

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 880 of 2010

1. Atma Ram Rathiya, S/o Budhram Rathiya, aged 42 years, Occupation Labourer, Caste Canwar, R/o Village Chandrasekharapur (Edu), Police Station Chhal, Tahsil Dharamjaigarh, District Raigarh (CG)

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh through Station House Officer, Police Station Chhal, Tahsil Dharamjaigarh, District Raigarh (CG)

---- Respondent

For Appellant:
For Respondent:

Shri S.K. Guha, Advocate.
Shri Ravindra Agrawal, Panel Lawyer

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

Judgement

Per Pritinker Diwaker J,

27/11/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 31.7.2010 passed by the 4th Additional Sessions Judge (FTC), Raigarh in S.T. No.20/10 convicting accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him with life imprisonment and fine of Rs.1,000/-, in default to undergo additional R.I. for 06 months.
2. The prosecution story, in brief, is that in the evening of 25.10.2009 the accused/appellant and the deceased i.e. wife of accused/appellant, had consumed liquor together and thereafter accused/appellant caused number of injuries to his wife by club which has resulted into her death. On 26.10.2009 at about 11.15 a.m. merg intimation (Ex.P-2) was lodged by accused/appellant informing the police that in the previous night, after consuming liquor, he & the deceased went to sleep and in the morning the

deceased expired. Inquest was conducted on the body of deceased vide Ex.P-7 and thereafter dead body was sent for post-mortem examination to the Government Hospital, Dharamjaigarh where Dr. B.L. Bhagat (PW-11) conducted post-mortem examination on the body of deceased vide Ex.P-17 and noticed following injuries;-

- Lacerated wound in the upper part of left side of forehead of 3x2cm in size.
- Lacerated wound in the upper part of left of frontal region of scalp of 4x1cm
- Contusion in the left thigh of 19x11cm in size. Discolouration and swelling over left thigh & ear.
- Lacerated wound in the left knee joint of 0.5cm in size. Clotted blood in & around the wound.
- Contusion in the right thigh of 26 x 15 cm in size.
- Minor abrasions in anterior aspect of right leg.

The doctor opined the cause of death as coma due to head injury caused by hard & blunt object and the death was homicidal in nature. After completion of investigation, charge sheet under Section 302 of the IPC was filed against the accused/appellant followed by framing of charge accordingly.

3. In order to bring home the charge levelled against the accused/appellant, the prosecution has examined 15 witnesses. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court vide impugned judgment, convicted & sentenced the accused/appellant in the manner as described above.
5. Learned counsel for accused/appellants submits that ;
 - there is no direct evidence against the accused/appellant connecting him with crime in question and the deceased died after consuming

excessive liquor for which the appellant cannot be blamed.

- As the appellant and the deceased both were in drunken condition, the possibility of third person entering the house and committing murder of deceased cannot be ruled out.
 - Even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-II of the IPC and not under Section 302 of the IPC, as has been done by the Court below.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that the deceased was found dead inside the house with injuries on her body and the appellant has offered false explanation that she died as a result of consumption of excessive liquor.
 7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
 8. Bhaluram (PW-1), uncle of accused/appellant, has not supported the prosecution case and has been declared hostile. However, in the cross-examination by the prosecution he has admitted that the deceased used to pick-up quarrel with the people of vicinity after consuming liquor.
 9. Bhuk Singh Rathiya (PW-2) has stated that on 26.10.2009 he along with other villagers came to know that the deceased died after consuming excessive liquor. He is also a witness to the inquest (Ex.P-7), seizure memos (Ex.P-10 & P-11) and memorandum (Ex.P-9). This witness has also been declared hostile.
 10. Teejram Chouhan (PW-3) is the village Kotwar and has not stated anything against the appellant. However, he too has stated that the

deceased used to consume excessive liquor and then to quarrel with her neighbourers.

11. Shyamlal (PW-4) is the Head Constable who recorded merg intimation (Ex.P-12). C.R. Sahu (PW-6) is the Patwari who prepared the spot map (Ex.P-4).
12. Naresh Kumar (PW-7) has stated that except the accused/appellant and the deceased none was residing with them. He is also a witness to the memorandum (Ex.P-9), seizure memos (Ex.P-8, P-10 & P-11) and arrest memo (Ex.P-12).
13. Dr. B.L. Bhagat (PW-11) is the doctor who conducted post-mortem examination on the body of deceased and noticed injuries as aforementioned. In his opinion, cause of death was coma as a result of head injury caused by hard & blunt object and the nature of death was opined to be homicidal.
14. Umesh Kumar Rathiya (PW-13) has stated that having come to know that wife of accused/appellant died, he along with elderly members of village had gone to the house of accused/appellant where accused/appellant requested them to save him once.
15. S.S. Raj (PW-15) is the Investigating Officer and has duly supported the prosecution case.
16. Close scrutiny of evidence makes it clear that on the fateful night the accused/appellant and the deceased were only inmates in the house and on the next morning, the deceased was found dead with multiple injuries on her body. It is settled position of law that when an offence takes place inside the privacy of a house, it is the inmate (s) of the house who has to offer plausible explanation as to how the death of deceased took place. Thus, there was a corresponding burden on the accused/appellant to give a cogent & convincing explanation as to how the deceased died. True it is

that the accused/appellant has come forward with an explanation that death of the deceased was the result of excessive consumption of liquor, but the same gets falsified from the medical evidence according to which, the cause of death was coma due to head injury caused by hard & blunt object and the death was homicidal in nature. Furthermore, it has come in the evidence that in presence of the prosecution witnesses and elderly members of village the appellant had requested them to save him once. Thus the explanation offered by the accused/appellant that deceased died on account of consumption of excessive liquor does not inspire confidence of this Court.

17. For the foregoing reasons, we are of the considered opinion that the findings recorded by the Court below are based on due appreciation of evidence available on record. That being so, the judgment impugned does not call for any interference. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-