

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 958 of 2013

1. Laldev Bhuihar S/o Matbal Ram Aged About 47 Years R/o Village Dugdugia, Thana Kunkuri, Distt. Jashpur C.G.

**---- Appellant
(In jail)**

Versus

1. State Of Chhattisgarh Through PS Kunkuri, Distt. Jashpur C.G.

---- Respondent

For Appellant:
For Respondent:

Shri S.P. Sahu, Advocate
Shri U.K.S. Chandel, Panel Lawyer

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

JUDGEMENT

Per P. Diwaker, J

27/08/2015

1. This appeal arises out of the impugned judgment of conviction & order of sentence dated 28.5.2010 passed by the Additional Sessions Judge, District Jashpur in S.T. No.35/2008 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him rigorous imprisonment for life and fine of Rs.100/-, in default to undergo S.I. for 10 days.
2. As per case of the prosecution, on 10.2.1998 at about 8.30 p.m. the accused/appellant came back to his house from his work place and demanded food from his wife Agarmati Bai (since deceased). She was in drunken condition and replied that she has not cooked food. He asked her to cook food which she denied therefore he firstly assaulted her in the courtyard with the stick made of paper and thereafter took her inside and assaulted her by hand, fist and blunt side of pickaxe as a result of which she sustained injuries and died.

Accused/appellant fled from the spot after locking the house. Next day, dead body of the deceased was found inside the house. FIR (Ex.P-1) was lodged by Arjun (PW-1), neighbour of accused/appellant & deceased, against accused/appellant based on which offence under Section 302 of the IPC was registered against him. Merg Intimation was also recorded vide Ex.P-4. In the FIR it has been alleged by Arjun (PW-3) that on the previous night he saw the accused/appellant and the deceased quarrelling with each other, he made them understand and on the next morning, the deceased was found dead inside the house. The Investigating Officer left for scene of occurrence and after summoning the witnesses, prepared inquest over the dead body of deceased vide Ex.P-6. Dead body of the deceased was sent for autopsy to the Community Health Centre Kunkuri where Dr. (Smt.) K. Kujur (PW-10) conducted autopsy vide Ex.P-18 and noticed following injuries:-

- Lacerated wound just above right eye of the size 2x 1½ x 1cm.
- Diffused swelling over forehead and right temporal region of the size 5cm x 3cm
- Lacerated wound just below right eye of 1/2cm x ½ cm x ½ cm.

Cause of death was haemorrhagic shock due to head injury and death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed by the Court below against him.

3. In order to convict accused/appellant, the prosecution had examined eleven witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.

4. Learned counsel for the appellant submits that:

- (i) even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-II of the

IPC and not under Section 302 of the IPC, as has been done by the Court below;

- (ii) the accused/appellant is in jail since 11.2.2008 and therefore, after converting his conviction into Section 304 Part-II of the IPC, he may be sentenced to the period already undergone by him.

5. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. PW-1 Arjun Ram, lodger of FIR & neighbour of accused/appellant, has stated that on the date of incident while coming back to his house from his work place when he reached in front of the house of accused, he saw that accused and deceased are quarrelling with each other. He made them understand and then went to his house. Next morning, on hearing cries of Sulochana Bai, he reached the house of accused/appellant and saw that dead body of Angarmati Bai is lying inside. He has further stated that at that time accused/appellant was not in the house and he was absconding. He has further stated that at many times he saw the accused/appellant and the deceased quarrelling with each other and on the date of incident also he saw them quarrelling in drunken state.
8. Khemraj Nagdev (PW-3) is the Patwari who prepared spot map of Ex.P-7. Shobha (PW-4) is daughter of accused/appellant & deceased. She has stated that being informed by her cousin Suresh that her house is locked and door is stained with blood, she reached there, broke open the lock and saw the dead body of her mother. She has further stated that she resides at

Kunkuri where she works. Her parents were residing in the house where her mother was found dead.

9. Chandan (PW-5) is Village Kotwar. He is witness of memorandum (Ex.P-10) of accused/appellant and seizure of various articles from the spot vide Ex.P-12. Though this witness has not supported the prosecution case but admitted his signatures over all the documents.
10. Dayaram (PW-6) is the brother of accused/appellant. He has stated that in the morning when he was in his house, the accused/appellant came to him and informed that after when he returned house from forest, the deceased was sleeping in the courtyard. He awakened her and demanded food. While he was taking her inside, she pushed her as a result she became unconscious. He has further stated that upon hearing about the incident, he had gone to the house of accused/appellant and saw the dead body of deceased. At this stage this witness has been declared hostile and on being confronted with his diary statement (Ex.P-17) wherein he has stated that accused/appellant confessed before him that he has committed murder of his wife, he replied that he did not make any such statement to the police. However, thereafter he has stated that as accused/appellant is his brother, he wants that he should escape from this case.
11. Rameshwar Ram (PW-7) is the nephew of accused/appellant before whom also the accused/appellant has made extra-judicial confession. Though this witness has not supported the prosecution case and has been declared hostile, but in the cross-examination by the Public Prosecutor he has admitted that accused/appellant had confessed that he has committed murder of deceased by causing injuries from club & pickaxe.
12. Dr. (Smt.) K. Kujur (PW-10) conducted post-mortem on the body of deceased and noticed injuries as mentioned above. As per her opinion,

cause of death of deceased was haemorrhagic shock due to head injury and death was homicidal in nature. This witness has clarified that injuries sustained by the deceased could not have come if any lady is collided with the doorpost.

13. K.S. Paikra (PW-11) has filed challan after the investigation was being completed by Investigating Officer Shri Pramod Pandey.

14. Minute scrutiny of evidence makes it clear that on refusal to cook food, some quarrel took place between the accused/appellant and the deceased and in that process he assaulted her firstly by stick, made of paper, and then by hands & fist and blunt side of pickaxe, as a result of which she sustained injuries and died. Factum of quarrel finds corroboration from the statement of Arjun Ram (PW-1), lodger of report & neighbour of accused/appellant, who has categorically stated that he had seen both of them quarrelling with each other and also asked them not to quarrel. In the cross-examination this witness remained very firm and nothing could be elicited from him. Even it is settled that in case of a house murder, in view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of house to give a cogent explanation as to how the crime was committed. In the present case, accused/appellant and deceased being husband & wife were living together under the same roof where the deceased was found dead with number of grievous injuries on her person and as such, the accused/appellant was under obligation to offer explanation as to how the deceased received injuries and died, but no such explanation has been offered by him except making bald denial of all the incriminating circumstances in his statement recorded under Section 313 of Cr.P.C. That apart, extra-judicial confession made by accused/appellant before Rameshwar Ram (PW-7) appears to be voluntary, without any pressure or influence and therefore the same is admissible in evidence to convict him. As such, involvement of the accused/appellant in

commission of offence stands proved beyond all reasonable doubt.

15. Now the question arises for consideration before this Court is whether act of accused/appellant amounts to murder or it falls within any of the Exceptions to Section 300 of the IPC?
16. From the evidence it appears that the deceased was habitual drunkard and on the date of incident also she had consumed excessive liquor due to which she had not cooked food. Accused/appellant after coming back to house from the forest asked her to give food and on coming to know that food is not cooked, he asked her to cook but she refused to do so which annoyed the accused/appellant and he assaulted her by stick, made of paper, and thereafter by hands, fists and blunt side of pickaxe causing various injuries resulting into her death. It is thus apparent that 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 accused/appellant had assaulted the deceased and nature of injuries caused to her, it is also apparent that he had the intention to cause such bodily injuries to the deceased as was likely to cause her death and therefore act of 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.
17. 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.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-