

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 372 of 2011

1. Surendra Basor, S/o Pitambar Basor, aged 23 years, R/o village Ramhepur, Lormi, District Bilaspur (CG)

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh, through District Magistrate, District Bilaspur (CG)

---- Respondent

For Appellant:
For Respondent:

Shri N.K. Chatterjee
Shri Arvind Dubey, Panel Lawyer

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

Judgement on Board by Hon. Shri Justice Pritinker Diwaker

03/02/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 27.4.2011 passed by the Additional Sessions Judge, Mungeli in S.T. No.52/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.2,000/-, plus default stipulation.
2. The prosecution case, in brief, is that on 10.7.2010 the accused committed murder of his wife Sheetal by pressing her neck with the help of a stick. At the instance of Nanakchand (PW-3), father of deceased, merger intimation Ex.P-5 was registered wherein he has stated that two days prior to the incident the accused demanded money from his son Sikander, who could not give the same to him, and all of sudden he came to know about the death of deceased. Inquest was conducted on 11.7.2010 vide Ex.P-4 and

thereafter dead body was sent for post-mortem examination which was conducted by Dr. Ajay Pathak (PW-5) vide Ex.P-9. The doctor conducting post-mortem examination noticed following injuries & symptoms;-

- Contusion mark having 7” length and 1” breadth in front of neck
- Incised wound of 0.5cm size on posterior part of wrist joint (upper part) of right hand.
- Fracture of thyroid cartilage (hyoid bone)

He opined the cause of death as asphyxia and the death was homicidal in nature. After merging inquiry, FIR (Ex.P-12) was registered against the accused/ appellant for the offence under Sections 302 & 201 IPC. After completion of investigation, challan was filed under Sections 302 & 201 IPC followed by framing of charges accordingly.

3. In order to prove the complicity of accused/appellant in the crime in question, the prosecution has examined 08 witnesses. Statement of accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.
4. After hearing the parties, the Court below while acquitting the accused/appellant of the charge under Section 201 IPC, convicted and sentenced him as mentioned above.
5. Counsel for the accused/appellants submits that;
 - conviction of appellant is substantially based on the circumstantial evidence but the quality of evidence is not as such on which basis it can be said that it is the accused/appellant who committed murder of deceased.

- Prosecution has utterly failed to prove the motive behind commission of crime.
- According to medical evidence, injuries sustained by the deceased on her neck could have come as a result of fall on the ground.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the body of deceased was found inside the house where accused/appellant was residing along with deceased, but he failed to offer any acceptable explanation in his statement recorded under Section 313 of Cr.P.C. that as to how she died. He further submits that as per query report (Ex.P-10), death of the deceased could have been caused with the help of the stick seized at the instance of accused/appellant vide Ex.P-8. In these circumstances, conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
7. Heard counsel for the parties and perused the evidence available on record.
8. T. Arif (PW-1) is the Patwari who prepared the spot map (Ex.P-1).
9. Rakesh Kumar Dhruv (PW-2) is the Naib Tahsildar who prepared inquest (Ex.P-4).
10. Nanakchand (PW-3) is the father of deceased. He has stated that after the marriage, his daughter was residing with the accused/appellant and at the time of death also, she was in the house of accused/appellant. However, this witness has been declared hostile by the prosecution.
11. Sikander (PW-4) is the brother of deceased. He has stated that his sister

was residing with the accused/appellant. He is the witness of memorandum statement (Ex.P-7) and seizure memo (Ex.P-8).

12. Dr. Ajay Pathak (PW-5) is the witness who conducted the post-mortem examination on the body of the deceased and gave his report Ex.P-5. According to this witness, he noticed one incised wound and fracture of hyoid bone on the body of deceased and opined the cause of death as asphyxia, and the death was homicidal in nature.
13. D.K. Sahu (PW-6) is the investigating officer who has duly supported the case of the prosecution.
14. Jagmohan Porte (PW-7) & S.S. Dubey (PW-8) are the persons who helped in the investigation.
15. Close scrutiny of evidence makes it clear that the death of the deceased was homicidal in nature and the dead body was recovered from the house of accused/appellant. Undisputedly, the house of accused where body of deceased was found was in the occupation of the two only (deceased and accused), and thus, in view of Section 106 of the Evidence Act, the accused/ appellant being the only surviving inmate of the said house was under an obligation to explain properly and convincingly as to how the death occurred but no reasonably convincing 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. Furthermore, on the disclosure statement of accused/appellant a club was seized from his possession and the query – whether the fracture injury present on the body of deceased could be caused by the club produced before him and whether the death of deceased is possible by strangulating her with the help of said club, was answered by the doctor in affirmative. Though in the statement

recorded under Section 313 Cr.P.C. the accused/appellant has raised the plea of false implication, but the defence has utterly failed to substantiate the same by leading cogent evidence. Thus, this Court is of the considered opinion that the findings recorded by the Court below are based on due appreciation of the evidence available on record. That being so, the judgment impugned does not call for any interference.

16. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-