

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 180 of 2015**

1. Babulal Sharthi son of Lodhuras, aged about 48 years, resident of village Mohlinebhata, Thana Katghora, Civil and Revenue District Korba, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Katghora, Civil and Revenue District Korba, CG

---- Respondent

For Appellant : Shri Manoj Mishra, Advocate
For Respondent/State: Shri Ravindra Agrawal, GA

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Gautam Chourdiya****Judgment On Board by Pritinker Diwaker, J****08/08/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 07.11.2014 passed by Additional Sessions Judge Katghora, in Sessions Trial No. 83/2013 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1000/-, plus default stipulation.

2. Name of the deceased in this case is Samund Kunwar - the wife of the accused/appellant. It is alleged that on 4.6.2013 at about 8-9 PM the accused/appellant killed her by inflicting number of club injuries resulting in her instantaneous death. After committing her murder, the accused/appellant went to Kiran Kumar (PW-1) and Smt. Shivkumari (PW-2) and

by giving the key of his house he informed them about his wife being killed by him and also asked them to perform her last rites. He made extra-judicial confession before Ku. Manisha (PW-3) and Shiv Sagar (PW-4) with regard to killing his wife. At the instance of PW-4 – the son of the deceased and accused, FIR was lodged against the accused/appellant under Section 302 IPC. After drawing inquest Ex. P-12, the dead-body was sent for postmortem examination which was conducted by Dr. Rudrapal Singh Kanwar (PW-7) who gave his report Ex. P-10. After completion of investigation, police filed *challan* against the accused/appellant u/s 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 11 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That on the date of incident there was no quarrel between the deceased and the accused, and it appears that being under the influence of liquor, he had beaten the deceased which unfortunately resulted in her death.

(ii) That even if the entire case of the prosecution is taken as it is, the act of the accused/appellant cannot entail his

conviction under Section 302 and at the most he can be held guilty under Section 304 (Part-I) or 304 (Part-II) IPC.

(iii) That the so-called extra-judicial confession made by the accused/appellant before PW-3 and PW-4 is a very weak type of evidence and therefore, cannot be made a basis for conviction of the accused/appellant.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that considering the number and nature of injuries inflicted by the accused/appellant and also the extra-judicial confession made before PW-3 and PW-4, the findings recorded by the Court below are fully justified and no interference therewith is called for in this appeal. State counsel also referred to the evidence of PW-1 and PW-2 who too have clearly stated that the accused/appellant came to them, gave key of his house, informed about killing the deceased and also asked them to do her last rites.

7. Heard counsel for the parties and perused the material available on record.

8. Kiran Kumar (PW-1) has stated that on the night of incident he came to know through PW-4 that the accused/appellant had consumed liquor and was beating the inmates, on which, he consoled him saying that it was a

routine matter and by morning he would be alright. He has further stated that the accused/appellant came to him, handed over the key of the house, informed about killing the deceased and asked for doing her last rites. Thereafter, this witness is stated to have gone to the house of the accused and seen his wife lying dead with bleeding injuries on her hand and leg. In paragraph No. 7 he however resiled from his version and stated that the accused/appellant had not informed him anything about performing the last rites of the deceased nor did he throw the key of his house. He has stated that the accused/appellant did not name anyone while disclosing the said fact and that at that time his daughter, daughter-in-law, son and brother were also present. Smt. Shiv Kumari (PW-2) – wife of PW-1 has stated that on the date of incident at about 8 PM she was informed by her brother-in-law and sisters-in-law (*Devrani and Nanad*) about the quarrel between the accused and the deceased. Thereafter, according to this witness, in the next morning accused came to her house, threw key of his house, informed about the death of the deceased and also asked to do her last rites. In paragraph No. 7 of her deposition she however turned back from her version and stated that she did not witness any quarrel nor anything like that was disclosed to her by anyone. Ku. Manisha (PW-3) – daughter of the accused and the deceased has stated that the accused/appellant made extra-judicial confession before her regarding committing murder of the deceased. Shiv Sagar (PW-4) – the son of the deceased though has been

declared hostile yet he has stated that the accused/appellant confessed before him about killing the deceased and also asked for performing her last rites. He has further stated that on the fateful night the accused had picked up quarrel with his mother (the deceased herein) and when he tried to intervene, he was also abused by him. According to this witness, after seeing the quarrelsome activities, he left the house and in the next morning the accused/appellant made extra-judicial confession regarding commission of murder of the deceased, and when he got back home, his mother was lying dead. Smt. Ritu Sagar (PW-5) and Rakesh Sonwani (PW-10) have not supported the case of the prosecution and have been declared hostile. Binda Bai (PW-6) and Ajay Sagar (PW-8) are the witnesses to inquest. Dr. Rudra Pal Singh Kanwar (PW-7) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-10 stating that he noticed three injuries, being abrasion on the left leg, swelling on wrist and shoulder and lacerated wound on the right temporal region with gross swelling and fracture of right skull bone (temporal bone). Cause of death, according to this witness, was cardio-respiratory failure due to head injury and the death was homicidal in nature. Bajrang Kulaste (PW-9) is the Patwari who prepared spot map Ex. P-13. Vivek Sharma (PW-11) is the investigating officer who has duly supported the case of the prosecution.

9. Appraisal of the evidence thus makes it clear that in the night of occurrence the accused/appellant being under the

influence of liquor had picked up quarrel with the deceased, started beating her which ultimately led to her death. Record also shows that when the quarrel was going on between the deceased and the accused, the other inmates of the house including children went to the house of elder brother of the accused. From the evidence of PW-1, PW-2, PW-3 and PW-4 it is manifest that on the next day in the morning hours the accused/appellant came to them and made a disclosure about killing the deceased and also asked them to perform her last rites. That apart, postmortem report Ex. P-10 goes to show that deceased had suffered three injuries including fracture of skull bone and the death was homicidal in nature. Defence has not brought anything on record that the extra-judicial confession made by the accused before PW-1, PW-3 and PW-4 was not voluntary and truthful. Rather the record shows that apart from being voluntary and truthful, it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. Another important point here is that the incident took place inside the house where no third person was present at the relevant time except the two and therefore, burden lies on the accused to explain as to how all that had happened but he did not offer any explanation in his 313 Cr.P.C statement in this regard. He cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on him to offer any explanation - **Trimukh Maroti Kirkan v.**

State of Maharashtra reported in **(2006) 10 SCC 681**.

10. In the aforesaid view of the matter, the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC appear to be based on appreciation of the evidence on record and being so no interference therewith can be made in this appeal. Accordingly, the appeal has no substance and it is dismissed as such. Judgment impugned is confirmed. As the appellant is already in jail, no order to surrender etc. is needed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Gautam Chourdiya)

Judge