

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 473 of 2011**

1. Shankar Lal Dewangan, S/o Chaituram Dewangan, aged about 47 years, R/o Village Tilai, P.S. Berla, Distt.-Durg (C.G.)

---- Appellant
(In Jail)

Versus

1. State Of Chhattisgarh, through Police Station Berla, District Durg (CG)

---- Respondent

For appellant:

Shri Ashok Swarnkar, Advocate

For Respondent:

Shri Ashsih Surana, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement**Per P. Diwaker, J****15/01/2016**

1. This appeal has been filed against the judgment of conviction and order of sentence dated 31.3.2011 passed by the Additional Sessions Judge (FTC), Bemetara in S.T. No.9/10 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.2,000/-, in default to undergo additional R.I. for 06 months.
2. Accused/appellant is the husband of deceased Rambai. As per case of the prosecution, on 13.6.2009 at about 6.00 a.m. in the morning the accused/appellant had left his house for the agricultural field. On the same day at about 9.00 a.m., wife of accused/appellant namely Rambai (since deceased), along with other family members had also reached the agricultural field. At about 2.00 p.m. in the afternoon, except the appellant

and his wife Rambai, all the members returned home for taking lunch. However, when the accused/appellant and his wife did not return till evening then they were searched and during the course of search, the body of the deceased with injuries was found lying in the field. Merg Intimation No.37/09 was recorded. During investigation, it revealed that the accused/appellant caused death of the deceased by assaulting her with stone. Thereafter at the instance of Mahendra Dewangan, son of the accused/appellant & the deceased, FIR (Ex.P-15) was recorded against the accused/appellant under Section 302 of IPC. Inquest on the body was performed vide Ex.P-2. Dead body was sent for post-mortem examination which was conducted by Dr. Jitendra Kunjaam (PW-10) vide Ex.P-14 on 14.6.2009. The autopsy surgeon has noticed following injuries:-

- Lacerated wound with clotted blood of 3 x 2 x ½ cm in size over left zygomatic area.
- Lacerated wound on the left eye of 3x2x1/2 cm. Clotted blood was present.
- Lacerated wound of 3x2x ½ cm size below the left eye.
- Contusions, three in numbers, on the lower jaw of 2x2cm size. Rounded in shape.
- Contusion on the upper side of the chest, reddish in colour.
- Clotted blood was present in the nose and left ear.
- Lacerated wound of 3x ¼ x ½ cm size at the left side of lower jaw.
- Star shape lacerated wound of 3 x 2 x ½ cm of size on the upper part of the skull.
- Lacerated wound of 5 x 1 x ¼ cm size on the front side of right leg. Clotted blood was present.

The doctor has opined the cause of death as haemorrhage and shock as a

result of multiple injuries to the body. On completion of investigation, charge sheet for the offence punishable under Section 302 of the IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

3. The prosecution in order to bring home the charge levelled against the accused/appellant had examined 17 witnesses in all. Statement of accused/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;
 - it is a case of circumstantial evidence and no one has seen the appellant committing the crime and the circumstances shown by the prosecution in the present case do not complete the chain and therefore the court below has erred in holding the appellant guilty of the charge of murder.
 - that relations between the appellant and the deceased were cordial and thus there was no motive with the appellant to commit his murder.
 - Witnesses of alleged extra-judicial confession are residents of other village and therefore the question of appellant going to them and making any confession does not arise.
 - At the time of commission of offence, the appellant was of unsound mind and therefore, he is entitled for protection under Section 84 of IPC.
 - On the date of incident there was storm in the village and therefore the possibility that the stone kept on the roof of said hut could have fallen on the head of deceased causing injuries to her cannot be ruled

out.

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 on the date of incident, the accused/appellant and the deceased were working together in the field and thereafter in the evening the deceased was found lying dead in the field and the accused/appellant was absconding. The accused/appellant also failed to give cogent explanation for the death of his wife and therefore, his conviction under Section 302 of IPC is fully justified. He further submits that there is no reason to disbelieve the testimonies of Smt. Ranjeeta Dewangan (PW-14) & Sukhdev Dewangan (PW-15) before whom the accused/appellant has made extra-judicial confession that he has killed his wife. He further submits that on the basis of disclosure statement (Ex.P-7) of the accused/appellant, the bloodstained stone used in commission of offence was seized vide Ex.P-8 and as per FSL report, the blood was found on the said stone. The witnesses of memorandum statement and seizure memos have fully supported the prosecution case. He further submits that considering the number of injuries sustained by the deceased, it is apparent that she had not received injuries in any accident rather she was brutally murdered by the appellant.
7. We have heard counsel for the parties and perused the evidence available on record.
8. Mahendra Kumar Dewangan (PW-1) is the son of accused/appellant and the deceased. He has deposed that on the date of incident he had gone to Bhilai and returned in the evening. On being informed by his wife that the accused/appellant and the deceased are in the agricultural field, he went there but did not find them in the field. While he was returning home, on the

way he saw the deceased lying near the field in dead condition. He immediately came back home and informed the village Kotwar etc. that his mother has expired. Thereafter, on the advice of the Sarpanch etc., the matter was reported to the police. He has further stated that at that time his father was not in the village and had escaped from the village. He has further stated that on the same day in the night Sriram (PW-12) came to him and informed that Sukhdev (PW-15) informed him over telephone that the accused/appellant came to Dhamdha and admitted that he has killed his wife. He has further stated that the accused/appellant has also admitted his guilt before his cousin sister Rani, who is residing in Bhilai. He has further stated that on the second day of incident, his father was arrested from Road No.18th. This witness has further stated that the deceased informed him that earlier also the accused/appellant made an attempt to kill her.

9. Manoj Kumar Dewangan (PW-2) is the another son of accused/appellant and the deceased. He has stated that on the date of incident, he along with his younger brother, sister-in-law, mother and father had gone to the field to work. In the afternoon, he along with his sister-in-law and younger brother Ravi came back home for lunch. When he asked her mother to accompany them, the accused/appellant stopped her. In the evening his elder brother Mahendra Dewangan came from outside and asked about the deceased and on being informed that she is in the agricultural field, he left the house for the field to see the deceased. After some time, his elder brother came back and informed that after committing murder of the deceased, the accused/appellant had ran away. He has further stated that relation between his mother and the accused/appellant were not cordial. This witness remained firm in the cross-examination and nothing could be elicited by the defence to discredit his testimony.

10. Ravi Dewangan (PW-4) is the another son of the accused/appellant and the

deceased. He has also supported the prosecution case and stated that he too had gone to the field along with other family members and except the accused/appellant & the deceased, all of them returned in the afternoon and that in the evening the deceased was found dead.

11. Chaituram Dewangan (PW-4) is the father of accused/appellant. He has stated that Sukhdev (PW-15) informed him over telephone that the accused/appellant came to his house and informed him that he has killed his wife. In Para-7 of the cross-examination this witness has admitted that the accused/appellant is not the man of unsound mind.
12. Indra Prasad Banjare (PW-5) is the Patwari who prepared the spot map (Ex.P-3).
13. Manju Dewangan (PW-6) is the daughter-in-law of the accused/appellant and wife of Mahendra Dewangan (PW-1). She had also gone to the field along with the appellant and the deceased. She has also supported the prosecution case.
14. Gajadhar Dewangan (PW-7) is the witness of seizure memos of Ex.P-8 to P-10, memorandum statement (Ex.P-7) and arrest memo of Ex.P-12 of the accused/appellant.
15. Shyamlal Dewangan (PW-8) is the witness of inquest (Ex.P-2) and took the dead body on suprudnama.
16. Chitrarekha (PW-9) is the sister-in-law (bhabhi) of the deceased. However, this witness has not supported the prosecution case and turned hostile.
17. Dr. Jitendra Kunjaam (PW-10) is the person who conducted post-mortem on the body of the deceased and noticed the injuries as stated above. He has opined that nature of death was haemorrhagic shock as a result of multiple injuries on the body.
18. Rajesh Chouhan (PW-11) is the witness of memorandum statement (Ex.P-7) and seizure memos of Ex.P-8, P-9 & P-10. He is also witness to the arrest

memo (Ex.P-12).

19. Bharat Yadav (PW-13) is the witness of inquest (Ex.P-2).

20. Smt. Ranjeeta Dewangan (PW-14) is the relative of the accused/ appellant.

This witness has stated that she was informed by Sukhdev (PW-15) that the accused/appellant had come to Dhamdha and informed that he has killed the deceased. She has further stated on the second day at about 8.00 a.m. in the morning the accused/appellant came to her and told that he has killed her aunt i.e. the deceased.

21. Sukhdev Dewangan (PW-15) is the person before whom the accused/appellant has made extra-judicial confession. This witness has stated that on the relevant day the accused/appellant had come to his house in the evening and asked him about the telephone number of village Tilai. On being asked, the accused/appellant told him that he has killed his wife.

22. L.D. Diwan (PW-17) is the Investigating Officer and he has duly supported the prosecution case.

23. As noticed above, the prosecution case was not based on direct evidence of eye-witnesses but purely on circumstantial evidence i.e. last seen. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of accused and totally inconsistent with his innocence.

24. Close scrutiny of evidence makes it clear that on the fateful day the accused/ appellant and his wife i.e. the deceased, were working in the field. When they did not return till evening, they were being searched by their son Mahendra Dewangan (PW-1) and during the course

of search, at about 4.30 p.m. the deceased was found lying dead near the field where she was working with the accused/appellant and the accused/appellant was absconding. PW-2 Manoj Kumar Dewangan, son of deceased & appellant, PW-3 Ravi Dewangan, another son of deceased & appellant, and PW-6 Manju Dewangan, daughter-in-law of the deceased & appellant, have stated in categorical terms that on the fateful day, they along with the deceased and the accused/appellant were working in the field, in the afternoon at about 2.00 p.m. they came back home for taking lunch leaving the accused/appellant and the deceased in the field itself and thereafter in the evening the body of the deceased was recovered from near the field. Evidence further goes to show that relations between the accused/appellant and the deceased were not cordial and on an earlier occasion also the accused/appellant made an attempt to kill the deceased by offering her water contaminated with glass powder. These witnesses remained very firm in their cross-examination and nothing could be elicited by the defence in their cross-examination so as to discredit their testimonies. Thus, from the evidence of aforesaid witnesses it is evident that the deceased was last seen alive in the company of the accused/appellant and thereafter her dead body was recovered.

Another strong piece of evidence against the accused/appellant is the extra-judicial confession made by him before two witnesses namely Smt. Ranjeeta Dewangan (PW-14) & Sukhdev Dewangan (PW-15) who have categorically stated that after the incident, the accused/appellant came to their place and informed that he has killed the deceased. This apart, on the basis of disclosure statement (Ex.P-7) of accused/appellant, seizure (Ex.P-8) of the stone used in the murder of the deceased was effected at his instance and as per FSL report (Ex.P-17), this stone was found to be stained with blood. However, there is no explanation from the

accused/appellant as to how the blood stains are there in the stone seized at his instance. Seizure witnesses (PW-7 & PW-11) have supported the seizure made from the appellant. According to the medical evidence, the injuries found on the body of deceased could be caused by the hard and blunt object which includes the stone also.

We find no merit in the argument of counsel for the appellant that due to storm the stone kept on the roof had fallen on the head of the deceased causing grievous injuries to her because the doctor conducting post-mortem had noticed as many as nine injuries on various parts of the body of deceased including fracture of lower jaw at centre & left zygomatic process and the aforesaid injuries are not possible only due to fall of a stone on the deceased. Even assuming the argument advanced by counsel for the accused that the deceased died on account of the injuries sustained by her on account of fall of stone on her head to be true, it should have been first and foremost duty of the accused/appellant to take her to the hospital for treatment after she sustained injuries or in the event of death the information should have been given to the police, but nothing like this has been done by accused/appellant, rather he fled from the village. This facet also raises an accusing finger leading to the involvement of accused in crime in question.

25. Further, we find no substance in the argument of counsel for the appellant that at the time of incident, he was suffering from insanity or unsoundness of mind. This point has neither been raised during the course of trial nor any evidence to this effect has been brought on record like medical documents etc. showing that the appellant is suffering from any such mental ailment or the opinion of the medical expert. It has time and again been held by the Apex Court that unless pleaded and proved during trial, the accused is not entitled to derive the protection of Section 84 IPC simply by raising the issue at a belated stage. In the present also, the defence has not been taken in a

position to prove in accordance with law that the cognitive faculties of the accused were so impaired that he was not in a position to see the repercussions of his act and since it has not been done, the accused/appellant cannot disown his guilt of murdering the deceased. Further, the act of accused/appellant in denying the charges, pleading trial and innocence in his statement recorded under Section 313 Cr.P.C. makes this Court to draw an inference that his mental faculties were not so impaired to provide him the strength to wriggle out of the rigor of law. Thus, in these circumstances and keeping in mind the aforesaid legal position, the appellant is held to be dis-entitled to have the protection of Section 84 of IPC.

26. Thus, if the cumulative effect of aforesaid analysis is kept in view, the prosecution appears to have proved its case beyond reasonable doubt and so also the court below has been conscious to the position by appreciating the evidence of the witnesses. The findings recorded by the court below being strictly based on the unfaltered appreciation of the evidence of the witnesses require no interference in this appeal. The judgment impugned is thus maintained and the appeal meets the fate of dismissal. Order as such. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge