

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 226 of 2012

- Faguram S/o Sanichara Kodaku, aged about 42 years, R/o Village Amdanda (Chhuhi Mati) P.S. Balrampur ,Distt. Surguja (C.G.)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through - P.S. Balrampur , Distt. Surguja C.G.

---- Respondent

For appellant : Shri Vivek Pandey, Advocate.
For Respondent/State : Shri Rahul Tamaskar, Panel Lawyer.

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

Judgment On Board By Justice Pritinker Diwaker

10/05/2016:

This appeal arises out of the judgment of conviction and order of sentence dated 10.1.2012 passed by the First Additional Sessions Judge, Ambikapur Distt. Surguja in S.T.No.376/10, convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and fine of Rs.1000/- with default stipulation.

02. Brief facts of the case are that in the night intervening 20/21.7.2010 while returning from the workplace, the appellant and his wife Kotribai (deceased) consumed liquor and returned to their house. In the night they had a quarrel which was intervened by mother of the appellant

namely Sukhmania (PW-5). It is alleged that in the late night the accused/appellant caused injuries to his wife by a club as a result of which she died. On 21.7.2010 at 9.10 am mere intimation Ex.P/2 was lodged by PW-2 Hirmal, cousin of the appellant. He also lodged FIR (Ex.P/3) at 9.15 am on 21.7.2010 under Section 302 of IPC against the appellant. Inquest over the dead body was performed vide Ex.P/13 and thereafter the body was sent for postmortem, which was conducted on 21.7.2010 by PW-9 Dr. NK Dutt vide Ex.P/16 wherein he noticed multiple contusions & abrasions on the body of the deceased and in his opinion the cause of death was internal haemorrhage due to shock as a result of rupture of diseased spleen and left kidney which occurred on account of injuries sustained over these areas. On the memorandum of the accused/appellant Ex.P/14, seizure of club was made vide Ex.P/15. As per query report Ex.P/17, no definite opinion could be given as the ruptured organs were already diseased and enlarged, so any injury to the area of these organs, subjective or objective, may cause injury to the kidneys and spleen which may lead to death. It was also mentioned in the said report that exact nature should be ascertained by the investigating officer as per circumstantial evidence. Further, as per query report Ex.P/18, on examination of the seized club the doctor has opined that the injuries found over the body of the deceased could be caused by the said object. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of IPC and accordingly, charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused was

also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that there is no eyewitness to the incident and all the important witnesses of the prosecution have turned hostile. He submits that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 323 or 304 Part-II of IPC. He submits that as per query report Ex.P/17, spleen and left kidney of the deceased were found to be enlarged and it has been opined by the doctor that she was suffering from some old disease in relation to these organs and therefore, the act of the appellant resulting in unfortunate death of the deceased cannot make him liable for the offence under Section 302 of IPC. Lastly he submits that the appellant is in jail since 22.7.2010 and therefore, after converting his offence into Section 323 or 304 Part-II of IPC, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in it. He submits that present is a case of house murder, the appellant and the deceased were the only inmates of the house and therefore, the

appellant was under legal obligation to explain as to under what circumstances the deceased died, however, no such explanation has been offered by him in his statement under Section 313 of Cr.P.C.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Narayan Singh, Patwari, prepared the spot map Ex.P/1. PW-2 Heermal, brother of the appellant and lodger of FIR and merged intimation, has stated that on the date of incident in the night the accused/appellant after consuming liquor beat his wife and fled from the spot. However, in para-5 he has stated that he has not seen the actual occurrence and reached the house of the appellant after the incident had taken place. He has stated that earlier also there used to be quarrel between the appellant and the deceased as the deceased used to visit her parents' house frequently. In para-10 he has stated that mother of the appellant had shouted that "her son (appellant) has killed."

09. PW-3 Bilas has stated that on the date of incident the accused/appellant had withdrawn amount from the bank, consumed liquor and beat his wife and that he heard the noise of the same and mother of the appellant shouting "run, he is killing", and when he reached there, he saw the appellant running away from there. After being declared hostile, he has stated that he did inform the police that he had seen the accused/appellant assaulting the deceased by a club. However, in para-5 he again has taken somersault by saying that he has not seen the actual occurrence and when he reached the place of

incident, the accused/appellant had fled from there and that the dead body was lying. PW-4 Vishun Ram has turned hostile.

10. PW-5 Sukhmania, mother of the appellant, after being declared hostile has stated that she had made statement to the police that after consuming liquor the accused/appellant and the deceased started quarreling. PW-6 Chulluram and PW-7 Mathura have turned hostile and not supported the prosecution case. PW-8 Devkumar, a witness to inquest Ex/13, memorandum of the appellant Ex.P/14 and seizure Ex.P/15, has though turned hostile but admitted his signature on the documents.

11. PW-9 Dr.N.K. Dutt, conducted postmortem on the body of the deceased on 21.7.2010 vide Ex.P/16 wherein he noticed multiple contusions & abrasions on the body of the deceased. In his opinion the cause of death was internal haemorrhage due to shock as a result of rupture of diseased spleen and left kidney which occurred on account of injuries sustained over these areas. On query being made by the police regarding nature of death, vide Ex.P/17 he stated that no definite opinion could be given as the ruptured organs were already diseased and enlarged, so any injury to the area of these organs, subjective or objective, may cause injury to the kidneys and spleen which may lead to death. It was also mentioned in the said report that exact nature should be ascertained by the investigating officer as per circumstantial evidence. Further, as per query report Ex.P/18, on examination of the seized club he opined that the injuries found over the body of the deceased could be caused by the said object.

12. PW-10 Kanhaiya Tiwari, investigating officer, has duly supported the prosecution case. PW-11 Urmila Lahre, Police Constable, took the dead body of the deceased to Community Health Center, Balrampur for postmortem. PW-12 T.R. Bhagat, recorded merged intimation (Ex.P/2) and FIR (Ex.P/3).

13. Close scrutiny of the evidence makes it clear that relations between the appellant and his wife/deceased were strained, there used to be quarrel between them frequently as a result of which the appellant was annoyed with her. According to PW-2 Heermal, who is cousin of the appellant and lodged the FIR as well as merged intimation, on the fateful day upon hearing the cries of Sukhmaniya (PW-5), mother of the appellant, he went to the house of the appellant and found the deceased lying dead with injuries over her head, chest and waist and upon seeing him, the appellant fled from the spot leaving the club there. He has stated that he was informed by PW-5 that it is the accused/appellant who killed the deceased. His evidence finds due corroboration from the medical evidence whereby corresponding injuries were noticed on the person of the deceased by the autopsy surgeon. Though PW-5 has turned hostile and even denied her presence on the spot, but she has admitted that on the date of incident the appellant and the deceased came to house after consuming liquor and started quarreling. Further, witnesses to memorandum of the appellant and seizure i.e. PW-7 Mathura and PW-8 have though turned hostile but admitted their signature on the documents. Thus, taking into consideration overall evidence on record, conduct of the appellant as also his failure to explain the incriminating circumstances in his

statement under Section 313 of Cr.P.C., his complicity in crime in question stands established.

14. Now the next question which arises for consideration of this Court is whether the act of the appellant makes him liable to be convicted under Section 302 of IPC or for any other offence?

15. From the medical evidence, it is clear that spleen and left kidney of the deceased were enlarged. There is no evidence on record to show that the appellant was aware of enlargement of the said organs of the deceased and further, on question being asked to him in this regard in his statement under Section 313 of Cr.P.C., he has pleaded ignorance about the same.

16. Almost similar question arose before the High Court of Calcutta in the case of ***Emperor Vs. Saberali Sarkar, AIR 1920 Calcutta 401***, wherein the accused having found that a young man had approached his kept mistress for the purpose of having sexual intercourse with her, though that he would be justified in teaching him a lesson by giving him a good thrashing and beat him by kicks and blows which resulted in his death. As the deceased was of a weak constitution and had an enlarged spleen, he succumbed to those injuries. In the aforesaid fact situation, the High Court held that in the circumstances of the case it was doubtful whether the accused had either intended or knew it to be likely that he would cause grievous hurt and as the case seemed to be on the boarder line between Sections 323 and 325, the accused might be given the benefit of doubt and should be convicted of an offence under Section 323.

17. Likewise, in the case of ***Ramakrishna Panichker Vs. State of Kerala, AIR 1959 Kerala 372***, the victim was having a spleen of diseased condition which got ruptured and in the said fact situation it was held that when the injury is not serious and there was no intention to cause death or grievous hurt, nor did the accused have knowledge that it was likely to cause grievous hurt or death, he is guilty of causing hurt and not death even though death is caused.

18. A similar question arose before the Divisional Bench of Allahabad High Court in the case of ***Sri Prakash Vs. State, 1990 CrLJ 486*** wherein beating given by the accused to a child having enlarged spleen resulted into his death and evidence do not show that the accused had knowledge of enlarged spleen of the deceased. On the fact situation, the High Court held the accused guilty under Section 323 of IPC.

19. Following the above principles of law, Gujarat High Court in the matter of ***State of Gujarat Vs. Babu Kava, (2003) 4 GLR 892*** held that as the accused persons were not aware of the enlarged spleen of the deceased while making assault, cannot be held guilty under Section 304 Part-II but are liable to be convicted under Section 323 of IPC.

20. Modi in his Medical Jurisprudence under the heading of “Spleen” has given specific opinion that an enlarged spleen becomes softened and brittle. Hence it is liable to rupture from a fall or from violence of a very slight degree. Enlarged spleen may sometimes rupture spontaneously from contraction of the abdominal muscles during the

act of sneezing, coughing, vomiting or straining.

21. In Illustration (b) of Clause (iv) of Section 300 of IPC, it has been provided that if the offender knowing that the victim is labouring under such disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury and the victim dies in consequence of the blow, the offender is guilty of murder although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if the offender not knowing that the victim is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health and the victim dies, the offender is not guilty of murder.

22. In the present case also, it is quite apparent that cause of death of the deceased was internal haemorrhage due to shock as a result of rupture of diseased spleen and left kidney on account of injuries over these areas. Further, as per query report Ex.P/17, the doctor has stated that any injury to the area of these organs, subjective or objective, may cause injury to the kidneys and spleen which may lead to death. As already stated above, the prosecution has utterly failed to prove that the appellant had the knowledge of enlarged spleen and kidney of the deceased or that he inflicted injuries with this knowledge on those organs so as to cause her death. Being so, it would not be safe to hold the appellant guilty of committing murder of the deceased and as such, his conviction under Section 302 of IPC is liable to be set aside. However, considering the manner in which the appellant assaulted the deceased repeatedly with stick, thereby causing her

multiple contusions & abrasions, he is definitely liable to be convicted under Section 324 of IPC.

23. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 324 of IPC and sentenced to RI for three years. As the appellant being in jail since 22.7.2010 has already completed the sentence imposed on him by this Court, he be set free forthwith if not required in any other case.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge