

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 462 of 2011

1. Kunwar Singh Gond, S/o Sukul Gond, aged about 35 years, old residence of village Lamni, Police Station Gaurela, District Bilaspur (CG)

**---- Appellant
(In jail)**

Versus

1. State Of Chhattisgarh, through Police Station Guarela, District Bilaspur (CG)

---- Respondent

For Appellant:
For Respondent:

Shri Ravi Maheshwari, Advocate.
Shri Arvind Dubey, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

15/03/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 22.2.2010 passed by the Additional Sessions Judge (FTC), Pendra Road, District Bilaspur in S.T. No.60/09 whereby the accused/appellant has been convicted under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for Life and fine of Rs.500/-, in default to undergo additional R.I. for 01 month.
2. Accused/appellant is the husband of deceased Smt. Sonkunwar. As per case of the prosecution, accused/appellant and deceased used to quarrel after consuming liquor and on 6.8.2009 the appellant had severely beaten the deceased by club as a result of which she succumbed to the injuries sustained by her and thereafter accused/appellant had hanged her on the beam of the house. At the instance of Suresh Kumar (PW-3), merger intimation (Ex.P-3) was recorded on 7.8.2009 at 8.30 a.m. mentioning

therein that on being informed by Radhe (PW-6) that the deceased had committed suicide, he reached the house of deceased and found her hanging from the beam of the house. After breaking open the door, the inquest (Ex.P-1) was prepared on 7.8.2009 mentioning therein that though the body was hanging from the beam but it was on the cot in sitting posture. Dead body was sent for post-mortem which was conducted by Dr. Kamal Kumar Soni (PW-4) & Dr. Amar Singh Sendram (PW-10) vide Ex.P-5 on 7.8.2009 and they noticed following injuries;

- Ligature mark present in the front of neck in circle and knot present in the left side of ear side just below the left ear pinna.
- Subcutaneous tissue under the ligature mark is not white and glistening.
- Contusion over left side of chest below the left breast of 2cm x 1cm.
- Contusion on the right side of abdomen in right hypochondriac region of 2x2cm size.
- Lacerated wound in the right adjacent of index & middle finger of 3x1x1cm.
- 5th rib of left side was fractured.
- Right & left lungs were congested.

As per their opinion, the cause of death was syncope due to injury No.3 causing rupture of liver leading to excessive bleeding (haemorrhagic shock) and the death was homicidal in nature. After receipt of post-mortem report & completion of merged inquiry, FIR (Ex.P-10) under Sections 302 & 201 of IPC was registered against the accused/appellant on 10.8.2009. On completion of investigation, charge sheet for the offence punishable under Sections 302 & 201 of the IPC was filed against the accused/appellant, however, the trial Court has framed the charge under Section 302 of IPC against the accused/appellant.

3. The prosecution in order to bring home the charge levelled against the appellant had examined 10 witnesses in all. Statement of appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for accused/appellant submits that;
 - there is absolutely no material to connect the appellant in any manner with the murder of the deceased.
 - the deceased had committed suicide by hanging herself which is evident from the fact that room from where the body was recovered was bolted from inside and there was no other way for entry.
 - though internal injuries were noticed in the post-mortem examination but the same could be caused on account of fall etc.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that 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. He further submits that according to medical evidence, cause of death was syncope due to injury No.3 causing rupture of liver leading to excessive bleeding (haemorrhagic shock) and the death was homicidal in nature, but no reasonable explanation has been offered by accused/appellant as to how the deceased received injuries which has resulted into her death and therefore, his conviction under Section 302 of IPC is fully justified. He further submits that it appears that after committing murder of the deceased, the accused/appellant made an attempt to hang her body but when he failed to do so, he fled away from the spot either from the other door or window of the house.

7. We have heard counsel for the parties and perused the evidence available on record.
8. Milan (PW-1) is the witness of inquest (Ex.P-1).
9. Horilal Dhurve (PW-2) is the person who had prepared the spot map of Ex.P-2.
10. Suresh Kumar (PW-3) is the village Kotwar at whose instance merger intimation (Ex.P-3) was recorded. This witness has stated that having been informed by Radhe (PW-6) that the deceased had committed suicide in her house, he reached the house of the deceased and saw her body hanging from the beam. Thereafter he gave intimation to the police. In the cross-examination this witness has stated that the deceased often consumes liquor and she also complains pain in her stomach. He has further stated that Radhe & others were saying that the room where the deceased hanged herself was bolted from inside.
11. Dr. K.K. Soni (PW-4) is the person who conducted post-mortem on the body of deceased along with Dr. Amar Singh (PW-10) and noticed injuries as described above. The doctors have opined that cause of death was syncope due to injury No.3 causing rupture of liver leading to excessive bleeding (haemorrhagic shock) and the death was homicidal in nature. The query whether the injuries present on the body of deceased could be caused by the club produced before them has been answered by doctors in affirmative. Dr. K.K. Soni (PW-4) has denied that liver could be ruptured on account of stomach pain. He has further denied that injuries found on the body of deceased may come due to fall while taking down the body hanging. He has further stated that injuries noticed on the body of deceased could not have been self-inflicted.
12. Awtaar Singh (PW-5) is the nephew of the appellant. He has not supported the prosecution case and turned hostile. However, he has

stated that the room where the deceased was found hanging was bolted from the inside and there was no other door to gain entry inside the room. He has further stated that accused/appellant and deceased used to quarrel after consuming liquor.

13. Radheshyam (PW-6) is the witness of seizure memo (Ex.P-9) by which club was seized. However, he has not supported the prosecution case and turned hostile.
14. Hori Singh Marawi (PW-7) has also not supported the prosecution story and turned hostile. However he has stated that when the door of the room was opened, they saw the deceased hanging. He has further stated that the deceased and accused/appellant used to quarrel after consuming liquor and a day prior to the incident also they have quarrelled.
15. Chandrakant Tiwari (PW-8) is the Head Constable who did initial part of the investigation. He has stated that after receiving information, he reached the place of occurrence. The door of the room was bolted from inside. After breaking open the door, they went inside and saw the body of deceased. He has noticed blood in the left leg of deceased. According to this witness when he reached the spot, he saw the body hanging from the beam. At the same time he has further stated that the dead body was on the cot in sitting posture, both her legs were touching the ground and one leg was folded. He has denied the fact that there was only one door on the spot. He has further stated that there was a big window also in the room.
16. Kabir Sai (PW-9) is the Investigating Officer and he has duly supported the prosecution case.
17. Dr. Amar Singh Sendram (PW-10) has stated that in the case of hanging eyes remain opened and tongue gets protruded. He has further stated that mark on the neck could be ante-mortem or post mortem but on

examination they bear different characteristics. If it is ante-mortem then the ligature mark would be white & glistening and as the aforesaid symptoms are not found in the present case, therefore he is saying that it is not the case of hanging.

18. Close scrutiny of the evidence available on record, makes it clear that the accused/appellant and the deceased were residing under the same roof and they used to quarrel with each other after consuming liquor and on the fateful day i.e. on 6.8.2009 when the body of the deceased was found hanging from the beam of the house, it is the accused/appellant who alone was present with her. According to post-mortem report (Ex.P-5), injuries present on the body of the deceased were ante mortem in nature, caused by hard & blunt object and mode of death was syncope due to injury causing rupture of liver leading to excessive bleeding. According to autopsy surgeon, the ligature mark present on the neck of the deceased could be ante-mortem and post-mortem as well, but on examination the distinct nature of the same could be noticed and in case of death being ante-mortem, the layer under the skin looks white and shiny which however was not found in the case in hand. Thus, from the material available of record it is not in dispute that the death was homicidal in nature.

Now let us come to the argument of the counsel for the appellant that at the relevant time the accused/appellant was outside and the door was bolted from inside. None of the witnesses has stated in his evidence that the house in question where the incident is said to have been taken place had only one exist point, rather from the evidence of Chandrakant Tiwari (PW-8) it appears that the said house had the other exist point also. Thus the submission as to the accused/appellant being outside the house at the relevant time has no substance and it is hereby turned down. This apart, a bloodstained club has also been seized by the prosecution at the instance of accused/appellant and as per the opinion given by the doctors, the injuries present on the body of the deceased could have been inflicted by the said club. Moreover there is no explanation on the part of accused/appellant as to how the said club contained

blood. True it is that in the statement under Section 313 of Cr.P.C. the accused/appellant has taken the plea of false implication, but the defence has not been able to substantiate the said allegation by explaining as to why he would be falsely implicated in this case.

19. Thus, having taken into consideration the cumulative effect of the evidence adduced by the prosecution including the medical one, this Court has no doubt that it is the accused/appellant who is the author of crime in question. The prosecution has collected sufficient material to establish the complicity of the accused/appellant and so also the Court below has also appreciated the evidence of the witnesses in its proper perspective.

20. In the light of the factual discussion as above, this Court does not see any reason to arrive at a conclusion contrary to the one which has been taken by the Court below and being so, the judgment impugned is hereby maintained.

21. Appeal is thus dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-