

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr. Appeal No.229 of 2011

Chain Singh, son of Paltan Singh, aged about 23 years, Resident of Village- Jhulan (Pakariya), Police Station Pamgarh, Present Address- Sivni, Champa, P.S. Champa, Janjgir, Distt. Janjgir-Champa (C.G.)

APPELLANT
(In Jail)

Vs

State of Chhattisgarh, through P.S. Janjgir-Champa (CG)

RESPONDENT

For the appellant:

Shri R.K. Jain, Advocate.

For the respondent:

Shri Rahul Tamaskar, Panel Lawyer.

DB: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice I.S. Uboweja

Judgment on Board by P. Diwaker, J

21.07.2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 13.12.2010 passed by the Sessions Judge, Janjgir-Champa (CG) in S.T. No.59/10 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for Life & fine of Rs.1,000/-, in default to undergo additional RI for 01 month.
2. In the present case name of the deceased is Smt. Noharbai. On the date of incident, the accused/appellant after consuming liquor had beaten his wife Smt. Noharbai (since deceased) by hands & fists and thereafter left the house by saying that he is going to commit suicide. Tekram (PW-3) came to the house of accused/appellant and saw the deceased in injured condition. Accused/appellant was brought back by Tekram (PW-3) and thereafter accused/appellant admitted the deceased in the hospital where she succumbed to the injuries suffered by her. On the basis of information received from the hospital, Merg

Intimation (Ex.P-10) was recorded. Post-mortem on the body of the deceased was conducted on 9.3.2010 by Dr. Anita Shrivastava (PW-16) and as per post-mortem report, cause of death was asphyxia due to cervical spine injury and the death was homicidal in nature. On internal examination, the doctor has noticed rupture of spleen and fracture of hyoid bone. After merg enquiry, FIR (Ex.P-15) was registered against the accused/appellant on 18.3.2010 under Section 302 of the IPC and after completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed against him.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 23 witnesses. Statement of the accused/appellant was 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.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced him as mentioned in para-1 of this judgment.
5. Learned counsel for the accused/appellant submits as under:
 - (i) there is absolutely no evidence to show that it is the accused/appellant who committed murder of the deceased and the possibility that when the appellant had left his house some third person may have enter the house and committed murder of the deceased, cannot be ruled out.
 - (ii) Even if the entire prosecution case is taken as it is, the appellant cannot be convicted under Section 302 of the IPC and at best, he

can be convicted under Section 304 Part-I of the IPC because admittedly no weapon has been used by the appellant while assaulting the deceased and the deceased was beaten by hands & fists only.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the 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 after consuming liquor, the accused/appellant had severely beaten the deceased and thereafter left the house by saying that he is going to commit suicide by throwing himself before the train. However, the accused/appellant returned and thereafter shifted the deceased to the hospital with the help of others.
7. We have heard learned counsel for the parties and perused the material available on record.
8. Ram Singh Chouhan (PW-1) is the uncle of deceased in whose house the accused/appellant and the deceased were residing. He has stated that he received information from his nephew Mangal Singh that the deceased had consumed poisonous substance and was taken to the hospital for treatment. He has further stated that by the time he reached to the hospital, the deceased has died. He has further stated that relations between the deceased and the appellant were cordial.
9. Mangal Singh Chouhan (PW-2) is brother of deceased and he is witness of map (Ex.P-1) and suprudagi of dead body (Ex.P-2). Tekram Chouhan (PW-3) is uncle of deceased and this witness has been declared hostile by the prosecution. Raghuraj Chouhan (PW-4) is neighbour of accused/appellant & the deceased and has stated that

while he was returning from grocery shop, he saw the deceased standing at the back side of house and the accused/appellant was standing in front of his house holding belt in his hand. He has further stated that he had informed Tekram (PW-2) that the accused/appellant & the deceased are quarrelling.

10. Ramawtar Yadav (PW-5) is the witness of spot map (Ex.P-5) prepared by the police during the course of investigation and seizure (Ex.P-6) by which certain articles were seized from the spot.

11. Surya Pratap Chouhan (PW-6) has stated that on the date of incident he along with accused/appellant had gone to the hotel of Sonibai (PW-7) where the accused/appellant had consumed liquor and thereafter left for his house. He has further stated that after 10-15 minutes the accused/appellant again met him near railway crossing and requested him to save life of the deceased as she is trying to consume some poisonous substance. At that time, Tekram came there and took the accused/appellant with him.

12. Sonibai Rai (PW-7) appears to be the owner of hotel from where accused/appellant had purchased some eatables. Dhiraj Singh Chouhan (PW-8) is the witness of map (Ex.P-7) prepared by the Patwari. Mujeeb Sheikh (PW-10) is the Patwari who prepared the spot map (Ex.P-7). Suryapal Singh (PW-11) has recorded merg intimation (Ex.P-9). Jageshwar Sahu (PW-12) has made seizure of Ex.P-8. Shyam Lal Kanwar (PW-13) is the witness of seizure memo (Ex.P-8). Ratiram Kenwat (PW-14) is the witness of seizure memo (Ex.P-6) by which liquor bottle, broken remote of television, broken pieces of bangles etc. were seized. Praveen Sharma (PW-15) had lodged the merg intimation (Ex.P-10).

13. Dr. Anita Shrivastava (PWA-16) conducted post-mortem on the body of the deceased and noticed following symptoms/injuries:-

- Rigor mortis was present.
- Pupils dilated.
- Cervical spine fracture between C1 & C2 level and haematoma present of 2x2 cm size.
- Hyoid bone was fracture.
- Haematoma of 5x5cm in the chest.
- Both the lungs were congested.
- Right chamber of heart was full of blood and blood clot was present in the left chamber.

She has opined that cause of death was asphyxia due to cervical spine injury & spleen rupture and mode of death was homicidal. She has stated in her cross-examination that if a woman is forcibly fisted over her spleen or dashed, then the spleen may rupture.

14. Surendra Singh Thakur (PW-17) is the investigating officer and has duly supported the prosecution case. Ramesh Dubey (PW-18) & Chudamani Rathore (PW-22) are the witnesses of inquest (Ex.P-25). Dr. Sandeep Kumar (PW-19) has first attended the deceased in the hospital. Bhuneshwar Prasad Tiwari (PW-20) recorded medical examination (Ex.P-10). Puran Singh (PW-21) did the initial investigation.

15. Minute scrutiny of the evidence makes it clear that on 8.3.2010 the accused/appellant after consuming liquor had beaten his wife with hands & fists and thereafter left the house by saying that he is going to finish his life by throwing himself before the train. Recovery of broken pieces of bangles, television remote, broken liquor bottle etc. indicates that some quarrel took place between the accused/appellant & the deceased and in that process, the accused/appellant assaulted the deceased with hands & fists and unfortunately the injuries so inflicted

resulted in her death. Evidence further makes it clear that no weapon was used by accused/appellant while assaulting the deceased. It has also come in the evidence that relation between the accused/appellant and the deceased were cordial and this fact is further clear from the conduct of deceased, who still while writhing with pain, had asked Tekram (PW-3) to save her husband. Thus taking the entire evidence as it is, one thing is apparent that on the date of incident though the accused/appellant had beaten the deceased by hands & fists after consuming liquor, but the incident took place all of a sudden in the heat of passion and without any premeditation on his part. However, looking to the manner in which the accused/appellant had assaulted the deceased and nature of injuries caused to her, it is also apparent that the accused/appellant had the intention to cause such bodily injuries to the deceased as was likely to cause her death and therefore act of the accused/appellant would fall under Exception-4 of Section 300 of IPC i.e. culpable homicide not amounting to murder, making him liable to be convicted under Section 304 Part-1 of the IPC and not under Section 302 of the IPC as has been done by the trial Court.

16. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-1 of the IPC and he is sentenced to undergo R.I. for 10 years. Since the appellant is already in jail, no further order is required.

1. Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-