

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 855 of 2012

- Bhedan Lal Sahu, S/o Topram Sahu, Aged About 30 Years, R/o Village Bhothali, Distt. - Balod C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - SHO, PS Gurur, Distt. - Balod C.G.

---- Respondent

For Appellant	:	Mr. B.P. Singh, Advocate
For Respondent	:	Mr. Avinash K Mishra, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgement

Per P. Diwaker, J

10/09/2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14.9.2012 passed by the Additional Sessions Judge, Balod, District Durg in S.T. No.32/2012 whereby the learned Additional Sessions Judge has convicted the accused/appellant for the offence punishable under Section 302 of the Indian Penal Code (henceforth 'the IPC') and sentenced him to undergo RI for Life with fine of Rs.50/-, in default to undergo additional RI for 3 months.
2. Facts of the case, in brief, are that Thalesh Bai (since deceased) was having illicit relation with one Bharat Sahu and therefore she started living with him. On 29.5.2012 a compromise was arrived at between the appellant & the deceased and thereafter the deceased returned to the house of accused/appellant. On that night itself, said Thalesh Bai had uttered some uncalled words to the accused/appellant as a result of which

he got annoyed and beheaded the deceased with an axe and thereafter he himself went to the police station and lodged FIR (Ex.P-12) based on which offence under Section 302 of IPC was registered against him. Merg Intimation (Ex.P-13) was registered. Inquest over the body was prepared vide Ex.P-3. Dead body was sent for post-mortem examination which was conducted by Dr. T.R. Thakur (PW-7) vide Ex.P-14 and he noticed that;

- Head was completely separated from neck.
- lacerated wound of 4.5 x1.5.x2.5 cm over right side of neck above clavicle.
- lacerated wound of 5x1x2.5cm over right side of chin.

The autopsy surgeon has opined that cause of death could be asphyxia due to complete separation of head from the body by sharp object, death was homicidal in nature and duration of death was within 12 hours from the time of post-mortem examination. Memorandum statement of accused/ appellant was recorded vide Ex.P-5 and pursuant to disclosure statement made by him, one iron axe with wooden handle stained with stains like blood and one red colour torch were seized vide seizure memo Ex.P-6. Seized articles were sent for chemical examination to FSL, vide Ex.P-16, however, there is no FSL report on record. Statements of witnesses were recorded under Section 161 of CrPC.

3. After completion of investigation, charge sheet was filed against the accused/appellant and accordingly, the charge under Section 302 IPC was framed against him by the trial Judge.
4. So as to hold the accused/appellant guilty, the prosecution has examined 8 witnesses. After recording of the evidence for the prosecution was over, the accused/appellant was examined under Section 313 of Cr.P.C. regarding the incriminating materials found in the evidence adduced on the side of prosecution. He denied such evidence to be false and once

again reiterated his stand that he is not guilty of any offence.

5. After hearing counsel for the respective parties and considering the material available on record, the trial Court by the impugned judgement, convicted and sentenced him as described above.
6. Learned counsel for the appellant submits that:-
 - appellant is convicted only on the basis of FIR lodged by him which contains a full confession of guilt by the appellant, but this FIR is not admissible in evidence as the same is hit by Section 25 of the Evidence Act. Reliance is placed on the decision of the Full Bench of the Hon'ble Supreme Court in Aghnoo Nagesia v. State of Bihar reported in AIR 1966 SC 119 and Khatri Hemraj Amulakh v. The State of Gujarat reported in (1972) 3 SCC 671.
 - though on the memorandum of appellant (Ex.P-6), an axe is said to have been seized, however, there is no FSL report on record.
 - the motive has not been proved by the prosecution and the relation between the appellant and the deceased were cordial.
 - even if the entire prosecution case is accepted to be true, it is apparent that the incident occurred all of a sudden, there was no premeditation on the part of the appellant and therefore, he is liable to be convicted for lesser offence.
7. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He further argued that present is a case of house murder where accused/appellant was residing along with his wife in the house in question and being an inmate he was under obligation to offer plausible and probable explanation but no such explanation has been offered by him in his statement recorded under Section 313 Cr.P.C. as to how the

deceased died. He further submits that even if the confession of accused/appellant contained in his FIR is excluded, there are other admissible piece of evidence justifying conviction of accused/appellant under Section 302 of IPC.

8. We have heard learned counsel for the parties and perused the material available on record.
9. Naresh Ram (PW-1), father of deceased, has stated that on coming to know that accused/appellant had killed his daughter, he came to the house of accused/appellant and found the beheaded body of his daughter lying in the passage of the house of accused/appellant. However, this witness has supported the prosecution case in its entirety and therefore he has been declared hostile.
10. Tamradhwaj Sahu (PW-2) & Shivcharan Thakur (PW-3) are the witnesses of inquest (Ex.P-3), memorandum (Ex.P-5) and seizure memos (Ex.P-6 to P-8). Hemlal Sonwani (PW-4) is the witness of inquest (Ex.P-3) and spot map (Ex.P-11) prepared by the Patwari. Ravi Shankar Dhruw (PW-5) is the Patwari who prepared the spot map (Ex.P-11). K.K. Kushwaha (PW-6) is the investigating officer who has duly supported the prosecution case. Dr. T.R. Thakur (PW-7) is the doctor who conducted post-mortem examination on the body of deceased and noticed injuries as described above. He opined that the cause of death could be asphyxia due to complete separation of head and death was homicidal in nature. Rain Singh Kange (PW-8) is the Constable who helped in the investigation.
11. Close scrutiny of the evidence available on record makes it clear that at the time when occurrence took place, the deceased and accused/appellant only were in the house and there was no other person. Body of deceased with her head completely severed from the rest of her body was lying in the passage of the house connecting kitchen garden, as

is mentioned in spot map (Ex.P-11). The cause of death of deceased i.e. cutting of head from the neck by a sharp edged weapon is also not in dispute. Even otherwise, from the medical evidence it is established that the cause of death was asphyxia due to separation of head with neck by sharp object. Thus, the prosecution has been able to show that at the relevant time, the house in question was in exclusive occupation of the couple (accused & deceased) where beheaded body of deceased was found and that she died homicidal death. Once it is established by the prosecution that at the relevant point of time the deceased was alone in the house with accused/appellant, he is under obligation to give an explanation, as envisages under Section 106 of IPC, as to how his wife died in his house and how beheaded body of his wife was found in his house. But, the accused/appellant fails to offer any reasonable explanation in discharge of the burden cast upon him by Section 106 of the Evidence Act. It is interesting to note that the accused/ appellant did not raise any positive defence and he in answer to all the questions put to him in his examination under Section 313 CrPC simply stated that he was not aware thereof. In absence of any explanation in that regard an adverse presumption can easily be drawn against his guilt in the commission of causing homicidal death of his wife.

It is true that in the present case FIR was lodged by the accused/appellant himself. It is settled position in law that confessional part of FIR cannot be used at all against the accused in evidence in view of ban under Section 25 of the Evidence Act. But, the non-confessional part of FIR can be used against accused to consider his conduct under Section 8 of the Evidence Act. In the present case, as per contents of the first information report (Ex.P-12) lodged by accused/appellant, on account of illicit relation with one Bharat Sahu, the deceased had eloped with him;

accused somehow brought her back home on the fateful night and when they were in their room, a quarrel ensued between them. This portion of FIR is non-confessional in nature and therefore the same is admissible in evidence as it come within the sweep of Section 8 of the Evidence Act. This non-confessional statement establishes the presence of accused/appellant at his residence along with deceased at the relevant point of time. The accused/appellant in his statement recorded under Section 313 of CrPC failed to explain the circumstances against him.

This non-confessional part of FIR is in the nature of motive also i.e. illicit relationship and eloping of deceased with another man. In **Bheru Singh vs. State of Rajasthan** reported in **(1994) 2 SCC 467**, it was held that if motive is possible to be culled out from FIR filed by accused, then such statement of motive is admissible.

In view of the above, the judgements relied upon by the learned counsel for the accused/appellant are of no help to him.

12. Likewise, the seizure of axe on the memorandum of accused/appellant, even though there is no FSL report on record, becomes an additional link to inculcate him for killing his wife.
13. In view of the above, the trial Court does not appear to be at fault in appreciating the evidence before it and arriving at the conclusion of holding the accused/appellant guilty as described above. Accordingly, the appeal being devoid of any substance is liable to be dismissed and it is dismissed as such with the affirmation of the judgment under challenge. As the accused/appellant is already in jail, no order to arrest him etc is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Smt. Rajani Dubey)
Judge

roshan/-