

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 412 of 2012**

1. Rajaram @ Bantha S/O Fekuram Cherawa, R/o Mandalpara, P.S. Baikunthpur , Distt. Korea C.G.

---- Appellant

Versus

1. State of Chhattisgarh Through P.S. Baikunthpur , Distt. Korea C.G.

---- Respondent

For Appellant	:	Mr. Rishi Rahul Soni, Advocate
For Respondent/State	:	Mr. Roshan Dubey, P.L.

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

Judgment on Board by T.P.Sharma, J.

14/05/2015

Challenge in this appeal is to the judgment of conviction dated 12.12.2011 passed by the Sessions Judge, Korea (Baikunthpur), in Sessions Trial No. 86/2009 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of his wife – Guddi @ Urmila, the trial Court convicted the appellant under Section 302 of the I.P.C. and sentenced to imprisonment for life with fine of Rs.1000/- and in default to undergo additional RI for three months.

2. Conviction of the appellant is impugned on the ground that without there being any iota of evidence against him the trial Court convicted and sentenced the appellant and thereby committed illegality.

3. As per the case of the prosecution, the appellant and the unfortunate deceased Guddi @ Urmila was residing with the appellant. On 10.05.2009

deceased went to the house of the father of the appellant along with appellant. They consumed liquor in the house of the father of the appellant. Thereafter, the appellant quarrelled with his father P.W.6 Phekuram on the ground of partition of property whereupon P.W.6 Phekuram did not agree. Then the appellant asked his wife (deceased) to return his home but the deceased was unable to go with him. On this the appellant dragged his wife and assaulted her, resulting into her death. P.W.10 Ram Lakhan witnessed the incident. P.W.2 Basant Lal went to Police Station Baikunthpur and lodged merged intimation vide Ex.P.3 and F.I.R. vide Ex.P.4.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.1, inquest over the dead body was prepared vide Ex.P.2. Spot map was prepared vide Ex.P.5. Patwari prepared spot map vide Ex.P.8. Bloodstained and plain soils were recovered from the spot vide Ex.P.16 & Ex.P.17. Dead body was sent for autopsy to District Hospital, Baikunthpur, vide Ex.P.10. P.W.8 Dr.S.K.Gupta conducted autopsy vide Ex.P.11 and found following injuries:

- i. Abrasion of 9" x 1.5" over left back black in colour.
- ii. Abrasion of 3 x 2 cm over lower back black in colour.
- iii. Abrasion of 3 x 3 cm over right elbow black in colour
- iv. Abrasion of 4 x 1 cm over left upper arm black in colour
- v. Abrasion of 2 x 2 cm over left elbow black in colour.
- vi. Abrasion of 3 x 3 cms over left cheek black in colour
- vii. Abrasion of 4 x 3 cms over right forehead black in colour.
- viii. On dissection, 3rd to 8th ribs of right side were fractured. Puncture of right lungs and liver.

Mode of death was syncope due to excessive internal bleeding on account of injuries.

5. During the course of investigation, appellant was taken into custody. He

made disclosure statement of stick vide Ex.P.14. The same was recovered at his instance vide Ex.P.15.

6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. After completion of investigation charge sheet was filed before the Court of C.J.M. Baikunthpur, who in turn committed the case to the Court of Sessions Korea at Baikunthpur.

8. In order to prove the guilt of the appellant, prosecution examined as many as 15 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication is claimed. The appellant admitted consuming of liquor together with his wife and presence of dead body in his house.

9. After providing an opportunity of hearing to the parties, learned Sessions Judge has convicted and sentenced the appellant as aforementioned.

10. We have heard learned counsel for the parties and perused the record of the trial Court including judgment impugned.

11. Mr. Rishi Rahul Soni, learned counsel for the appellant, vehemently argued that conviction of the appellant is substantially based on the P.W.10 Ramlakhan, but, his evidence alone is not sufficient for conviction of the appellant as his evidence does not inspire confidence and trustworthy. As per the initial case of the prosecution, appellant and deceased went to the house of the father of the appellant where they consumed liquor, thereafter the appellant started quarrelling with his father, then he directed deceased to accompany him upto the house but as the deceased was not in a position to accompany him, he dragged her and she died which shows that during the course of dragging her wife upto the house, injuries have been caused. Drinking liquor together, taking the deceased by the

appellant showing that he was not having any motive for commission of offence but deceased died when she was with the appellant.

12. On the other hand, Mr. Roshan Dubey, learned counsel for the State opposed the appeal while submitting that conviction of the appellant is based on P.W.8 Dr. S.K.Gupta and P.W.10 Ramlakhan, whose evidence is sufficient for proving 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. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Guddi @ Urmila is not only substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.6, P.W.7, P.W.8, P.W.9 and P.W.10, namely, Phekuram, Nirmal, Dr. S.K.Gupta, Devdutt Kumar Dubey and Ramlakhan, Merg Ex.P.3, F.I.R. Ex.P.4 and autopsy Ex.P.11.

14. As regards complicity of the appellant in crime in question, the conviction of the appellant is substantially based on the evidence of P.W.10 Ramlakhan, who has deposed that the appellant the deceased consumed liquor in the house of Phekuram (P.W.6), father of the appellant. Thereafter, the appellant directed the deceased to take him to the house, but, deceased was not in a position to walk, then the appellant dragged her and during that course she was found dead. Medical evidence revealed that fracture of as many as 3 to 8 right ribs with puncture of right lungs and liver. Deceased was with the appellant at the time of such injuries. Appellant has failed to offer any explanation that who has caused such injuries. In absence of such explanation, the only inference would be possible that the appellant has caused injuries to deceased resulting into her death and that too her homicidal death.

15. As regards question of motive, in case of direct evidence, motive losses its importance. Even otherwise, it is aid in criminality and can be inferred from the kind

of weapon used, part of body hit, nature of injury and other circumstances. In the present case, as per evidence of P.W.10 Ramlakhan, initially the appellant consumed liquor with the deceased. He has directed the deceased to accompany with him to the house but she was in a position to walk. Thereafter, the incident took place which shows that the appellant was not having any motive to kill his wife but during the course of dragging her the incident took place. Causing such injuries at least the appellant was not having any knowledge that by his act the deceased may die as a result of 7 injuries with fracture of five ribs including puncture of lungs and liver. Therefore, case of the appellant clearly reveals that he has not committed homicidal death amounting to murder of his wife, but, his act squarely falls within the purview of Section 304 Part-I of the I.P.C.

16. While convicting the appellant under Section 302 of the I.P.C. the Court below did not consider the above facts and circumstances and thereby committed illegality.

17. Consequently, appeal is partly allowed. Conviction of the appellant under Section 302 of the I.P.C. is hereby altered to Section 304 Part I of the I.P.C. and he is sentenced to RI for 10 years. Appellant is in custody since 05.07.2009. He is entitled for set off the period of detention already undergone by him.

(T. P. Sharma)
JUDGE

(I.S. Uboweja)
JUDGE