

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 912 of 2010**

- Mast Ram Nishad S/o Sampat Ram Nishad, aged about 45 years, occupation Labourer, R/o. Village Mudpar, PS Arjuni, Distt. Dhamtari (CG)

---- Appellant**Versus**

- State of Chhattisgarh through PS Arjuni, Distt, Dhamtari (CG)

---- Respondent

For appellant	: Mr. A. N. Pandey, Adv.
For Respondent/State	: Mr. Vivek Sharma and Mr. Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Oral Judgment**Per Pritinker Diwaker, J****28/10/2015**

1. This appeal arises out of judgment and order dated 23-10-2010 passed by the Sessions Judge, Dhamtari in S.T. No. 19/2010 convicting the accused appellant under Sections 302, 324, 326 (on two counts) of the IPC and Section 27 of the Arms Act and sentencing him to undergo life imprisonment with fine of Rs. 2,000/- under Section 302, IPC, rigorous imprisonment for 3 years with fine of Rs. 500/- under Section 324, IPC, rigorous imprisonment for 7 years with fine of Rs. 1,000/- under Section 326, IPC and RI for 7 years with fine of Rs. 1,000/- under Section 27, Arms Act plus default stipulations. All the substantive sentences are directed to run concurrently.
2. As per prosecution case, on 9-5-2007 after committing murder of his wife Chhaya Bai, accused appellant also caused injuries to P.W. 1 Pawan Singh Nishad, P.W. 6 Nogendra Kumar and P.W. 8 Khilendra Kumar. Incident was witnessed by P.W. 1 Pawan Kumar Singh, P.W. 2 Ramadhin Nishad, P.W. 5 Leelaram Nishad, P.W. 6 Nogendra Kumar and P.W. 7 Ramesh Yadav. Immediately after incident, merg intimation Ex. P-1 was recorded at the instance of P.W. 1 Pawan Singh Nishad and thereafter FIR was also registered vide Ex. P-3 against accused appellant under Sections 302, 307, IPC and under Section 25 and 27 of the Arms Act. P.W. 8 Injured Khilendra Kumar (P.W. 9) was medically examined vide Ex. P-20 whereas injured Pawan Singh Nishad (P.W. 1) was examined vide Ex. P-13. Post mortem over the dead body of deceased was conducted vide Ex. P-10 on 9-5-2007

by P.W. 3 Dr. Smt. Abha Hinikar. According to her, cause of death was asphyxia caused by undue pressure over the neck obstructing the air passages, death was homicidal in nature. After committing offence, accused appellant absconded. He was arrested on 20-2-2010. Charges under Sections 302 and 307 (on two counts), IPC, Sections 25 and 27 of the Arms Act were framed against accused appellant.

3. In order to establish guilt of the accused/appellant, prosecution has examined 12 witnesses. Statement of the accused / appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and false implication in the case.
4. After hearing the parties, the trial Court by impugned judgment has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.
5. Contention of learned counsel for the appellant is as under:
 - i) that the accused/appellant has been falsely implicated.
 - ii) that the statement of P.W. 1 Pawan Kumar Singh, P.W. 2 Ramadhin Nishad, P.W. 5 Leelaram Nishad, P.W. 6 Nogendra Kumar and P.W. 7 Ramesh Yadav are not reliable. They have exaggerated their version as they wanted to grab the land of the appellant.
 - iii) that medical report does not support the prosecution case.
 - iv) that there is no evidence against the accused/appellant for committing murder of his wife Chhaya Bai.
6. On the other hand, supporting the impugned judgment, it has been argued by learned State counsel :-
 - i) that P.W. 1 Pawan Kumar Singh, P.W. 2 Ramadhin Nishad, P.W. 5 Leelaram Nishad, P.W. 6 Nogendra Kumar and P.W. 7 Ramesh Yadav have categorically supported the prosecution case and there is no reason to disbelieve their statements.
 - ii) medical reports of injured P.W. 1 Pawan Singh Nishad and P.W. 8 Khilendra Kumar also support prosecution case.
 - iii) that the dead body of the deceased wife of the accused/appellant has been found inside his house for which no explanation has been offered by him in his statement under Section 313 of Cr.P.C.
7. Heard learned counsel for the parties and perused the material available on record.

8. P.W. 1 Pawan Singh Nishad is eye-witness to the incident. While supporting prosecution case, he has stated that the appellant is his cousin and on the date of incident he and his family members were sleeping in the veranda, courtyard and on roof of the house. At about 2.00 – 2.30 in the night after hearing cries of his children when he went to roof of his house, he saw the accused/appellant beating his sons. Thereafter accused/appellant also assaulted him and when he tried to save himself, he sustained injuries on his thumb. He has further stated that the incident was also witnessed by his father, mother and upon hearing the cries, elder brother of accused appellant Leelaram (P.W. 5), neighbour Heeraram and P.W. 7 Ramesh Yadav also reached to the spot. They caught hold of the accused/appellant. He has further stated that when they caught hold of the accused/appellant, he had stated that he had killed his wife and that he would kill all the members of his family. He has further stated that upon coming to know that the accused/appellant had killed his wife, he had gone to see her dead body and in the meanwhile the accused/appellant ran away from the spot. In cross-examination, this witness but for minor contradictions remained very firm as to the manner in which the incident took place.
9. P.W. 2 Ramadhin Nishad is father of P.W. 1 Pawan Singh Nishad. He has also made similar statement as has been made by P.W. 1 Pawan Singh Nishad. He too has categorically stated as to the manner in which P.W. 1 Pawan Singh Nishad, P.W. 6 Nogendra and P.W. 8 Khilendra Kumar were assaulted by accused/ appellant and that the dead body of the deceased was found in his house. He has also stated that before him and other family members accused/appellant had confessed that he had committed murder of the deceased.
10. P.W. 5 Leelaram Nishad, P.W. 6 Nogendra Kumar, P.W. 7 Ramesh Yadav and P.W. 8 Khilendra, injured witness have also supported the prosecution case. These witnesses have also stated that the accused appellant made confessional statement before them to the effect that he had killed his wife.
11. P.W. 3 Dr. Abha Hinikar conducted post mortem on the body of deceased. According to her, cause of death was asphyxia caused by undue pressure over neck, death was homicidal in nature.
12. P.W. 9 Dr. S.K. Chaterjee had medically examined injured P.W. 1 Pawan Singh Nishad vide Ex. P-13 and noticed one simple incised wound size 4 x 1 x 1 cm fresh below thumb and index finger. Daughter of this witness namely Dr. Ku. Namrata Chaterjee had medically examined P.W. 6 Nogendra Kumar. P.W. 10 Peeluram Gangvet had examined Katta and

cartridges and found them to be live.

13. P.W. 11 Anup Nag, the Investigating Officer has duly supported prosecution case. Dr. Mausam Jefrin (PW 12) had examined Khilendra vide Ex. P-20 and found following injuries :-
 - i) incised wound on left forearm dorsal aspect with cut muscle and radius bone also cut and fractured, profusely bleeding.
 - ii) clean cut incised wound on left hand between index and middle finger with profuse bleeding muscle deep.
 - iii) clean cut incised wound on right forearm with bleeding muscle deep
 - iv) incised wound with bleeding over left side forehead.
14. In his statement under Section 313 of the Cr.P.C. accused/appellant has not offered any explanation as to how the dead body of deceased Chhaya Bai has been found in his house.
15. A close scrutiny of evidence makes it clear that on 9-5-2007 after committing murder of his wife, appellant caused injuries to P.W. 1 Pawan Singh Nishad, P.W. 6 Nogendra Kumar and P.W. 8 Khilendra Kumar. Apart from injured eye-witnesses, other independent witnesses have also supported prosecution case and have deposed against the accused appellant. P.W. 1 Pawan Kumar Singh, P.W. 2 Ramadhin Nishad, P.W. 5 Leelaram Nishad, P.W. 6 Nogendra Kumar and P.W. 7 Ramesh Yadav have also stated that the accused made extra judicial confession before them for committing murder of his wife Chhaya Bai. Medical report of injured also supports the prosecution case. In his statement under Section 313 of the Cr.P.C. the accused/appellant has not offered any explanation as to how the dead body of the deceased was found in his house.
16. Considering all aspects of the case, the trial Court has rightly convicted the accused appellant under Sections 302, 324, 326 of IPC and Section 27 of the Arms Act. We find no illegality in the impugned judgment. The appeal has no substance. Same is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge