant also made extrajudicial confession before PW-2 & PW-3. These witnesses have categorically supported the prosecution case and the defence has utterly failed to elicit anything from them to render their evidence untrustworthy or doubtful. As per autopsy surgeon also the death of the deceased was due to

consumption of some poisonous substance. At the instance of accused/appellant the poisonous substance foret which was kept in a polythene and one steel glass used by the appellant for giving poison to the deceased were seized. PW-6 Mukundram, witness of appellant's memorandum Ex.P/8 and seizure Ex.P/9 has fully supported the prosecution case. As already stated above, FSL report Ex.P/14 also confirms death of the deceased due to poisoning. Thus on the basis of evidence on record, complicity of the appellant in crime in question stands established beyond all reasonable doubt.

13. We find no substance in the argument of the appellant that in the facts and circumstances of the case, at best the appellant is liable to be convicted under Section 304 Part-II of IPC. In para-11 Dr. Anuranjan Kujur (PW-1) has stated that if a person consumes poison, it is not necessary that he would vomit as it depends upon the quantity of the poison consumed. According to PW-2 Manglu Ram, father of the deceased, after consuming poisonous substance given by the appellant the deceased was vomiting. He has stated that the appellant had told him that the medicine given to the deceased was brought by her from Jashpur for preserving ladyfinger plants. From the oral and the medical evidence it is clear that the appellant was well aware of the nature and effect of the poisonous substance and she dissolved the same in water in such a quantity that the deceased immediately started vomiting. Thus from the facts and circumstances of the case it can safely be inferred that the appellant gave poisonous substance to the deceased with intention to kill him and she had every knowledge that consumption of the same in such a quantity would lead to his death.

Therefore, her conviction under Section 302 of IPC is based on proper appreciation of the evidence warranting no interference.

14. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed. As the accused/appellant is already in jail, no further order regarding her surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge