

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.64 of 2011

Ramkumar Bhaina, S/o Vashudev Bhaina, aged about 40 years, R/o Village Gejamuda, P.S. Kotraroad, District Raigarh, Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Kotraroad, District Raigarh, Chhattisgarh.

---- Respondent

For Appellant:	Mr. Abhijit Sarkar, Advocate.
For Respondent/State:	Mr. Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

Judgment

25/03/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 10-12-2010 passed by the Sessions Judge, Raigarh in Sessions Trial No.116/2009, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Parvati Bai, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby committed an illegality.
3. As per case of the prosecution, on the fateful day of 8-10-2009 between 5.30 p.m. and 6.30 p.m., unfortunate deceased Parvati Bai, wife of the appellant, died inside the room where the appellant was present and the door was closed from inside. Son of the appellant Ganesh Ram Sidar (PW-2) knocked the door but the appellant did not open the door then he went inside the room from roof where he saw the dead body of his mother Parvati Bai. He also noticed that the appellant after encircling lungi was tying the same over his neck which he removed with the help of others. Thereafter, he went to Police Station Kotra Road and lodged FIR vide Ex.P-2 and morgue vide Ex.P-3. The investigating officer left for the scene of occurrence and after summoning the witnesses prepared inquest over the dead body of the deceased vide

Ex.P-1. Spot map was prepared vide Ex.P-4.

4. Dead body of the deceased was sent for autopsy to K.G. Hospital, Raigarh vide Ex.P-14A. Dr. Sunil Ratre (PW-8) conducted autopsy vide Ex.P-14 and found following injuries: -

- Deep impacted black mark completely encircling neck above thyroid cartilage width is approximately 1.5 – 2 c.m.

Mode of death was asphyxia as a result of strangulation and death was homicidal in nature.

5. Broken bangles were seized from the spot vide Ex.P-10. During the course of investigation, the appellant was taken into custody, he made disclosure statement of lungi vide Ex.P-8 and same was recovered at his instance vide Ex.P-9. Statements of the witnesses were recorded under Section 161 of the CrPC.
6. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Raigarh, who committed the case to the Court of Sessions, Raigarh where trial of the case was conducted.
7. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 9 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
8. After providing opportunity of hearing to the parties, learned Sessions Judge convicted & sentenced the appellant as aforementioned.
9. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
10. Learned counsel for the appellant vehemently argued that although Ganesh Ram Sidar (PW-2), son of the appellant and the deceased, has deposed that he has witnessed the incident, but virtually, he has not witnessed the incident, the appellant himself has also sustained injury and the prosecution has failed to prove motive of the offence. Even otherwise, act attributed to the appellant does not travel beyond the scope of Section 304 Part-II of the IPC.
11. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Ganesh Ram Sidar (PW-2) by itself is sufficient for proving the guilt of the appellant.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death as a result of fatal injury found over the body of deceased Parvati Bai has not been substantially disputed on behalf of the appellant.

On the other hand also, it is established by evidence of Dhruplal (PW-1), Ganesh Ram Sidar (PW-2), morgue Ex.P-3, FIR Ex.P-2, evidence of Dr. Sunil Ratre (PW-8) and autopsy report Ex.P-14, that death of deceased Parvati Bai was homicidal in nature.

- 14.As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Ganesh Ram Sidar (PW-2). As per his evidence, the appellant and the deceased i.e. his father and mother respectively, were present in the house, he came after sometime, he saw that the door of the room was closed from inside, he knocked the door, but it was not opened then he climbed upon the roof and peep inside, he saw the dead body of his mother and cloth on the neck of his father i.e. the appellant. His father was unconscious. He went inside. He called other persons. The appellant made extra judicial confession that he has killed his wife. He went to the police station and lodged FIR vide Ex.P-2.
- 15.Defence has cross-examined this witness at length but has not been able to elicit anything in his evidence to discredit his testimony, inter alia, evidence clearly reveals that the appellant and the deceased only two persons were found inside the room, the deceased died as a result of strangulation and the appellant has not offered any explanation that who has caused homicidal death of the deceased. In the circumstances, the only inference under Section 106 of the India Evidence Act would be possible that the appellant was the author of the crime and none else.
- 16.After appreciating the evidence available on record, learned Sessions Judge has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
- 17.Consequently, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
(T. P. Sharma)
JUDGE

Sd/-
(Inder Singh Uboweja)
JUDGE