

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 523 of 2007**

- Kamla Bai W/o Parmanand Nishad, aged about 50 years, R/o Village – Matiya, P.S. Dongergaon, Distt. Rajnandgaon (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through : P.S. Dongergaon, District Rajnandgaon (C.G.)

---- Respondent

For Appellant.	:	Shri V.K. Sharma, Advocate.
For Respondent.	:	Shri Arvind Dubey, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board**By Pritinker Diwaker, J****15/12/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 30.04.2007 passed by the Sessions Judge, Rajnandgaon in S.T. No.91/2006 convicting the accused/appellant under Section 302 IPC & and sentencing her to undergo imprisonment for life with fine of Rs.500/- plus default stipulations.

02. In the present case, name of the deceased is Nitu Nishad – daughter-in-law of the accused/appellant. It is alleged that a day prior to the incident i.e. on 15.07.2006, there was quarrel between the accused/appellant and deceased, and on the next day i.e. night intervening 16-17/07/2016 deceased was found lying dead in her

house where she was residing along with the accused/appellant. Information about the death of deceased was passed on by the accused/appellant to the villagers, in turn merged intimation (Ex.P/3) was recorded on 17.07.2016 at the instance of Purnanand (PW/3)-village Sarpanch. Inquest on the body of deceased was conducted on 17.07.2006 vide Ex.P/2 and thereafter dead body was sent for postmortem to Primary Health Center, Dongergaon. On the same day postmortem examination on the body of deceased was conducted by Dr. Praveen Goswami (PW/12) who gave his report Ex.P/13 and found following injuries/symptoms:-

- (i) Both eyes were semi opened, tongue protruded through mouth.
- (ii) Contused abrasion of 3 x 2 cm on both side of forehead which was purple black in colour.
- (iii) Contused abrasion of 6 x 4 cm on back of right shoulder, which was purple black in colour.
- (iv) Contused abrasion of 5 x 3 cm on back side of shoulder which was purple black in colour.
- (v) A yellowish green colour nylon rope encircling neck of deceased and both the ends of rope were grasped in palm of both hands, elbow flexed. Finger firmly grasped the end of rope. Nail blueish in colour.
- (vi) A compressions mark resembling of rope in 3 x 2 cm on the left palm ulnar side below the base of little finger.
- (vii) Abrasion of 6 x 4 cm on the left palm ulnar aspect.
- (viii) Ligature mark superficial in nature light gray in colour and compound with rope.
- (ix) Multiple small abrasions of 1 x 0.5 cm on both side & central of neck purple black in colour.
- (x) Abrasion of 3 x 1 cm on left side of neck.
- (xi) Two abrasions of 2 x 0.5 cm on the central of neck.
- (xii) Abrasion of 3 x 1 cm on the left side of neck.
- (xiii) Abrasion of 1 x 1 cm on the left side of eyebrow.
- (xiv) Abrasion of 2 x 1 cm on left side of cheek.
- (xv) Abrasion of 1 x 1 cm on right side of eyebrow.
- (xvi) Abrasion of 2 x 1 cm on left side of forehead.
- (xvii) Two abrasions of 2 x .5 cm on middle finger of right hand.
- (xviii) Ligature mark of 3.5 cm present below the hyoid cartilage.

The autopsy surgeon opined the cause of death to be asphyxia due to throttling.

03. Based on merg inquiry, FIR (Ex.P/16) was registered against the accused/appellant under Sections 302 and 498-A IPC. After investigation, charge sheet was filed against the accused/appellant under Sections 302 and 498-A IPC, however, while framing the charge the trial Court has framed charge against the accused/appellant under Section 302 IPC alternatively Section 304-B IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under:

- that the accused/appellant has been falsely implicated in the crime in question;
- that even on the date of incident there was quarrel between the accused/appellant and deceased, and it is the deceased who was aggressor; caused number of injuries to the accused/appellant and when accused/appellant was trying to protest and save herself, it appears that during scuffle her neck was pressed and unfortunately she died. He has

referred the medical report (Ex.P/14) of the appellant;

- that even if the entire prosecution case is taken as it is, the appellant cannot be convicted under Section 302 IPC and she is liable to be convicted for culpable homicide not amounting to murder and her case squarely covered by Exception 2 to Section 300 IPC;
- that the accused/appellant has already remained in jail for about four years and two months and, therefore, after converting her conviction into Section 304 Part-I or Part-II IPC, her sentence may be reduced to the period already undergone by her.

07. On the other hand, opposing the submission of accused/appellant it has been argued by learned counsel for the State as under:-

- that the defence taken by the accused/appellant is very improbable. After causing injuries to the deceased, the accused/appellant pressed her neck till she dies and to give a different picture to the incident, a nylon rope was tied by the accused/appellant around her neck and accused/appellant made an attempt to prove that the deceased has committed suicide;
- that had it been the case of self defence or exceeding the right of self defence, the appellant would not have made any attempt to give different picture to the incident and it appears that after causing injuries to deceased, accused/appellant pressed her neck till she dies. According to State counsel, accused/appellant is not entitled to have advantage of Exception 2 to Section 300 IPC.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Ramesh (PW/1) is a witness to inquest (Ex.P/2). He has stated that there used to be quarrel between the accused/appellant and deceased.

10. Sukhdev (PW/2) – father of deceased has stated that when deceased came to his house after six months of marriage, she informed of her being subjected to cruelty by her mother-in-law. There used to be quarrel between the accused/appellant and deceased. He is also a witness to inquest (Ex.P/2).

11. Purnanand (PW/3) has stated that a day prior to the incident Parmanand, father-in-law of deceased, called him and informed that his daughter-in-law (deceased) has locked herself inside the room and poured kerosene oil on her. He has further stated that deceased had also made an attempt to commit suicide but he made her to understand. Deceased had asked him that her mother-in-law used to quarrel with her on very trivial issues. This witness went on to state that he advised father-in-law of deceased to call his son and take her with him. This witness also went on to state that next day he was informed by the accused/appellant that deceased has committed suicide by hanging herself. Thereafter, he immediately went to the spot and saw the body of deceased. He has also stated that neck of the deceased was tied by a nylon rope and both ends of rope were in her hands. He has also stated that during investigation appellant informed the police that it was the deceased who tried to press her neck and in self defence she pushed deceased and that memorandum (Ex.P/5) of the accused/appellant was also recorded by the police.

12. Prabhulal Nishad (PW/6) is a witness to seizure made under

Ex.P/10 by which certain articles were seized from the spot.

13. Manbodhi Patel (PW/7) is a witness to memorandum (Ex.P/5) of the appellant and seizure made under Ex.P/6.

14. Kundanlal Sharma (PW/8) is Patwari who prepared spot map vide Ex.P/8.

15. Rewti Bai (PW/9) – Mother of deceased has stated that accused/appellant used to quarrel with deceased.

16. Bihari Lal Nishad (PW/10) is a witness to village meeting which had taken place prior to the date of incident.

17. Dr. Praveen Goswami (PW/12) who conducted postmortem on the body of deceased vide Ex./13, has opined that the cause of death of deceased was asphyxia due to throttling. According to autopsy surgeon, ligature mark caused by rope was postmortem in nature and other injuries like abrasions and contusions over neck and head were antemortem in nature. This witness has also examined the accused/appellant vide Ex.P/14 and found following injuries:-

- (i) Contusion of 6 x 4 cm below right eye region reddish black in colour.
- (ii) Abrasion of 1 x .5 cm on the right side of neck.
- (iii) Three abrasions of 1 x .5 cm on the central of neck.
- (iv) Two abrasion of 1 x .5 cm on the left side of neck.
- (v) Lacerated wound of 1 x .5 cm on the left index finger of both palm.
- (vi) Abrasion of 2 x .5 cm on the left side of cheek.

18. A.R. Bairagi (PW/13) is Sub Divisional Officer who prepared inquest vide Ex.P/2 and recorded preliminary statements.

19. Smt. S. Taram (PW/14) is Investigating Officer who has duly supported the prosecution case.

20. Imil Lakra (PW/15) is S.D.O.P. who after investigation filed challan

before the Court.

21. Parmanand (DW/1) - husband of deceased has stated that day prior to the incident deceased had made an attempt to commit suicide by pouring kerosene oil on her, he intervened in the matter and had called the village meeting. He has further stated that on the second day he had gone to call his son and when he came back to his house, he came to know about the death of deceased.

22. In the statement recorded under Section 313 of Cr.P.C, specific defence has been taken by the accused/appellant that on the date of incident deceased was trying to press her neck, she was dragged by deceased holding her hairs, in defence she pushed her (deceased) as a result of which she sustained injuries and then leaving the deceased as it was, she had gone to her room and slept. Thereafter, on the next morning she found the dead body of deceased.

23. Close scrutiny of the evidence makes it clear that on the date of incident it is the accused/appellant and deceased who were together in the house and no one else was there. As per accused/appellant own saying, she had quarreled with deceased in which she pushed her as a result of which deceased sustained injuries and thereafter, the accused/appellant went to her room for sleep. According to postmortem report (Ex.P/13), cause of death was asphyxia due to throttling. To give different picture to the story, the accused/appellant put a nylon rope around the neck of deceased and informed villagers that deceased has committed suicide. This conduct of the accused/appellant also goes against her and contradict her version that when she was trying to defend herself, deceased suffered injuries. Furthermore, according to

the accused/appellant, she simply pushed the deceased resulting some injuries to her, whereas as per the postmortem report, deceased died due to throttling. Thus, it is duly established by the prosecution that it is the accused/appellant who committed murder of the deceased.

24. We find no substance in the argument of counsel for the appellant that case of the appellant would cover by Exception 2 to Section 300 IPC, and thus her act would come within the definition of culpable homicide not amounting to murder. It is not the defence of the accused/appellant that during scuffle, by mistake or to save herself, she pressed the neck of deceased which may have resulted in her death, but the defence of the accused/appellant is that she pushed the deceased as a result of which her head struck against the door frame resulting her death, whereas the postmortem report (Ex.P/13) speaks otherwise. In the cases involving house murder, it has time and again been held by the Apex Court that it is the inmate(s) of the house who has to offer satisfactory explanation as to how the death occurred but in this case the accused/appellant has not offered plausible explanation and attempt was made to put a different picture.

25. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned. The appeal

thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be on bail, she be arrested and sent back to jail for serving remaining sentence imposed upon her by the trial Court.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(R.C.S. Samant)
JUDGE