

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 543 of 2011

1. Saraswati, wife of Late Shri Dwarika Manikpuri, aged about 35 years, resident of Purani Basti, Kota, Police Station Kota, District Bilaspur, Chhattisgarh

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

Versus

1. State Of Chhattisgarh Through: P.S. Kota, District Bilaspur, C.G.

---- Respondent

For Appellant;
For Respondent;

Shri Rajeev Kumar Dubey, Advocate
Shri Vivek Sharma, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice C.B. Bajpai

JUDGEMENT

Per P. Diwaker J;

19/11/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 25.5.2011 passed by the 5th Additional Sessions Judge, Bilaspur in S.T. No.136/2010 convicting the accused/appellant under Sections 302/34 & 201/34 of the Indian Penal Code (for short 'the IPC') and sentencing her to undergo R.I. for Life and fine of Rs.200/- & R.I. for 3 years and fine of Rs.200/- respectively, with usual default clauses.
2. As per case of the prosecution, present accused/appellant with the help of co-accused Deepak Kumar (since deceased) and two juvenile namely Amit Das & Harish Chandravanshi @ Bunty committed murder of her husband Dwarika Das by throttling. Further case of the prosecution is that after committing murder of the deceased, Merg Intimation (Ex.P-7) was lodged by accused/appellant on 15.5.2010 alleging therein that in the intervening night 14th & 15th May, 2010 the deceased came in drunken condition and

had a quarrel with the appellant. She offered food to him but he threw the same and slept in the verandah. After some time Radha Devi (PW-1) came to her and informed that deceased is not talking and is unconscious. Thereafter, with the help of neighbourers the deceased was taken to the Community Health Centre, Kota where he was declared brought dead by the doctor. The Investigating Officer after summoning the witnesses, prepared inquest over the body of the deceased and thereafter sent the dead body for post mortem examination to the Community Health Centre, Kota where Dr. S.K. Jaiswal (PW-7) conducted post-mortem vide Ex.P-13 and noticed multiple abrasions on various parts of the body. According to the doctor, cause of death may be due to compression of neck (asphyxia) causing respiratory failure and shock, however, he has opined that final opinion can be given only after FSL examination report. After receipt of post-mortem report, FIR (Ex.P-14) under Section 302 of IPC was registered against unknown persons and thereafter an enquiry was conducted. During the course of enquiry, statements of Radha Devi (PW-1), Anjali & Deepak were recorded on 20.5.2010 and all of them have deposed that it is the accused/appellant who with the help of other accused persons had killed the deceased.

3. On completion of investigation, charge sheet for the offence punishable under Sections 302, 201, 34 of the IPC was filed against the accused persons and accordingly the charges were framed against them. The prosecution in order to bring home the charges levelled against the accused persons had examined eleven witnesses in all. Statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted and

sentenced the accused/appellant in the manner as described above.

5. Co-accused Dipak Kumar had also challenged his conviction by filing Criminal Appeal No.419/2011, however, during the pendency of said criminal appeal co-accused Dipak died and therefore vide order dated 25.8.2015 his appeal has been dismissed as having become abated.
6. Learned counsel for accused/appellant submits that conviction of the appellant is substantially based on the evidence of Radha Devi (PW-1), sister of deceased, but her evidence does not inspire confidence. He further submits that Radha Devi (PW-1) alleged to have witnessed the incident from the ventilation but as per the map prepared by the Patwari there was no such ventilation in the house. He further submits that other eyewitnesses to the incident i.e. Anjali Manikpuri (PW-5) & Dipak Arakh (PW-6), have also not supported the prosecution case and turned hostile. He further submits that post-mortem report (Ex.P-13) does not reflect as to whether death was homicidal in nature or not, whereas heavy burden lies on the prosecution to prove that death of deceased was homicidal. He further submits that relation between the appellant and the deceased were cordial and thus there was no motive with the appellant to commit his murder.
7. 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. There is no reason to disbelieve the testimonies of Radha Devi (PW-1) who had seen the incident from the ventilation. Apart from Radha Devi (PW-1), Anjali Manikpuri (PW-5) & Dipak Arakh (PW-6) had also seen the appellant committing murder of the deceased but unfortunately they turned hostile. He further submits that the story cooked up by accused/appellant after committing the offence gets

falsified from the medical evidence as in the post mortem report no alcohol was found in the body of deceased. He further submits that according to post-mortem report, multiple abrasions were present on the body of deceased and cause of death was due to compression of neck causing respiratory failure, but the accused/appellant failed to offer any explanation in her statement recorded under Section 313 of Cr.P.C. that as to how the deceased died. He further submits that in the map (Ex.P-1) prepared by the police on 19.5.2010, the ventilation from where Radha Devi (PW-1) had witnessed the incident has been shown and therefore her narration cannot be termed as an afterthought.

8. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
9. Radha Devi (PW-1) is the sister of deceased and sister-in-law of accused/appellant. She has stated that on the date of incident having heard cries of her deceased brother, she came to his house and finding that door is closed from inside she peeped through ventilation and saw that her brother was lying on the bed, two persons had caught hold his legs and accused/appellant was pressing his neck. On seeing this, she raised alarm and called Madan Sriwas & one washer-man but since the door was closed from inside, they could not do anything. She has further stated that she was running around for help and after 10-15 minutes when she returned, she found that her deceased brother had been thrown outside by the accused persons. She has further stated that thereafter the deceased was taken to the hospital where he was declared brought dead. She has further stated that the police had prepared spot map vide Ex.P-1. In Para-3 of examination, this witness has clarified that three boys and present accused/appellant were killing her brother. She has further clarified that she knew accused Dipak (since deceased). This witness has denied that

the deceased was habitual drunkard, however, admits that at times he used to consume liquor. She has further stated that it is accused Dipak who had forcibly put liquor in the mouth of her brother. She has further stated that at the time of recording of her case diary statement, she had disclosed to the police that she had witnessed the incident from the ventilation and if the same is not mentioned in her diary statement, she cannot tell reason. When she was confronted with her diary statement, she has clarified that she had informed the police about everything, however, she is not aware as to why those facts were not recorded. She admits that there is constant movement of people from the road of vicinity. She has further stated that she had peeped 5-6 times through the ventilation. She has admitted that she was not in talking terms with the accused/appellant. In Para-18 of cross-examination she has stated that height of ventilation is about 5.8”.

10. Balaram Chandravanshi (PW-2) is the witness of seizure memo (Ex.P-5) but he has not supported the prosecution case and turned hostile.
11. Bhaskar Rao (PW-3) is the Head Constable who recorded merg intimation of Ex.P-7, prepared inquest (Ex.P-9) and sent the dead body for post mortem examination.
12. Pardeshi Ram Dhruv (PW-4) is the Head Constable who prepared seizure memo of Ex.P-11 by which viscera was seized.
13. Anjali Manikpuri (PW-5) is daughter of deceased and accused/appellant. Though she has been declared hostile but in Para-3 of her cross-examination by the prosecution she has stated that there is no ventilation in the house. Her father used to consume excessive liquor and on the date of incident also he had consumed excessive liquor. She has further stated that on the date of incident her father was consuming liquor since morning and continued to consume liquor till night without eating anything. She has

further stated that her father did not come to the house whole night and in the drunken condition he was quarrelling with the people. She has admitted that there is a dispute between them and Radha Devi (PW-1).

14. Dipak Arakh (PW-6) is the person who took the deceased to the hospital, but he has been declared hostile by the prosecution.
15. Dr. Santosh Jaiswal (PW-7) conducted post-mortem on the body of deceased and noticed multiple abrasions. This witness has opined that “most probable cause of death may be due to compression of neck (asphyxia) causing respiratory failure & shock & death, but final opinion after FSL examination report”. On query being made by the police, this witness has reiterated the same thing vide Ex.P-17. In the cross-examination this witness has stated that but for the injuries sustained on the neck, other injuries were simple in nature.
16. Dilshad Ahmed (PW-8) is the Patwari who prepared the map (Ex.P-3). He has stated in categorical terms that in the house where incident had taken place there was no ventilation and therefore he had not shown the same in the map. He has clarified that had there been such ventilation, he would have definitely shown the same in the map (Ex.P-3).
17. D.P. Banjare (PW-9) has filed the charge sheet after completion of investigation.
18. Mangaldas Manikpuri (PW-10) is the witness of inquest (Ex.P-9). He has stated that at the time of inquest the witnesses have expressed that the deceased died on account of consumption of excessive liquor and did not express suspicion on anybody. He has further stated that at the time of inquest, excessive smell of alcohol was coming. In the cross-examination this witness has stated that on the date of incident the deceased became unconscious due to excessive consumption of liquor and he was admitted in the hospital where he died during the course of treatment.

19. Binu Kayal (PW-11) is the Investigating Officer who has duly proved the prosecution case.
20. Close scrutiny of evidence makes it clear that conviction of accused/appellant is substantially based on the evidence of alleged eyewitness Radha Devi (PW-1) who deposed that on hearing cries of the deceased, she came to the house of deceased and having found the door locked from inside she peeped into through ventilation located at the height of 5.8" from the floor and saw that two persons had caught hold her brother and present accused/appellant was pressing his neck. However, if the contents of case diary statement of this witness, which was recorded after unexplained delay of five days from the incident, are compared with her Court statement, it is quite apparent that while deposing in the Court as to the manner in which the incident took place, she has improved a lot and made even those allegations which are not there in her case diary statement. Claim of Radhi Bai (PW-1) that she had witnessed the incident through the ventilation gets falsified from the evidence of Anjali Manikpuri (PW-5), daughter of deceased & accused/appellant, who has stated that there is no ventilation in the house, and also from the map (Ex.P-3) prepared by the Patwari (PW-8) according to which there was no ventilation on the spot. Assuming that there was a ventilation in the house, as shown in the map (Ex.P-1) prepared by the police, but considering the height of ventilation from the floor i.e. 5.8", as deposed by Radha Devi (PW-1), it is difficult to believe that she could have seen the entire incident from the ventilation. Even she has not stated anywhere that she had climbed up or used any stool etc. to peep through said ventilation. Evidence also reflects that the accused/appellant was not in talking terms with Radha Devi (PW-1) and thus the possibility of false implication of accused/appellant by this witness cannot be ruled out.

According to the doctor conducting post mortem examination, the most probable cause of death may be due to compression of neck (asphyxia) causing respiratory failure and shock & death, but at the same the doctor has opined that final opinion as to the death being homicide can be drawn only after receipt of FSL report. However, in this case there is no FSL report and thus the prosecution has not been able to prove that the death was homicidal in nature and that being so, benefit of same has to go to the accused/appellant.

Likewise, there is nothing on record to show that after the death of the deceased the accused/appellant had caused disappearance of the body and that way her conviction under Section 201/34 of the IPC is also not sustainable in the eye of law.

21. Thus, considering the nature and quality of evidence adduced by the prosecution, we are of the opinion that the prosecution has failed to prove involvement of accused/appellant in the crime in question beyond reasonable doubt and she is definitely entitled to be acquitted of the charges by extending her benefit of doubt.
22. For the foregoing reasons, the appeal is allowed. Conviction and sentence of the appellant under Sections 302/34 & 201/34 of the IPC are hereby set aside and she is acquitted of those charges by extending her benefit of doubt. The appellant is reported to be in custody, therefore, she be released forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-