

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 844 of 2011

- Shubhchand Rathore S/o Shatrughan Rathore, R/o Raliya, Chowki Hardibazar, Kusmunda, Distt.-Korba, C.G.

---- Petitioner

Versus

- State Of Chhattisgarh Through: P.S. Kusmunda, Distt.-Korba, C.G.

---- Respondent

For Appellant:
For Respondent:

Shri Rajneesh Shrivastava, Advocate.
Shri Ravindra Agrawal, Panel Lawyer.

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

Judgement

Pritinker Diwaker, J

01/04/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 24.9.2011 passed by the Additional Sessions Judge, Katghora, District Korba in S.T. No.98/10 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life & fine of Rs.500/-, in default to undergo additional SI for 6 months.
2. The prosecution story, in brief, is that marriage of accused/appellant & deceased was solemnized about 8-9 years prior to the date of incident. Accused & deceased used to quarrel with each other and even on one occasion deceased had lodged report against appellant under Section 498A & 323 IPC. On 21.5.2010 there was a marriage in the family of

sister of the deceased which she wanted to attend but accused/appellant did not permit her to go there and on this, they had a quarrel and in that process he dashed the head of deceased against the wall as a result of which she died instantaneously. Thereafter, accused/appellant took the body of deceased in the auto rickshaw to his father's house and disclosed that the deceased had consumed some poisonous substance. At the instance of Shatrughan (PW-4) un-numbered merg (Ex.P-2) was recorded on 22.5.2010 and thereafter numbered merg (Ex.P-6) was recorded on 23.5.2010 vide Ex.P-16. Based on merg enquiry, un-numbered FIR (Ex.P-25) was recorded on 1.6.2010 and thereafter numbered FIR (Ex.P-22) was recorded on 2.6.2010 against the appellant under Sections 302 & 201 of IPC. Inquest on the body of deceased was prepared vide Ex.P-10. Dead body was sent for post-mortem examination which was conducted by Dr. P.S. Kanwar (PW-6) & Dr. Dinesh Kumar Chauhan on 22.3.2010 vide Ex.P-3 and they noticed following injuries;-

- Swelling (contusion) present over occipital region of the scalp of 5x4 cm of size.
- Depressed wound (contusion) of 1 ½ x 1 ½ size over left temporal region.
- Contusion of 1 ½ x 1 ½ size over frontal bone above right eyebrow.

They opined the cause of death to be coma due to head injury and homicidal in nature. On completion of investigation, charge sheet for the offence punishable under Sections 302 & 201 IPC was filed against the accused/appellant, however, the trial Court has framed charge under Section 302 IPC against him.

3. In order to hold the accused/appellant guilty, the prosecution had examined as many as 14 witnesses. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the

circumstances appearing against him in the prosecution case 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. Learned counsel for the accused/appellant submits that;
 - there is no direct evidence against the appellant and conviction is based on the circumstantial evidence which are not of such nature as to lead to an irresistible inference that it is the accuse/appellant who committed murder of the deceased.
 - Durgesh Rathore (PW-8), son of accused & deceased, has categorically stated that at the time of incident the appellant was not present in the house.
 - Even if the entire case of the prosecution is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-I of the IPC and not under Section 302 of the IPC, as has been done by the Court below.
 - Lastly he submits that accused/appellant is in jail since 21.5.2010 and therefore after converting his conviction into Section 304 Part-I or II IPC, he may be sentenced to the period already undergone by him.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the 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 death of deceased has taken place inside the house but the appellant did not give any explanation as to how the deceased died homicidal death in his house. He further submits that though eyewitness of witness i.e.

Durgesh Rathore (PW-8) did not support the prosecution case but he has admitted in the cross-examination by the prosecution that after seeing the accused beating deceased, he and his sister started crying and asked him not to beat her. He further submits that accused/appellant has taken support of equivocation saying that death was the result of poisonous substance consumed by deceased, whereas according to medical evidence, the deceased died homicidal death.

7. We have heard learned counsel for the parties and perused the material available on record.
8. Harish Chandra Miri (PW-1) & Firatram (PW-2) are the witnesses of seizure memo (E.xP-1) by which broken pieces of bangles were seized.
9. Shatrughan (PW-3) is the father of accused/appellant. He has not supported the prosecution case and turned hostile. However, he has stated that when the deceased was brought to him in auto rickshaw by accused/appellant at that time he did not notice any injury on her person. He has admitted that at his instance, merg intimation was recorded. He has also stated that the appellant informed him that deceased had consumed some poisonous substance.
10. Rajkumar Rathore (PW-4) is the brother of deceased. He has also not supported the prosecution case and turned hostile. In the cross-examination by the prosecution, he has admitted that accused & deceased used to quarrel and the deceased got registered offence under Sections 498A & 323 IPC against the appellant.
11. Smt. Shivratri (PW-5) is the mother of deceased and she has also been declared hostile. However, she too has stated that accused used to quarrel with the deceased and beat her.
12. Nageshwar (PW-7) is the person who prepared the spot map Ex.P-5.
13. Durgesh Rathore (PW-8) is a child witness and son of accused and

deceased. This witness has been cited as an eye-witness of the incident but he has not supported the prosecution story and turned hostile. However, in the cross-examination by the prosecution he has stated that while the deceased was being assaulted by accused/appellant, he and his sister were crying and requesting him not to beat her. He has further stated that when they came back after taking juice, they saw that his mother was making twisting movements.

14. D.K. Wahane (PW-9) is the Naib Tahsildar who recorded merged statement and prepared inquest. He also helped in the investigation.
15. Bhagwan Singh (PW-10) is the person who recorded un-numbered merged.
16. Prashant Kumar Bhatti (PW-12) is the doctor ...
17. Smt. Kunti Rathore (PW-14) is the sister of deceased and though she turned hostile but stated that accused and deceased used to quarrel with each other.
18. Ramesh Pandey (PW-15) is the investigating officer who has duly proved the prosecution case.
19. Close scrutiny of the evidence available on record, makes it clear that the accused/appellant and the deceased were residing under the same roof, they used to quarrel with each other and on the fateful day i.e. on 21.5.2010 at about 5-6.00 p.m. when the deceased received injuries on her body, it is the accused/appellant who alone was present with her. According to post-mortem report (Ex.P-13), injuries present on the body of the deceased were ante mortem in nature, cause of death was coma due to head injury and death was homicidal in nature. Thus, once the death is proved to be homicidal, the accused/appellant must have come forward with a plausible explanation in his statement under Section 313 Cr.P.C. as to how it occurred because apart from him there was no third person in the house at the relevant time, but he failed to do so. True it is

that accused/appellant has stated that death was the result of consumption of some poisonous substance by deceased, but this does not fit to the factual firmament of the case because the doctor conducting post-mortem examination has opined the cause of death as shock due to head injury and not due to consumption of any poisonous substance.

That apart, the incident was witnessed by Durgesh Rathore (PW-8), son of accused/appellant & deceased, who has categorically stated that seeing the accused/appellant assaulting the deceased, he & his sister started crying and requested the accused/appellant not to beat the deceased. Though this witness turned hostile and not supported the prosecution but it is settled position that evidence of hostile witness is not required to be rejected in toto on account of few infirmities or contradictions in his evidence and if any part of his evidence is otherwise found useful, the same can be read in evidence. Thus, keeping in mind portion of the evidence of aforesaid eye-witness which finds due corroboration from the medical evidence as well, the complicity of accused/appellant stands proved beyond reasonable doubt.

20. We shall now venture to apply the parameters laid down by the Supreme Court to determine whether the appellant can be stated to have intentionally caused such bodily injury to the deceased, as he knew was so imminently dangerous, that it would in all probability cause her death.

21. Evidence available on record reflects that accused/appellant and deceased used to quarrel often and on the day of occurrence also, a scuffle ensued between appellant and deceased upon appellant's refusal to visit house of the deceased's sister house to attend marriage and during the course of said scuffle, accused/appellant firstly assaulted deceased by hands & fists and thereafter dashed her head against the wall resulting into her death. It is thus apparent that the act was

committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and the accused has not taken undue advantage or acted in a cruel and unusual manner, but looking to the manner in which accused/appellant had assaulted the deceased and nature of injuries caused to her, it is also apparent that he had the intention to cause such bodily injuries to the deceased as was likely to cause her death and therefore act of accused/appellant would fall under Exception-4 of Section 300 of IPC i.e. culpable homicide not amounting to murder.

22. Considering the background facts it is clear that there is substance in the plea that the occurrence took place in the course of a sudden quarrel. That being so, the conviction is altered from Section 302 IPC to Section 304 Part-I; custodial sentence of ten years would meet the ends of justice. The appeal is allowed to the aforesaid extent.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-