

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.884 of 2010

Santosh Kumar Nirmalkar, S/o Rikhiram Nirmalkar, aged about 40 years, R/o Purani Basti, Near Shiv Temple, Pacharighat, Korba, Thana Kotwali, Distt. Korba (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Kotwali, Distt. Korba (C.G.)

---- Respondent

For Appellant: Mr. Samir Singh, 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 On Board

07/04/2015

T.P. Sharma, J: -

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 23-10-2010 passed by the Sessions Judge, Korba, in Sessions Trial No.131/2009, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Laxmi @ Laxmin, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.5,000/-, in default of payment of fine to further undergo RI for one year.
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, in the intervening night of 7-9-2009 and 8-9-2009, the appellant and unfortunate deceased Laxmi @ Laxmin were sleeping in one room after bolting the door from inside, at about 2 a.m., the unfortunate deceased called Jyoti (PW-1) – her daughter who was sleeping in another room, and told that the appellant is assaulting her, Jyoti (PW-1) rushed to the room of the appellant where she saw that the appellant was pressing neck and mouth of the deceased. The deceased was agonizing. The appellant killed the deceased. The appellant has also

locked the doors before committing the offence. On second day morning, Jyoti (PW-1) searched the key and opened the door, thereafter, went to her maternal uncle Nankiram Nirmalkar (PW-5) and informed the incident. Jyoti (PW-1) went to Police Station Kotwali, Korba, and lodged morgue vide Ex.P-1 and FIR vide Ex.P-2.

4. The investigating officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-10, prepared inquest over the dead body of the deceased vide Ex.P-11. Bloodstained and plain soil were recovered from the spot vide Ex.P-7.
5. Dead body of the deceased was sent for autopsy to Primary Health Centre, Korba vide Ex.P-5A. Dr. G.S. Kanwar (PW-3) conducted autopsy vide Ex.P-5 and found following injuries and symptoms: -
 - The body lying down supine in the mortuary with rigor mortis in all four limbs, eyes closed, tongue bitten in between teeth. The body is cold and clammy.
 - Linear abrasion present on the neck, compression of finger mark are present on the left lateral side of neck.
 - Hyoid bone fractured.

Mode of death was asphyxia and death was homicidal in nature.

6. Patwari prepared spot map vide Ex.P-6. One table was seized from the spot vide Ex.P-15. Statements of the witnesses were recorded under Section 161 of the CrPC.
7. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Korba, who committed the case to the Court of Sessions, Korba where trial of the case was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 8 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. In his examination under Section 313 of the CrPC, while answering question Nos.3 and 7, the appellant has admitted his presence at the time of incident, inside the room along with the deceased and the fact that the room was bolted from inside.
9. After providing opportunity of hearing to the parties, learned Sessions Judge convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Jyoti (PW-1), Prakash (PW-2) and Akash (PW-4) – minor children of the appellant and the deceased. They have specifically deposed in their cross-examination that the appellant was not present at the time of incident and had gone for his treatment, three days prior to the incident. This

evidence is sufficient to exclude the possibility of involvement of the appellant in the crime in question, but while convicting the appellant, the trial Court has not considered aforesaid evidence and thereby committed an illegality.

12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Jyoti (PW-1), Prakash (PW-2) and Akash (PW-4) clearly reveal that the appellant and the deceased were sleeping inside one room at the time of incident. Although Jyoti (PW-1) and Prakash (PW-2) have admitted in their evidence that the appellant was not present, but the appellant himself has admitted his presence at the time of incident inside the room and bolting of room while answering question Nos.3 and 7 of his examination under Section 313 of the CrPC which are sufficient to prove the fact that at the time of incident only two persons i.e. the appellant and the deceased were present inside one room, the incident took place at night 2 a.m., the offence was committed in secrecy and the appellant was under obligation to explain that who has caused homicidal death of the deceased in terms of Section 106 of the Indian Evidence Act, but he has failed to offer any explanation. These circumstances alone are sufficient to establish the guilt of the appellant.
13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Laxmi @ Laxmin has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Jyoti (PW-1), Prakash (PW-2), Dr. G.S. Kanwar (PW-3), Akash (PW-4), morgue Ex.P-1, FIR Ex.P-2, and autopsy report Ex.P-5, that death of deceased Laxmi @ Laxmin was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Jyoti (PW-1), Prakash (PW-2), Akash (PW-4) and admission of the appellant while answering question Nos.3 and 7.
16. As per evidence of Jyoti (PW-1), Prakash (PW-2) and Akash (PW-4), the appellant and the deceased were sleeping inside one room, the room was bolted from inside and their mother died in the intervening night. But Jyoti (PW-1) has admitted in para 8 of her cross-examination that her father had gone out for treatment. Prakash (PW-2) – another child witness, has deposed in para 3 of his evidence that his father and mother were sleeping inside the room. He has also deposed that his father had gone out for treatment. Likewise, Akash (PW-4) – another child witness, has deposed same thing.
17. They are minor children. They have specifically deposed that their father and mother were sleeping in one room. Although they have admitted the suggestion that their

father had gone out for treatment, but the appellant himself has admitted while answering question Nos.3 and 7 that at the time of incident in the night of incident, he was sleeping with his wife inside the room and the room was bolted from inside. This admission and evidence are sufficient to prove the fact that at the time of incident, the appellant was present inside the room where only two persons, the appellant and the deceased, were present.

18. The deceased died as a result of fatal injuries. On second day morning, the appellant was not present in his room, he has not lodged report to the police, the incident was committed in secrecy and the appellant was under obligation to explain that who has caused homicidal death of the deceased, but he has not offered any explanation. The appellant was absent after the incident and has also not offered any explanation that where he had gone. These circumstances are sufficient to connect the appellant with the crime in question that the appellant was the only author of the crime and none else.
19. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
20. Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
T.P. Sharma
Judge

Sd/-
Inder Singh Uboweja
Judge