

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 987 of 2012

- Sufal Singh S/o Buthu Gond Aged About 36 Years, Occupation – Agriculture, R/o Village Khondala, Piperpara, PS Udaipur, Distt. Surguja C.G.

---- Appellant

Versus

- State Of C.G. Through : PS Udaipur, Distt. Surguja C.G.

---- Respondent

For Appellant	:	Shri Ajay Mishra, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J

07/07/2017

This appeal arises out of the judgment of conviction and order of sentence dated 11.11.2011 passed by the Sessions Judge, Surguja (Ambikapur) in ST No.401/2010 convicting the appellant under Section 302 of IPC for committing murder of his wife Urmila Bai and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case on 27.6.2010 PW-4 Thakur Singh, injured eyewitness to the incident, came to the house of the appellant, who happens to be his relative, to take certain amount from the appellant in lieu of one bag of manure given by him to the appellant. When PW-4 entered the house of the appellant, he saw the appellant quarrelling with his wife Urmila Bai and then throwing her on the floor and pressing her neck. When PW-4 tried to intervene in the matter he was pushed by the appellant as a result of which he also sustained

some injuries. At the instance of PW-4 on 28.6.2010 merger intimation (Ex.P/8) was recorded at 9.15 am wherein it has been stated by PW-4 that it is the accused/appellant who killed his wife Urmila Bai by pressing her neck. Immediately after about 10 minutes, FIR (Ex.P/7) was registered against the appellant under Section 302 of IPC at the instance of PW-4. Inquest over the dead body was conducted on 28.6.2010 vide Ex.P/6 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-1 Dr. BM Kamre vide Ex.P/1 and he noticed that blood was oozing from her nose, contusion over right eye and cheek, lungs, trachea, food pipe, membrane of intestines, liver, kidney and spleen were congested. In his opinion the cause of death was asphyxia due to strangulation and the nature of death was homicidal. This witness also examined PW-4 Thakur Singh vide Ex.P/11A and noticed abrasion over left knee with tenderness and swelling with tenderness over left shoulder and opined that the said injuries were caused by hard and blunt object and were simple in nature. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 6 witnesses in all. 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. He has stated that at the relevant time he was not present in his house and had gone to market and on his return, he found his wife dead.

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 above.

05. Counsel for the appellant submits as under:

(i) that the appellant has been falsely implicated in the crime in question.

(ii) that as per postmortem report, ligature mark has not been noticed on the body of the deceased and the autopsy surgeon in his statement has also not deposed so.

(iii) that the deceased could have died after consuming excessive liquor as it has come in the evidence of the witnesses that she used to consume excessive liquor and on the date of incident was also drunk.

(iv) even if the entire case of the prosecution is taken as it is, case of the appellant would be covered by exception of Section 300 of IPC as the incident occurred all of a sudden in the heat of passion without any premeditation on the part of the appellant. As such, he can at best be convicted under Section 304 Part-I or II and not 302 of IPC. Further, considering the detention period of the appellant, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been submitted by the State counsel that the appellant and the deceased alone were residing in the house in question and on the date of incident his presence in the house is also confirmed by PW-5 Budhiyaro Bai, daughter of the appellant and the deceased. PW-4 Thakur Singh, who had gone to the house of the appellant on the date of incident, saw the appellant quarreling with the deceased and then pressing her neck. According to this witness when he intervened, he

was pushed back by the appellant as a result of which he too sustained injuries over his knee and shoulder. This witness remained consistent in the Court. Further as per autopsy surgeon the cause of death was asphyxia due to strangulation and the nature of death was homicidal. Though ligature mark on the body has not been found but considering her postmortem report, evidence of the autopsy surgeon and the eyewitness PW-4, the same is of no help to the appellant. She lastly submits that PW-5 Budhiyaro Bai, daughter of the appellant and the deceased, has also confirmed presence of the appellant with the deceased on the date of incident in the house in question.

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

08. PW-4 Thakur Singh, injured eyewitness to the incident, has stated that the deceased is his niece. The appellant and the deceased were residing near his house, about 300 meter away. The appellant had taken one bag of manure from him. On the date of incident he had gone to the house of the appellant to take money in lieu of that manure. At that time he saw that the appellant was quarreling with his wife Urmila Bai and then the appellant threw her on the floor and pressed her neck. When he tried to intervene, the appellant pushed him down as a result of which he fell unconscious. After regaining consciousness, he informed about the incident to the neighbours and by the time they came there, Urmila Bai had died. He has stated that on account of assault made by the appellant, he suffered injuries on his left shoulder. He states that on the next morning of the incident he lodged report. He has proved merger intimation and the FIR. He is also a

witness of inquest Ex.P/6. In cross-examination he has admitted the fact that the deceased used to consume liquor excessively and on the date of incident also she was drunk. He has denied the suggestion that on the date of incident the deceased was hurling abuses after consuming liquor and further stated she was hurling abuses at the appellant and then the appellant pressed her neck. In cross-examination this witness remained firm on the point of witnessing the appellant quarreling with the deceased and then pressing her neck and the nothing could be elicited from him by the defence which may be of any help to the appellant.

09. PW-1 Dr. BM Kamre conducted postmortem on the body of the deceased on 28.6.2010 vide Ex.P/1 and noticed that blood was oozing from her nose, contusion over right eye and cheek, lungs, trachea, food pipe, membrane of intestines, liver, kidney and spleen were congested. In his opinion the cause of death was asphyxia due to strangulation and the nature of death was homicidal. He also examined PW-4 Thakur Singh vide Ex.P/11A and noticed abrasion of size 1 x 1 cm over left knee with tenderness and swelling with tenderness over left shoulder and opined that the said injuries were caused by hard and blunt object and were simple in nature.

10. PW-2 Rameshwar Gond, brother of the appellant, has not supported the prosecution case and has been declared hostile. PW-3 Prakash Singh, brother of the deceased, came to know about the incident after it had taken place and when he reached the house of the appellant he found body of the deceased there. He is also a witness of inquest. PW-5 Budhiyaro Bai, minor daughter of the appellant and the

deceased, aged 11 years, has stated that on the date of incident the appellant and the deceased were inside the room and they had consumed liquor. PW-6 Farhan Qureshi, investigating officer, has duly supported the prosecution case.

11. In his statement under Section 313 of Cr.P.C., the appellant has stated that at the relevant point of time he was not there in the house and when he returned he found dead body of his wife.

12. Close scrutiny of the evidence makes it clear that on 27.6.2010 it is the accused/appellant who killed his wife Urmila Bai. The incident has been witnessed by PW-4 Thakur Singh who has duly supported the prosecution case. As per this witness, he saw the appellant pressing neck of the deceased and on his intervention, he was pushed down by the appellant as a result of which he too suffered some injuries. Postmortem report lends support to the evidence of this witness according to which the cause of death of the deceased was asphyxia due to strangulation and her death was homicidal in nature. The autopsy surgeon (PW-1) also medically examined PW-4 and found abrasion on his knee and swelling on his shoulder vide Ex.P/11A. There is no reason to disbelieve the statements of these witnesses. Though minor discrepancy is there in the court statement of PW-4 from that of his diary statement but the same is of no help to the appellant because right from the time of lodging merged intimation and FIR he is consistent in saying that it is the appellant who killed his wife. Furthermore, the appellant has taken a false defence of alibi whereas according to eyewitness PW-4 Thakur Singh and PW-5 Budhiyaro Bai, daughter of the appellant, he was very much available in the house at

the relevant point of time with the deceased. Such false explanation further strengthens the case of the prosecution.

We find no substance in the argument of the appellant that even if the prosecution case is accepted in its entirety, at best the appellant is liable to be convicted under Section 304 Part-I or II of IPC. Considering the manner in which the offence took place where the appellant pressed the neck of the deceased with such a force which led her instantaneous death, it can safely be inferred that he not only had the intention to cause death but also had the knowledge that such act of his would surely result in her death. Being so, his conviction under Section 302 of IPC cannot be faulted with.

13. On the basis of aforesaid analysis, we are of the considered view that the prosecution has successfully proved guilt of the appellant based on the evidence adduced by it and as such, the trial Court was fully justified in convicting and sentencing the appellant under Section 302 of IPC for committing murder of his wife.

14. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge