

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 45 of 2011

- Bharat Gond, S/o Laher Singh Gond, aged about 50 years, Occupation - Labour, R/o Village Kohka, Police Station Arjuni, Distt. Dhamtari (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station Arjuni, District Dhamtari (CG)

---- Respondent

For appellant : Shri KK Singh, Advocate.
For Respondent/State : Shri Arvind Dubey, PL.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on board by Justice Pritinker Diwaker

24/11/2015

This appeal arises out of the judgment of conviction and order of sentence dated 22.11.2010 passed by Sessions Judge, Dhamtari in S.T.No.25/2010 convicting the accused/appellant under Sections 302, 177 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.2000/- and RI for six months, fine of Rs.500/- respectively with default stipulations.

02. In the present case, name of the deceased is Pramila Gond, wife of the accused/appellant. It is alleged that in the night intervening 3/4th

February, 2010 the accused/appellant had a quarrel with the deceased and he assaulted her with fist blows and wooden log which resulted in her death. After her death, merg intimation Ex.P/13 was lodged by the appellant informing the police that Pramila died on account of fall from the cot. After lodging merg, inquest Ex.P/2 was performed over the body of the deceased and thereafter, the dead body was sent for postmortem which was conducted by PW-3 Dr. Indra Kumar Som vide Ex.P/11 on 5.2.2010. After receiving PM report and merg enquiry, FIR (Ex.P/15) was registered against the accused/appellant on 6.2.2010 under Sections 302 and 177 of IPC. After completion of investigation charge sheet was filed against the appellant under Sections 302 & 177 of IPC and accordingly charges were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses. Statement of the accused was also 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) even if the entire prosecution case is taken as it is, at best the accused/appellant is liable to be convicted under Section 304 Part-II of IPC because he had no intention to cause death of the deceased, it

was a simple quarrel between the couple in which it appears that the appellant had beaten the deceased which unfortunately resulted in her death.

(ii) that though the wooden log has been seized from the appellant but it has been opined by the doctor that the injuries suffered by the deceased could not have been caused by the said weapon.

(iii) that the appellant is in jail since 7.2.2010 and therefore, after converting his conviction into Section 304 Part-II his sentence may be reduced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that number of injuries were caused by the appellant to the deceased including fracture of various ribs and temporal bone. He submits that according to the autopsy surgeon, the death was homicidal in nature and considering the act of the appellant, his conviction under Sections 302 and 177 of IPC is strictly in accordance with law.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Rukham Gond, is a witness of inquest Ex.P/2. He has though been declared hostile but admitted his signature on the documents. PW-2 Birbal Singh, village Kotwar, is also a witness to the inquest. Though he has been declared hostile but has admitted his signature on the documents. In para-6 he has stated that when he enquired from the daughter of the accused/appellant namely Renuka about the death of her mother, she informed him that her mother Pramila died after being

severely beaten by the appellant and then only he came to know that a false report has been lodged by the appellant. PW-3 Dr. Indra Kumar Som conducted postmortem on the body of the deceased on 5.2.2010 vide Ex.P/11 and noticed following injuries:

- (i) swelling of size 2 x 1 inch on right temporal region,
- (ii) abrasion on chest of size 2 x 3 inch browning in colour, blood oozing from mouth and nose,
- (iii) abrasion on abdomen of size 5 x 3 inch bluish in colour,
- (iv) abrasion on right thigh of size $\frac{1}{2}$ x $\frac{1}{2}$ inch and another abrasion of size $\frac{1}{2}$ x $\frac{1}{4}$ inch,
- (v) two abrasions on left thigh, admeasuring $\frac{1}{4}$ x $\frac{1}{4}$ inch and $\frac{1}{2}$ x 1 inch respectively,
- (vi) abrasion on right arm of size $\frac{1}{2}$ x $\frac{1}{2}$ inch.

On internal examination, he noticed fracture of 2nd, 3rd, 4th, 5th ribs of right side and fracture of 3rd and 4th ribs of left side. There was blood clotting in between the skin and the skull at the right side of the forehead. On dissection, fracture of right temporal bone was noticed. All the injuries were antemortem in nature. In his opinion the cause of death was hemorrhage and coma on account of injury to vital organ and that the death was homicidal in nature. In para-9 he has specifically denied that the injuries suffered by the deceased could be caused due to fall from the cot and stated that the same appear to have been caused by some hard and blunt object.

09. PW-4 Smt. Gayatri Sinha recorded mereg intimation Ex.P/13. PW-5 G.R. Manjhi did initial part of investigation. PW-6 Bhagwati appears to be neighbour of the appellant and the deceased. He has stated that on the date of incident Ku. Vinay, daughter of the appellant and the deceased, came to his house crying in the night and informed that the accused/appellant is beating her and other family members. Thereafter, he reached the house of the appellant and asked the appellant as to why he is beating them, on which the appellant asked him to go away from there and then he left the place. The children of the appellant and the deceased also followed him. He has further stated that the deceased also requested him to take her children with him. He has stated that while children of the appellant and the deceased were sleeping in his house, there were only the appellant and the deceased in the house of the appellant. However, this witness has been declared hostile on the point whether the appellant had confessed before him that he killed the deceased.

10. PW-7 Renuka Gond, daughter of the accused/appellant and the deceased, has stated that on the date of incident the appellant had quarreled with her mother and that he forced her and other children to leave the said house. According to her, Bhagwati (PW-6) intervened in the matter but the appellant asked him to go away and then she and her brothers and sisters went to the house of Bhagwati. She has stated that on the next morning she found her mother dead and blood was oozing. She has categorically stated that in the night, only the appellant and her mother were in the house. PW-8 Duleshwari Gond, another daughter of the accused/appellant and the deceased has made almost

similar statement as has been made by PW-7. PW-9 Santosh Kumar Jain, investigating officer, has duly supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that in the night intervening 3/4th February, 2010 it is the accused/appellant who had brutally beaten the deceased, caused injury by hands, fists and club as a result of which she died. As per postmortem report, she sustained various injuries including fracture of temporal bone and the cause of death was hemorrhage and coma due to injury to vital organ and that the death was homicidal in nature. PW-6 Bhagwati, PW-7 Renuka and PW-8 Duleshwari have stated that in the night there was quarrel between the appellant and the deceased and all the children of the deceased and the appellant had slept in the house of PW-6. On the next day, a false merg intimation was lodged by the appellant that the deceased died due to fall from the cot.

12. When an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it is extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. In such cases, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to

how the crime was committed. The inmates of the house can not get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation.

13. In the case in hand, immediately after the incident the accused/appellant lodged mere intimation with the police stating that the deceased sustained injuries due to fall from the cot and died, which in light of the evidence of PW-6, PW-7, PW-8 and medical evidence of PW-3 stand falsified and unerringly points towards the guilt of the appellant. The prosecution has been able to prove involvement of the appellant in commission of the crime in question on the basis of evidence adduced by it beyond the shadow of reasonable doubt.

14. We find no substance in the argument of the appellant that in the facts and circumstances of the case, at best the appellant is liable to be convicted under Section 304 Part-II of IPC. Considering the nature and extent of injuries suffered by the deceased, the manner in which the appellant assaulted her resulting in fracture of various ribs and right temporal bone leading to her instantaneous death, intention of the appellant to cause death of the deceased is writ large and as such, his conviction under Section 302 of IPC cannot be faulted with. Had it been a case of single injury on non-vital part of the body, in the facts and circumstances it could have been presumed that the incident occurred all of a sudden without any premeditation upon a sudden quarrel and in that eventuality, the appellant could, at best, be held guilty under Section 304 Part-II of IPC.

15. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed. As the accused/appellant is already in jail, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge

khan