

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 182 of 2011

- Sonu @ Tiri, S/o Chamru Madiya, aged about 50 years, R/o Village-Kurenga, Pakhnarchapara, Police Station-Parpa, Distt. Bastar (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station - Frezarpur, Distt. Bastar (CG)

---- Respondent

For appellant : Shri Avinash Mishra, Advocate.
For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

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

Judgment On Board by Pritinker Diwaker, J

13/07/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 31.12.2010 passed by the III Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.72/10 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.300/- and in default thereof to undergo three months' R.I.

02. As per prosecution case, the accused/appellant used to suspect the chastity of his wife Paklibai (since deceased). On 10.5.2010 in between 11.30 pm and 12.00 night he killed her by causing five knife injuries on her vital parts. After sustaining injuries, the deceased came

out from her house and narrated the incident to her son PW-1 Raju Kashyap and her daughter PW-4 Mangaldei and thereafter she collapsed. FIR (Ex.P/1) was lodged on 11.5.2010 by PW-1 Raju Kashyap against the accused/appellant under Section 302 of IPC and immediately thereafter mereg intimation (Ex.P/2) was also recorded. Postmortem on the body of the deceased was conducted on 11.5.2010 by PW-5 Dr. SS Takam, vide Ex.P/11 wherein he noticed five incised wounds on the body of the deceased and opined that the cause of death was shock and internal haemorrhage due to puncture of lung and that the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant under Section 302 of IPC and charge was framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses. 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.

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 star witness of the prosecution i.e. PW-1 Raju has not supported the prosecution case and in cross-examination he has categorically stated that the deceased had not informed him anything.

(ii) though PW-4 Mangaldei has supported the prosecution case but considering the fact that she is daughter of the deceased, her evidence is required to be ignored.

(iii) but for the statement of PW-4 Mangaldei there is no other evidence against the appellant. Though certain seizure was made by the prosecution but in absence of FSL report, the same cannot be connected with the crime in question.

(iv) that even if the entire prosecution case is taken as it is, at best the appellant can be convicted under Section 304 Part-I or II of IPC because the act done by him is culpable homicide not amounting to murder.

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

(i) that PW-4 Mangaldei, daughter of the appellant and the deceased, has supported the prosecution case and categorically stated that the deceased made oral dying declaration before her. Though PW-1 Raju has not supported the prosecution case in the cross-examination but if his entire evidence is seen, it is quite clear that he too has supported the prosecution case.

(ii) that the deceased had sustained injuries in the house of the appellant and therefore, it was for him to explain as to how she suffered injuries in his house.

(iii) that PW-2 Tulsi has supported the prosecution case up to some extent where he has stated that PW-1 came to him and informed that it is the accused/appellant who has killed the deceased.

(iv) that FIR (Ex.P/1) and merger intimation (Ex.P/2) have been duly

proved by the prosecution witnesses, in particular the investigating officer PW-8 Devendra Dubey.

(v) that considering the heinous act of the accused/appellant, he has rightly been convicted under Section 302 of IPC and therefore, his conviction cannot be altered into Section 304 of IPC.

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

08. PW-1 Raju, son of the appellant and the deceased, in examination-in-chief has stated that on the date of incident at about 12 in the night after hearing the cries of his mother he woke up and then his mother informed him that it is the accused/appellant who had caused several knife injuries to her and thereafter, she collapsed. He has further stated that he immediately went to Sarpanch and next day he lodged report Ex.P/1. Merg intimation Ex.P/2 was also recorded at his instance. In the cross-examination, he has stated that after hearing the cries of his mother he rushed to the place of occurrence, saw his mother in injured condition and then informed the incident to his grand-mother. He has further stated that his mother did not inform him as to who had assaulted her. PW-2 Tulsi appears to be neighbour of the appellant and the deceased. He is also a witness of seizure Ex.P/3, P/4 & P/5 and memorandum Ex.P/6 & inquest Ex.P/8. Though he has not supported the prosecution, but has admitted her signature on these documents. PW-3 Dhaniram, brother of the appellant, has turned hostile and has not supported the prosecution case.

09. PW-4 Mangaldei, daughter of the appellant and the deceased,

while supporting the prosecution case has stated that the accused/appellant is her father, he used to suspect the chastity of her mother (deceased) and on the date of incident when she was sleeping in the adjacent house of her uncle along with her brother, uncle, aunty, grand-father and grand-mother, at about 12 in the night her mother came there in injured condition and informed her that the accused/appellant had caused her injuries. There were injuries on her chest and stomach and blood was oozing. On the second day, PW-1 Raju and PW-2 Tulsi had gone to lodge a report. She has further stated that as her father was trying to escape from the place of occurrence, his hands were tied and he was set free only after arrival of the police. In cross-examination, she remained very firm and nothing could be elicited from her by the defence which could make her evidence untrustworthy or doubtful.

10. PW-5 Dr. SS Tekam, conducted postmortem on the body of the deceased on 11.5.2010 vide Ex.P/11 and noticed following injuries on her person:

- (i) incised wound on left side of breast on 4th, 5th and 6th rib, diagonal length 3x1x4 inch depth clear cut margin, blood present in the lung.
- (ii) incised wound in between stomach and breast in the center of size 1x0.5x0.5 inch with clear cut margin.
- (iii) incised wound over left leg of size 1x0.5x0.5 inch with clear cut margin.
- (iv) incised wound over right leg of size 2x0.5x0.5 inch with clear cut margin.
- (v) incised wound on left palm of size 1x0.5x0.5 inch with clear cut

margin.

All the injuries were ante-mortem in nature. Cause of death was shock and internal haemorrhage due to puncture of lung and that the death was homicidal in nature.

11. PW-6 Bhadru, a witness of memorandum (Ex.P/6) and seizure (Ex.P/ 3 to P/5), has turned hostile and has not supported the prosecution case. PW-7 Harishchandra Netam, Police Constable, helped in the initial investigation. PW-8 Devendra Dubey, investigating officer, who recorded FIR (Ex.P/1), merged intimation (Ex.P/2) has stated that it is PW-1 Raju who lodged FIR and at his instance merged intimation was recorded. He has duly supported the prosecution case. PW-9 Dharmendra Tandiya, Patwari, prepared the spot map Ex.P/19.

12. Close scrutiny of the evidence makes it clear that the accused/appellant used to suspect the chastity of his wife/deceased and on 10.5.2010 at about 11.30-12 in the night he caused several knife injuries to her as a result of which she died. Immediately after sustaining injuries, the deceased came out of her house and informed the incident to her children PW-1 Raju and PW-4 Mangaldei. Though PW-1 Raju in the examination-in-chief has supported the prosecution case, however, in cross-examination he has not supported, but so far as PW-4 Mangaldei is concerned, she has categorically stated that her mother/deceased informed her that it is the accused/appellant who had caused her injuries. The defence has failed to elicit anything from this witness to render her evidence unreliable or doubtful. Her evidence also finds due corroboration from the medical evidence, according to which corresponding injuries were found on the body of the deceased.

Even in his statement recorded under Section 313 of Cr.P.C. no explanation has been offered by the accused/appellant as to how the deceased sustained injuries when the accused/appellant and the deceased were residing together inside the house. PW-8 Devendra Dubey, investigating officer, has duly proved lodging of FIR (Ex.P/1) and merg intimation (Ex.P/2) by PW-1 Raju and signatures of PW-1 on these documents are also not in dispute. Thus, considering the totality of the case, even in absence of FSL report the prosecution has succeeded in proving its case against the accused/appellant beyond reasonable doubt. The findings recorded by the trial Court for holding the appellant guilty under Section 302 of IPC are based on proper appreciation of the evidence on record. We find no illegality or infirmity in the judgment impugned warranting interference by this Court.

13. In the result, the appeal being without substance is liable to be dismissed and is hereby dismissed. As the appellant is already in jail, no further order is required.

Sd/

(Pritinker Diwaker)
J U D G E

Sd/

(I.S. Uboweja)
J U D G E