

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 55 of 2011

- Anuj Ram, S/o Shambhu Satnammi, aged about 45 years, R/o Ameri Awaaspara Satnaam Mohalla, P.S. Chhakarbhata, Distt. Bilaspur (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Station House Officer, P.S. Bilha, District Bilaspur (CG)

---- Respondent

For Appellant : Smt. Savita Tiwari, Advocate
For Respondent/State : Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board by Justice Pritinker Diwaker

31/08/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 28th September, 2010 passed by the First Additional Sessions Judge, Bilaspur in S.T.No.180/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default thereof to undergo additional RI for three months.

02. In the present case name of the deceased is Anjorabai, wife of the accused/appellant. It is alleged that on 21.8.2009 at about 2 pm the accused/appellant caused number of injuries on the head of his wife Anjorabai. Upon receiving this information, FIR (Ex.P/6) was lodged by PW-2 Anand Kumar, son of the deceased, based on which offence

under Section 307 of IPC was registered against the accused/appellant at Outpost-CIMS, City Kotwali, Bilaspur. The injured was taken to hospital where she died at around 5.20 pm. When the deceased was hospitalized, her medical examination was done by PW-10 Dr. R.K. Upadhyay vide Ex.P/24. Based on the information given by ward boy of the hospital, merg intimation (Ex.P/20) was registered on 21.8.2009. Thereafter, numbered FIR (Ex.P/14) was registered against the accused/appellant under Section 302 of IPC at the instance of PW-2 Anandram. After her death, inquest Ex.P/3 was prepared and postmortem examination on her body was conducted on 22.8.2009 by PW-8 Dr. Ashutosh Tiwari vide Ex.P/11 who noticed multiple injuries on the head of the deceased including linear and depressed fracture over tempoparietal region. In his opinion, the cause of death was coma as a result of subdural hematoma due to head injuries. After investigation, charge sheet was filed under Section 302 of IPC and thereafter, charge was framed against the accused/appellant accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant 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. In defence, he examined one Pinku Masil as DW-1.

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) that the statement of PW-3 Smt. Anita Lahre being interested witness is not reliable.

(ii) that even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-I of IPC.

She has placed reliance on the judgment of the Apex Court in the matters of ***Hanmappa Vs. State of Karnataka*** reported in **(2010) 1 SCC (Cri) 273**.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that looking to the manner in which the accused/appellant brutally assaulted the deceased, he has rightly been convicted under Section 302 of IPC. He further submits that PW-3 Smt. Anita Khare may be relative of the accused/appellant and the deceased but has categorically stated as to the manner in which the deceased was ruthlessly beaten by the accused/appellant. It is further argued that on the disclosure statement of the accused/appellant (Ex.P/5), his bloodstained shirt was seized vide Ex.P/6 and from the place of incident bloodstained stone was also seized vide Ex.P/12. According to FSL report (Ex.P/26) presence of blood was confirmed on the aforesaid seized articles.

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

08. PW-3 Smt. Anita Lahre, niece in relation of the accused/appellant, while supporting the prosecution case has stated that on the date of

incident she was in the house of the accused/appellant and the deceased. At about 11-12 noon when she woke up she saw the accused/appellant holding neck of the deceased with one hand and assaulting her with stone by other hand. He assaulted her continuously for about an hour and thereafter, having cleaned his hands sat on the chair whereas the deceased had fallen down on the floor. She has stated that though she called her sister but got no reply and then she called her brother Anand who was residing near the said house. After seeing Anand, the accused/appellant fled from the spot. She has further stated that the deceased was taken to hospital with the help of Bhuvneshwar (PW-4), however, within five minutes she died. She has further clarified in para-3 that first the accused/appellant threw the deceased on the floor by pressing her neck and then gave her repeated blows on her head by stone. In para-6 she has admitted that prior to the incident she had not heard any sound of quarrel between the accused/appellant and the deceased and that she did disclose the police that for about an hour the accused/appellant continuously assaulted the deceased and if the same was not recorded in her case diary statement, she could not tell the reason. In cross-examination, she remained very firm and nothing could be elicited from her by the defence to make her evidence untrustworthy or doubtful.

09. PW-4 Bhuvneshwar Kurre, brother of the deceased and brother-in-law of the accused/appellant, while supporting the prosecution case has stated that on the date of incident when he was out of his house in connection with his work, at about 2.30 pm he was telephonically informed by Anita and his wife Laxmin that the accused/appellant has

killed his wife Anjorbai by assaulting her stone and in turn, he informed the son of the appellant Anand on phone. Then he (PW-4) immediately reached the place of incident and after seeing condition of the deceased, she was taken to hospital with the help of Anand. However, in the evening she expired.

10. PW-2 Anand Kumar Soni, son of the accused/appellant and the deceased, has also supported the prosecution case. He has stated that he received telephonic information from PW-4 Bhuvneshwar about commission of murder of his mother and then he rushed to his house and saw her mother lying in the courtyard drenched with blood. She was immediately taken to hospital where she died.

11. PW-10 Dr.R.K. Upadhyay had medically examined the deceased when she was taken to hospital vide Ex.P/24 and noticed the following injuries:

(i) lacerated wound on right temporal region of the head, 10 cm x 6 cm x 5 cm.

(ii) lacerated wound on the middle of the head of size 8 cm x 4 ½ cm x 3 ½ cm.

(iii) lacerated wound on the left parietal region of the head, 7 ½ cm x 3 ½ cm x 2 ½ cm.

(iv) incised wound on the upper part of the face, 3 ½ cm x 1 cm x 1 cm.

(v) incised wound on the forehead (right) upper part, 3 ½ cm x 1 cm x ½ cm.

(vi) swelling on the right cheek and right eye.

Injuries No. (i) to (iii) may be caused by hard and blunt rough object

whereas Injuries No. (iv) & (v) may be caused by sharp cutting object. He also advised for CT scan of the head.

12. PW-5 Dr. Ashutosh Tiwari conducted postmortem on the body of the deceased on 22.8.2009 vide Ex.P/11 and noticed following injuries on her person:

(i) contusion with swollen 9 x 7 cm over left zygomatic area to left eye brow region.

(ii) Stitched wound (2 stitches) 3 cm over right eyebrow.

(iii) Stitched wound (8 stitches) 10 cm over right zygomatic to right tempo parietal region.

(iv) Stitched wound (4 stitches) 14 cm over right mastoid process to right occipital region.

(v) lacerated wound 1.5 x 0.5 x 0.5 cm over right tempo parietal region 3 cm upward from right ear tip.

(vi) lacerated wound 5 x 1 x 1 cm over right occipital region obliquely.

(vii) lacerated wound 5.5 x 1.5 cm up to bone deep over right occipital region, 5 cm horizontally from right mastoid process.

He also noticed sub-scalp hematoma all over the scalp with linear and depressed fracture. In his opinion, the cause of death was subdural hematoma due to head injury. All the injuries were antemortem in nature which were caused by hard and blunt object.

13. PW-6 Rajkumar Kurre who is a witness of seizure has turned hostile. PW-7 Smt. Malti Tiwari recorded merg intimation (Ex.P/13) and FIR (Ex.P/14). PW-8 J.K. Rathore, A.S.I., recorded unnumbered FIR (Ex.P/16) and did initial part of investigation. PW-11 Ku. Akanksha has

stated that Anita (PW-3) went to the house of Bhuvneshwar (PW-4) and informed that it is the accused/appellant who killed the deceased. PW-12 Sanat Pandey, Patwari, prepared the spot map Ex.P/25. PW-13 Amardas Sonwani, seizure witness, has duly proved seizure (Ex.P/12) of stone from the courtyard of the accused/appellant. PW-14 Ashish Wasnik, investigating officer, has duly supported the prosecution case.

14. DW-1 Pinku Masil has stated that at the time of incident the accused/appellant was in his house.

15. As per FSL report (Ex.P/26), blood was found on the stone seized from the courtyard of the accused/appellant and shirt of the accused/appellant.

16. Close scrutiny of the evidence makes it clear that on 21.8.2009 it is the accused/appellant who killed the deceased by repeatedly assaulting her with stone on her head. Eyewitness to the incident PW-3 Smt. Anita Lahre has categorically stated as to the manner in which the deceased was brutally assaulted by the accused/appellant. In her cross-examination she remained consistent and nothing could be brought out from her by the defence to make her evidence doubtful. After the incident this witness immediately informed Anand (PW-2), son of the appellant and the deceased, who in turn informed about the incident to Bhuvneshwar (PW-4). Both these witnesses (PW-2 & PW-4) have duly supported the prosecution version. The oral evidence of the witnesses finds due corroboration from the medical evidence (Ex.P/24 MLC report and Ex.P/11 postmortem report of the deceased), according to which corresponding injuries by hard and blunt object

were noticed on the person of the deceased. This apart, from the courtyard of the accused/appellant a bloodstained stone was seized which has been duly proved by the prosecution and according to FSL report (Ex.P/26) presence of blood on the said stone was confirmed. Likewise, FSL report also confirms blood on the shirt of the accused/appellant seized by the police. Further, the accused/appellant has taken a false plea of alibi, which is also one of the incriminating circumstance against him. Thus on the basis of aforesaid ocular and medical evidence involvement of the accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

17. We find no substance in the argument of counsel for the appellant that considering the act of the appellant he, at best, is liable to be convicted under Section 304 Part-I of IPC. The accused/appellant assaulted the deceased repeatedly with stone on her vital part head, thereby causing three lacerated wounds on the head, two incised wounds one on the face and another on forehead as also linear and depressed fracture in the scalp. If the act of the accused/appellant is seen in the background of facts and circumstances of the case, it is quite evident that the accused/appellant having taken undue advantage acted in a cruel manner, he had intention to cause death of his wife and also had every knowledge that the injuries being so inflicted by him on his wife would result in her death. Thus by no stretch of imagination the act of the accused/appellant would fall in any of the exceptions to Section 300 of IPC. The judgment relied upon by counsel for the appellant being entirely distinguishable on facts is of no help to the appellant. The prosecution has successfully proved guilty of

the accused/appellant on the basis of evidence adduced by it and the trial Court was fully justified in holding the appellant guilty under Section 302 of IPC. We find no reason to interfere with such finding.

18. In the result, the appeal being without substance is liable to be dismissed and is, accordingly, dismissed. The accused/appellant is reported to be in jail, therefore, no further order is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge

Khan