

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 300 of 2011

- Douram @ Dauaa Sahu, S/o Punawa Sahu, Aged about 40 years, R/o Village Shuklabhatta (Vicharpur), Police Chowki-Fasterpur, Thana-Mungeli, Distt. Bilaspur (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station-Mungeli, Distt. Bilaspur (CG)

---- Respondent

For appellant : Shri Vinay Pandey, Advocate.
For Respondent/State : Shri V. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker, &

Hon'ble Shri Justice I.S. Uboweja, JJ

Judgment On Board by Pritinker Diwaker, J

14/07/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 15.2.2011 passed by II Additional Sessions Judge (FTC), Mungeli, Distt. Bilaspur in S.T.No.24/10 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.2000/- and in default thereof to undergo one year's additional R.I.

02. In the present case, name of the deceased is Santoshi Bai, who was first wife of the accused/appellant. It is alleged that as the

accused/appellant did not have any issue from his first wife Santoshi Bai, he performed second marriage with Sunita, from whom he was having two issues. On or about 18.4.2010 second wife of the appellant Sunita had gone to her parents' house and only the appellant and Santoshi Bai were there in the house. It is said that on 18.4.2010 at about 3 am the appellant committed murder of Santoshi Bai by throttling her. Brother of the appellant namely Chhedi informed the incident to Village Kotwar Shivkumari (PW-1) and in turn, the Village Kotwar went to house of the appellant and then lodged merger intimation Ex.P/1. At the time of lodging merger intimation, PW-1 had gone to the police station along with the appellant and one Kamlesh Sahu. Unnumbered FIR (Ex.P/12) was first recorded and thereafter, numbered FIR (Ex.P/9) was recorded against the appellant under Section 302 of IPC. Postmortem on the body of the deceased was conducted on 18.4.2010 by PW-6 Dr. BL Raj vide Ex.P/10 wherein he noticed seven injuries on her body and opined that the cause of death was throttling leading to asphyxia and that the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant under Section 302 of IPC and charge was framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 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) that appellant has been falsely implicated in this case case.
- (ii) that the appellant was suffering from serious mental ailment and therefore, even if he has committed the said crime, his case would fall under Section 84 of IPC.
- (iii) that considering the fact that at the time of commission of the offence, the appellant was not in his senses he cannot be convicted under Section 302 of IPC.
- (iv) in the facts and circumstances of the case, the possibility that the deceased might have been killed by someone else cannot be ruled out.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

- (i) that present is a case of house murder and in such cases, the appellant being the only inmate of the house at the relevant time was required to offer satisfactory explanation as to the death of the deceased whereas no such explanation has been given by him.
- (ii) the appellant has also sustained abrasions in the said incident, for which no explanation has been offered by him. In his statement u/s 313 Cr.P.C. he has simply denied that he has sustained any such injury or that his medical examination was conducted. This circumstance also goes against him and points towards his guilt.

(iii) that the plea of insanity was not raised by the appellant before the trial Court and thus he cannot draw any advantage of the same at this stage. Moreover, according to the State counsel, there is absolutely no evidence on record to show that the accused/appellant was having any mental problem or was insane at the time of commission of the offence.

(iv) that conviction of the appellant is based on proper appreciation of the evidence and therefore, the same cannot be altered into Section 304 Part-I or II of IPC.

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

08. PW-1 Shivkumari is a Village Kotwar who lodged merger intimation and FIR. She is also a witness of inquest Ex.P/3 and spot map Ex.P/4. She has categorically stated that the accused/appellant also accompanied her when she went to police station to lodge report. As she denied the fact that the accused/appellant confessed before her that he killed his wife, she was declared hostile. She has stated that in her presence when the police enquired from the appellant, he confessed that it is he who had committed murder of his wife by throttling her. She has further stated that the accused/appellant performed second marriage as he was not having issues from his first wife. She has stated that when after receiving information about the incident she had gone to the house of the appellant, he was sitting there. PW-2 Mishrilal appears to be a villager to whom the incident was informed by brother of the appellant. He is a witness of inquest Ex.P/3,

seizure Ex.P/4 to P/7. PW-3 Khelan is also a villager. He is a witness of inquest P/3 and seizure Ex.P/4 & P/5. Though both these witnesses (PW-2 & P/-3) have been declared hostile, but they have admitted their signatures on the documents. PW-4 Maniram, brother of the deceased, has not stated anything specific. PW-5 Shyam Pradhan, Head Constable, recorded numbered merg intimation (Ex.P/8) and FIR (Ex.P/9). PW-6 Dr. BL Raj conducted postmortem on the body of the deceased on 18.4.2010 vide Ex.P/10 and noticed following injuries on her person:

External injuries

- (i) abrasion present in the left shoulder joint over left deltoid muscle, near about 2 x 1 cm, 2 x ½ cm,
- (ii) patechial heamorrhage on right elbow joint 2 x 2 cm and left side 2 x 2 cm,
- (iii) abrasion below the thyroid cartilage ½ x ½ cm, ½ x ¼ cm, ½ x ¼ cm, 2 x 1 cm, 1 x ¼ cm.

Internal injuries

- (i) underneath the neck muscles are contused 3 x 2 cm just below the thyroid cartilage on right side.
- (ii) underneath the neck muscles are contused 2 x 2 cm just below the above injury.
- (iii) underneath the neck muscles are contused 2 x 2 cm just below the above injury. On cutting the skin blood clot present.
- (iv) Echymosis present all around the tracheal ring 3 x 3 cm.
- (v) large amount of blood mix froathing on trachea.

Cause of death was throttling leading to asphyxia and that the death was homicidal in nature.

He also medically examined the accused/appellant on 18.4.2010 vide Ex.P/11 wherein he found the following injuries on his person:

(i) abrasion present in the abdomen right side 6 x ¼ cm blood clot present.

(ii) abrasion present in the abdomen right side 5 x ¼ cm blood clot present.

(iii) abrasion present in the abdomen at the level of umbilicus right side.

(iv) abrasion present in the left side of chest, middle clavicular line measuring about 6 x ½ cm, 3 ½ x 3 ½ cm.

(v) abrasion present in the just below the right clavicle bone measuring about 1 x ½ cm.

(vi) abrasion present over the backside of left knee measuring 2 x 1 cm, blood clot present.

All the injuries were caused by blunt object and were simple in nature.

PW-7 RK Sahu, investigating officer, has duly supported the prosecution case.

09. Close scrutiny of the evidence makes it clear that on 18.4.2010 the accused/appellant killed his wife Santoshi Bai, who was residing with him in the same house, by throttling. The incident was informed by brother of the appellant to the villagers and in turn, FIR and merger intimation were lodged. The prosecution witnesses have categorically stated that after coming to know about the incident when they had gone to the house of the appellant, the appellant was present there. There is also evidence that the appellant had accompanied PW-1 Shivkumari when she went to lodge report in the police station.

10. 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. In the present case, no such explanation has been offered by the appellant.

11. So far as plea of insanity raised by the appellant here in this appeal is concerned, no such plea was taken by the appellant at the stage of trial, there is absolutely no evidence to substantiate the said plea. On the basis of mere assertion of the appellant that he was not mentally fit or insane, he cannot take any advantage of the same at this stage. For the purpose of claiming the benefit of defence of insanity in law, the person would have to prove that his cognitive faculties were so impaired at the time when the crime was committed that he was not aware about the nature of his act. Furthermore, in the same incident the appellant has also suffered six abrasions. According to the doctor (PW-6), the abrasions sustained by the appellant could be caused during scuffle. The appellant has also offered no explanation as to the injuries found on his person, rather he has even denied his medical

examination and sustaining of any such injury as well. Thus, in the totality of the circumstances, it can safely be inferred that when the appellant was throttling the deceased, she would have resisted to it and during the course of struggle, the appellant sustained those injuries.

12. Taking into consideration the facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution as well as the conduct of the appellant, we are of the opinion that the prosecution has been successful in proving the guilt of the appellant on the basis of circumstantial evidence beyond reasonable doubt. Under no circumstance, he can be held guilty under Section 304 Part - I or II of IPC and the trial Court has rightly convicted him under Section 302 of IPC.

13. In the result, the appeal fails and is, accordingly, dismissed. As the appellant is already in jail, no further order is required.

Sd/

(Pritinker Diwaker)

J U D G E

Sd/

(I.S. Uboweja)

J U D G E