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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILSPUR (C.G.)

CR.A.NO.....716/2011(D.B.)

APPELLANT

(INJAIL)

P.R. No.....

Presented by Shri

Dated.....

5673/11

V.K. Pandey

14.9.11

Versus

RESPONDENT

Ramhit S/o Kola Majhi, Aged
about 45 year, R/o village-
Narmadapur, P.S.-Kamleshvarpur,
Distt.- Surguja (C.G.)

State of Chhattisgarh

Through:- D.M. Surguja (C.G.)

APPEAL UNDER SECTION 374(2) OF CRIMINAL
PROCEDURE CODE

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.716 of 2011

APPELLANT:
(In Jail)

Ramhit

Versus

RESPONDENT:

State of Chhattisgarh

{Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973}

Present:

Mr. Vineet Kumar Pandey, counsel for the appellant.

Mr. Mahesh Mishra, Panel Lawyer for the State/respondent.

Division Bench: -

Hon'ble Mr. T.P. Sharma and
Hon'ble Mr. C.B. Bapai, JJ

JUDGMENT
(2-2-2015)

T.P. Sharma, J: -

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 28-7-2011 passed by the Sessions Judge, Ambikapur (Surguja), in Sessions Trial No.314/2009, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Mangli Bai, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.2,000/-, in default of payment of fine to further undergo RI for six months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby committed an illegality.
3. As per case of the prosecution, on the fateful night of 4-4-2009 between 8 and 9 p.m., the appellant, who was in drunken state, assaulted his wife Mangli Bai in his house by stick and caused her instantaneous death. Budhan (PW-2), Chhotu (PW-6) & Samal (PW-7) have witnessed the incident. There was no facility of reaching to the police station at night, therefore, on second day i.e. on 5-4-2009 at about 11.45 a.m., Ropan Majhi (PW-1) went to Police Station Kamleshwarpur and lodged FIR vide Ex.P-1. Morgue was recorded vide Ex.P-2.

4. The investigating officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-13, prepared inquest over the dead body of the deceased vide Ex.P-14. Spot map was prepared vide Ex.P-15. Bloodstained and plain soil were recovered from the spot vide Ex.P-9.
5. Dead body of the deceased was sent for autopsy to Community Health Centre, Narbadapur, Mainpat, Distt. Surguja, vide Ex.P-5A. Dr. Rajesh Vastrakar (PW-4) conducted autopsy vide Ex.P-5 and found following injuries: -
 1. Ecchymosis over cheeks and scalp.
 2. Lacerated wound over anterior aspect of right leg L/3 muscle deep 1 c.m. x ½ c.m..
 3. Lacerated wound of ½ c.m. x ½ c.m. muscle deep over anterior aspect of right leg L/3.
 4. Lacerated wound 3 c.m. x ½ c.m. muscle deep over anterior aspect of right leg L/3.
 5. Swelling over upper 1/3 right forearm .
 6. Fracture of radius & ulna M/3 left.
 7. Contusion over left nipple 6 c.m. x 1 c.m.
 8. Contusion of 2 c.m. x 1 c.m. over right shoulder posterior aspect.
 9. Bloodstains over both eyes.
 10. Lacerated wound of 4 c.m. x ½ c.m. over left parietal region skin deep.

Mode of death was shock and death was homicidal in nature.

6. Clothes of the deceased were sealed and seized. Stick was seized from the appellant vide Ex.P-10. Seized articles were sent for chemical examination to the Forensic Science Laboratory vide Ex.P-16 and presence of blood on stick has been affirmed by the FSL vide Ex.P-17. Statements of the witnesses were recorded under Section 161 of the CrPC.
7. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Sitapur, who committed the case to the Court of Sessions, Ambikapur where the trial was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as ten witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing

against him, pleaded innocence and false implication in the crime in question.

9. After providing opportunity of hearing to the parties, learned Sessions Judge convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment impugned and records of the Courts below.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is based on surmises and conjectures. Most of the prosecution witnesses have been declared hostile by the prosecution and they have not supported the case of the prosecution. The trial Court has convicted the appellant on the ground that the deceased died, the appellant was present in his house and has failed to offer explanation that who caused injury to the deceased and who caused death of the deceased, but the offence was not committed in secrecy where only the appellant and the deceased were present. Dead body of the deceased was found out of the house of the appellant. Eyewitnesses have turned hostile. In these circumstances, burden to explain was not upon the appellant and by shifting such burden upon the appellant, the trial Court has committed illegality.
12. On the other hand, learned State counsel opposed the appeal and submitted that heavy burden to explain that who has caused injury to the deceased and how the deceased died was upon the appellant and the appellant has failed to offer explanation. Therefore, the trial Court has rightly convicted and sentenced the appellant in the aforesaid manner.
13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death of deceased Mangli Bai as a result of injuries found over her body has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Ropan Majhi (PW-1), Budhan (PW-2), Vitul Majhi (PW-3), J.S. Maravi (PW-5), Chhotu (PW-6), Samal (PW-7), Chamru (PW-8), FIR Ex.P-1, morgue Ex.P-2, evidence of Dr. Rajesh Vastrakar (PW-4) and autopsy report Ex.P-5 that death of deceased Mangli Bai was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, most of the witnesses have turned hostile and they have not deposed anything against the appellant. The trial Court has considered the fact that at the time of death of the deceased, the appellant was present and heavy burden to



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explain that how the deceased died was upon the appellant, but the appellant has failed to offer any explanation. As per evidence of the witnesses and spot maps Exs.P-12 & P-15, dead body was found near the house of the appellant and the house of Madhav Majhi, it was not inside the house of the appellant, but as per FIR Ex.P-1, the incident took place in the house of the appellant where he assaulted his wife. As per the autopsy report and evidence of Dr. Rajesh Vastrakar (PW-4), doctor has noticed four lacerated wounds of considerable size, but the investigating officer has not noticed or seized bloodstained soil from inside the house of the appellant. This shows that the incident has not taken place inside the house of the appellant.

16. In case of incident committed outside the house where only the appellant and the deceased were not present, burden to offer explanation was not upon the appellant, but by holding that the appellant is under obligation to offer explanation, the trial Court has committed illegality. Virtually, this is a case of no evidence.

17. Consequently, the appeal deserves to be allowed and is hereby allowed. Conviction and sentences imposed upon the appellant under Section 302 of the IPC are hereby set aside and the appellant is acquitted of the said charge. The appellant be set at liberty at once. He is in custody. He be released forthwith, if not required in any other case.

Sd/-
T.P. Sharma
Judge

Sd/-
Chandra Bhushan Bajpai
Judge

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