

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 710 of 2008

- Girdhari @ Girdhar S/o Mohar Ram Bhuihar, R/o Village-Purandih, P.S. Ramanujganj, Distt.-Sarguja (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through : District Magistrate, Sarguja (C.G.)

---- Respondent

For Appellant	:	Shri V.R. Tiwari, Advocate
For Respondent	:	Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

P. Diwaker, J

05/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 20.3.2008 passed by the 2nd Additional Sessions Judge (FTC), Ramanujganj, District Sarguja in S.T. No.215/07 convicting the accused/ appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.2,000/-, in default to undergo additional R.I. for 1 year.
2. In the present case name of deceased is Ganiya Bai, wife of appellant.
3. The prosecution story, in brief, is that on 3.3.2007 at about 4.00 p.m. some quarrel took place between accused/appellant and deceased and during the course of said quarrel, accused/appellant gave a solitary blow of club on the left side of temporal region of deceased as a result of which she started bleeding. FIR (Ex.P-16) was registered on 3.3.2007 at the instance

of Laxman (PW-7) under Section 307 IPC. Deceased was immediately taken to the hospital where she succumbed to the injuries on 5.3.2007. After the death of deceased, unnumbered merg (Ex.P-5) was registered and thereafter numbered Merg (Ex.P-6) was registered. Inquest (Ex.P-13) was prepared over the body of deceased on 6.3.2007. Body of the deceased was sent for post-mortem examination which was conducted by Dr. H.N. Rai (PW-10) and he noticed one lacerated wound over left ear pinna of 3 x 2 x ½ cm in size. The doctor has opined that cause of death was due to head injuries leading to intra cerebral haemorrhage and mode of death was due to coma. On the basis of memorandum statement (Ex.P-8) of accused/appellant, two clubs were recovered vide seizure memo Ex.P-9. Statements of witnesses were recorded under Section 161 CrPC.

4. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against accused/appellant and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/ appellant examined 15 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.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that the appellant and the deceased both had consumed liquor together in the fateful night and thereafter a quarrel took place between them on some trivial issue in which the appellant gave a solitary blow on the temporal region of the deceased which led to her death during the course of treatment. Thus, it is clear that the incident had taken place in the spur of moment and the

appellant had inflicted only a single lathi blow which show that there was no intention or pre-meditation on the part of appellant to inflict injury to the deceased as were likely to cause her death in the ordinary course of nature. In these circumstances, the appellant cannot be convicted under Section 302 IPC and therefore his conviction be altered from Section 302 to Section 304 Part II IPC.

7. 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.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Pyarelal (PW-1) is the witness of extra-judicial confession made by accused/appellant before him. He has stated that on receiving information about the quarrel between accused/appellant and deceased, he went to the house of accused/appellant where amongst other persons the accused/appellant was also present. The deceased was lying there with injuries on her body. He has further stated that the accused/appellant confessed before him to have assaulted his wife. He has further stated that the deceased died during the course of treatment.
10. Dr. S.K. Sinha (PW-2) is the person who did MLC of the deceased vide Ex.P-2 and noticed multiple haematomas. He has stated that though the person who brought the injured before him for examination informed him that she had consumed liquor but he did not notice any smell emanating from her mouth.
11. Dikeshwar Singh (PW-3) is the Patwari who prepared spot map Ex.P-1. Jagdev Kushwaha (PW-4) is the Head Constable who assisted in the investigation.

12. Munki Devi (PW-5) is the daughter-in-law of deceased. She has stated that she informed the police that accused/appellant and deceased were under the influence of liquor. Baijnath (PW-6), son of accused and deceased, has not stated anything incriminating against the accused/appellant.
13. Laxman (PW-7) is the person who reached on the spot after the incident had taken place. This witness has also stated that the accused confessed to have killed his wife.
14. R.S. Paikra (PW-9) did the initial part of the investigation.
15. Dr. H.N. Rai (PW-10) is the doctor who performed autopsy on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was due to head injuries leading to intra cerebral haemorrhage. In the cross-examination this witness has denied the suggestion that the deceased was under intoxication.
16. Dr. J.K. Jain (PW-11) is the doctor who first attended the deceased at District Hospital, Ambikapur vide Ex.P-4. Santoshi (PW-13) & Dikdar (PW-14) did not support the prosecution case and turned hostile. Gopal Vaishya (PW-15) is the investigating officer who has supported the prosecution case.
17. Close scrutiny of the evidence available on record, makes it clear that the accused/appellant and the deceased were residing under the same roof where the deceased was found lying in injured condition. The doctor (PW-10) conducting post-mortem examination has categorically stated that he noticed diffused intra cerebral haemorrhage in the brain of deceased and opined the death to be homicidal in nature. Thus, once the death is proved to be homicidal, there was a corresponding burden on the accused/appellant to explain properly and convincingly as to how his wife received injuries, but he failed to do so. It is not that the

accused/appellant kept mum and did not try to explain the death of his wife, but the whole explanation offered by him appears afar from the truth. Accused/appellant has taken a plea in his statement under Section 313 CrPC that the deceased was under the influence of liquor and had fallen from the roof of his house while coming down from the ladder, but this plea taken by him appears to be false as the doctor conducting post mortem examination has categorically stated that he did not notice any smell of liquor in the case of deceased. 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 in stead of discharging this legal burden, the accused/appellant offered a false explanation and it is a strong circumstance which indicates that he is responsible for commission of the crime.

18. In Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681, the Supreme Court held as under:

“Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

19. That apart, accused/appellant confessed before Pyarelal (PW-1) & Laxman (PW-7) to have inflicted injuries to the deceased by club. According to these witnesses, after coming to know about the quarrel between accused/appellant and deceased, they visited the house of

accused/appellant and saw the deceased lying inside the house with injuries on her person. Accused/appellant was also present there. On inquiry being made, the accused/appellant confessed that he had inflicted lathi blow to his wife Ganiya Bai. No doubt, the evidence of extra-judicial confession is fragile in nature but once it is established that such confessional statement was voluntary and gets corroboration from other surrounding circumstances, it regains the credibility of being made basis to arrive at a particular conclusion. Here in this case also nothing has been elicited by the defence that extra-judicial confession made by accused/ appellant was not voluntary or that the witnesses before whom it is said to have been made nurtured any bias or inimical relationship as an indication of motive on their part of attributing an untruthful statement against the accused.

Thus, on the basis of evidence adduced by the prosecution, complicity of accused/appellant in commission of offence stands proved beyond all reasonable doubt.

20. Now the question for consideration before this Court is whether the act of accused/appellant would fall within any of the Exceptions to Section 300 of IPC i.e. culpable homicide not amounting to murder?
21. From the evidence on record it is clear that the incident admittedly had taken place in a sudden quarrel and during the course of which, without any pre-meditation, the appellant caused a solitary injury to the deceased which ultimately resulted in her death. The incident had taken place on 3.3.2007 and the deceased succumbed to injury on 5.3.2007. Taking the prosecution evidence and medical evidence cumulatively we are of the view that the accused/appellant could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury, but he could be definitely imputed with the knowledge that he

was likely to cause an injury which was likely to cause death of the deceased. This being the position, act of accused/appellant is covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder, and he is liable to be convicted under Section 304 Part-II of IPC and not under Section 302 IPC as has been held by the trial Court.

22. In the result, the appeal is allowed in part. Conviction and sentence of accused/appellant under Section 302 IPC are hereby set aside. However, looking to his act and evidence on record, he stands convicted under Section 304 Part-II IPC and sentenced to undergo RI for 5 years. He is reported to be on bail. His bail bonds are cancelled and he is directed to surrender immediately before the Court below concerned to serve the jail sentence imposed on him. The period of detention already undergone by the accused/appellant shall be adjusted.

Sd/-
(P. Diwaker)
Judge

roshan

Sd/-
(RP Sharma)
Judge