

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.169 of 2011

Harishchandra Markam, S/o Sundarlal Markam, aged 32 years, R/o Gurawad, Police Station Sihava, Distt. Dhamtari (CG)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Sihava, Distt. Dhamtari (CG)

---- Respondent

For Appellant: Mr. Vivek Shrivastava, Advocate.

For State/Respondent: Mr. Roshan Dubey, Panel Lawyer.

Hon'ble Mr. Justice T. P. Sharma and
Hon'ble Mr. Justice Inder Singh Uboweja

JUDGMENT

17/03/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 28-9-2010 passed by the Additional Sessions Judge (FTC), Dhamtari, in Sessions Trial No.54/2010, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Vimla Bai, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.500/-, in default of payment of fine to further undergo RI for one month.
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 16-1-2010 at about 1 a.m., the appellant and his wife, the unfortunate deceased, were present in the house, the appellant assaulted his wife and caused fatal injuries resulting into her death. Second day morning, the appellant went to the house of Munshiram Mandavi (PW-7) and called him. He noticed injuries on the temporal region of the deceased. On being asked, the appellant made extra judicial confession before him that he has caused injury to his wife. After some time, the appellant has further explained that he has slapped his wife, his wife fell down upon the door and gate and sustained

injuries. After some time, she died. Munshiram Mandavi (PW-7) went to Police Station Sihava and lodged morgue vide Ex.P-4. FIR was registered vide Ex.P-5.

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-6. Bloodstained soil, plain soil and blood found on frame of door and wall have been taken out and seized vide Ex.P-8.
5. Dead body of the deceased was sent for autopsy to Primary Health Centre, Belargaon, vide Ex.P-10A. Dr. Suresh Kumar Nag (PW-13) conducted autopsy vide Ex.P-10 and found following injuries and symptoms: -
 1. Contusion on right side of right temporal region just in front to right ear, 2½" x 2", bleeding and blue colour blood spot seen.
 2. Contusion on left side of left temporal region, 2½" x 3", bleeding and black spot seen.
 3. Both lungs are congested.
 4. Liver congested.
 5. Right side of heart full with dark blood, left empty.
 6. Kidneys congested.
 7. Spleen congested.
 8. Undigested small amount of food and liquid present in stomach.
 9. Small intestine semi digested.
 10. Right side temporal lobe of brain haemorrhage spot present.

Cause of death was brain haemorrhage and death was homicidal in nature.

6. Patwari prepared spot map vide Ex.P-3. During the course of investigation, the appellant was taken into custody. His statement under Section 27 of Indian Evidence Act was recorded vide Ex.P-2. Sealed clothes of the deceased were seized vide Ex.P-16. 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, Nagri, who committed the case to the Court of Sessions, Dhamtari from where the Additional Sessions Judge (FTC), Dhamtari, received the case on transfer for trial.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 15 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 Additional 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. At the outset, learned counsel for the appellant submits that conviction of the appellant is substantially based on the evidence of Munshiram Mandavi (PW-7) before whom the appellant has made extra judicial confession. As per paras 1 and 2 of his evidence, he was called by father of the appellant, he saw the deceased and noticed injuries and blood, on being asked, the appellant made extra judicial confession before him that he has assaulted his wife, and he went to his house back, after some time, the deceased died. Again the appellant was asked by villagers then he explained that he assaulted his wife by hands & fists whereupon she came into contact with frame of door and door, and sustained injuries. They went to the house of the appellant where they noticed broken bangles found near cot and blood found upon wall and frame of door. This shows that the appellant assaulted his wife by slap then she fell down upon frame of door and sustained injuries which reveals that the appellant has not caused homicidal death of the deceased amounting to murder. The act attributed to the appellant may be, at the worst, offence punishable under Section 326 of the IPC in which the appellant is in custody since 18-1-2010.
12. On the other hand, learned State counsel opposes the appeal and submits that evidence of Munshiram Mandavi (PW-7) by itself is sufficient to prove the guilt of the appellant that the appellant has knowingly and intentionally caused injuries resulting into death of the deceased.
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 Vimla 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 Tijau Ram Netam (PW-1), Kamlesh Netam (PW-2), Vishram Mandavi (PW-3), Lohra Ram (PW-4), Rameshwari Netam (PW-5), Raj Kumar Markam (PW-6), Munshiram Mandavi (PW-7), morgue Ex.P-4, FIR Ex.P-5, evidence of Dr. Suresh Kumar Nag (PW-13) and autopsy report Ex.P-10 that death of deceased Vimla Bai was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Munshiram Mandavi (PW-7). As per his evidence, the appellant has made extra judicial confession before him that he has caused injury to his wife. In para 2 of his evidence, he has deposed that the appellant has explained that he slapped his wife then his wife fell down upon frame of

door and sustained injury on which this witness went to the house of the appellant and noticed pieces of broken bangles lying upon cot and blood was found over wall and frame of door. This evidence reveals that the appellant has not used any weapon for causing injury to the deceased (his wife), but he slapped his wife on which his wife fell down upon frame of door and sustained injuries upon his temporal region. This shows that the appellant has not caused homicidal death of the deceased with intent to cause her death, but certainly at the time of causing injury that too in the mid night with full force, the appellant was having knowledge that the deceased may die. The act attributed to the appellant squarely falls within the ambit of Section 304 Part-II of the IPC, not under Section 302 of the IPC. While convicting and sentencing the appellant under Section 302 of the IPC, the trial Court has not considered the aforesaid facts and thereby committed an illegality.

16. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-II of the IPC and the appellant is hereby sentenced to RI for the period already undergone by him and pay fine of Rs.500/-. The appellant is in custody since 18-1-2010. The appellant be set at liberty at once. He be released forthwith, if not required in any other case.

JUDGE

JUDGE