

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 105 of 2015

- Ashok S/o Late Akbar Dhobi Aged About 38 Years R/o Village Devipur, Police Station Surajpur, Distt. Surajpur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Surajpur, Distt. Surajpur C.G.

---- Respondent

For Appellant	:	Shri Hemant Kesharwani, Advocate.
For Respondent/State	:	Shri Anil Pillai, Dy. A.G.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Choradiya

Judgment on Board by Justice Pritinker Diwaker

02/08/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.11.2014 passed by the learned III Additional Sessions Judge, Surajpur in S.T. No.14/2013 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life, pay a fine of Rs.500/- and RI for three years, to pay a fine of Rs.200/- with default stipulations respectively.
2. As per prosecution case, on 5.6.2013 the appellant is said to have caused several club injuries on the body of his wife Kuntibai (since deceased) resulting in her death. Dehati merg (Ex.P/6) was lodged on 6.6.2013 by the appellant informing the

police that on 5.6.2013 since morning the deceased had been consuming excessive liquor, she did not even prepare food which led to quarrel between them and then both of them slept without having their meals. At about 6 pm when he woke up he found his wife dead and then informed about the same to his neighbours. Based on this, numbered merg Ex.P/7 was recorded on 6.6.2013. Inquest over the dead body was conducted on 6.6.2013 vide Ex.P/2 and thereafter the body was sent for postmortem which was conducted on the same day vide Ex.P/8 by PW-7 Dr. Rashmi Kumar. The autopsy surgeon found presence of rigor mortis all over the body, both eyes were closed and pupil dilated and fixed, mouth was open, teeth clenched; one abrasion on neck, multiple bruises on both arms; multiple bruises on both legs; one lacerated wound below the abdomen and one contusion on left side of chest. In her opinion, the cause of death was coma and shock due to internal hemorrhage from external injuries over body. On 8.6.2013 memorandum of the appellant was recorded vide Ex.P/3 which led to recovery of one club having stains like blood. However, there is no FSL report. While framing charge, the trial Court charged the appellant under Sections 302 & 201 of IPC.

3. The prosecution in order to bring home the charges levelled against the accused/appellant examined 8 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.
4. After hearing counsel for the parties and considering the material

available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.

5. Learned counsel for the accused/appellant submits that;-

- there is no eyewitness to the incident and conviction of appellant is based on the circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed murder of the deceased.
- that the deceased appears to have died after sustaining fall and this fact has been admitted by the autopsy surgeon (PW-7) in her Court statement.
- even if the entire prosecution case is taken as it is, the appellant can not be convicted under Section 302 of IPC and it appears that during the course of quarrel between the two, the appellant gave certain club blows to the deceased which unfortunately resulted in her death. However there was no intention on the part of the appellant to commit murder of his wife/deceased and therefore, at best he can be held guilty under Section 304 Part-I or II of IPC.

6. On the other hand, learned counsel appearing for the State supporting the impugned judgment submits as under:

- (i) that present is a case of house murder but the appellant

has failed to offer any explanation in his statement u/s 313 of CrPC as to how and under what circumstances his wife suffered such injuries and died.

(ii) that the appellant gave false information to the police while lodging Dehati merg wherein he has stated that on the date of incident he and his wife/deceased had consumed liquor, thereafter they slept and at about 6 pm when he woke up he found her lying dead. However, in the postmortem report no liquor was found in the body of the deceased and as such, giving of this false information to the police points towards the guilt of the appellant and serves as an additional link in the chain of circumstantial evidence.

(iii) that considering the nature and extent of injuries caused by the appellant and the manner in which she was done to death, conviction of the appellant under Section 302 of IPC is strictly in accordance with law.

7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
8. PW-1 Shyambai, neighbour of the appellant, has stated that when she had gone to take bath in the village pond, the accused/appellant and the deceased were entering their house and from the village pond she went to the market. She states that the deceased was in the habit of consuming liquor and used to be found lying anywhere in the village. PW-2 Chandrabhan is a witness to inquest (Ex.P/2), memorandum of the appellant Ex.P/3 and seizure Ex.P/4, however, he has turned hostile. PW-3 Digamber Prasad, witness to memorandum and seizure, has

also turned hostile. PW-4 Mahesh is a villager who has stated that when he enquired from the appellant as to how the deceased died, he did not disclose anything to him. PW-5 Radhe, cousin of the deceased, reached the place of occurrence after coming to know about the incident. PW-6 KS Paikra did part of investigation. PW-8 Devendra Kumar Singh, investigating officer, has duly supported the prosecution case.

9. PW-7 Dr. Rashmi Kumar conducted postmortem on the body of the deceased on 6.6.2013 vide Ex.P/8 and noticed presence of rigor mortis all over the body, both eyes were closed and pupil dilated and fixed, mouth was open, teeth clenched; one abrasion on neck, multiple bruises on both arms; multiple bruises on both legs; one lacerated wound below the abdomen and one contusion on left side of chest. In her opinion, the cause of death was coma and shock due to internal hemorrhage from external injuries over body. Initially she has stated that the injuries sustained by the deceased could have been caused due to fall into bushes, however, on further examination by the prosecution she admits that all these injuries could not have been caused due to fall into bushes and that her death was homicidal in nature.

10. In the case in hand, there is no eye witness to the incident, the incident took place inside the house of appellant and the case of prosecution rests upon circumstantial evidence. It is now well settled that the circumstance from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the

crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with this innocence.

11. Close scrutiny of evidence of record makes it clear that the accused/appellant and the deceased being husband and wife were residing under the same roof and on the date of incident admittedly they both were present in the house in question where the deceased was found lying dead with injuries on her body. According to the autopsy surgeon PW-7 Dr. Rashmi Kumar, there were multiple abrasions, bruises & contusions on her neck, arms, legs as also one lacerated wound below the abdomen. In her opinion, the cause of death was coma and shock due to internal hemorrhage from external injuries over body. Though the defence has tried to establish that its a case of accidental death due to fall into bushes by giving such suggestions to the doctor, which was initially accepted by her but on further examination by the prosecution she stated that all these injuries could not have been caused due to fall into bushes and that her death was homicidal in nature. Thus, once it stands proved that the death was homicidal in nature, the crime was committed in the privacy the house where the appellant was the only inmate, by virtue of Section 106 of the Evidence Act, it was incumbent upon the appellant to explain as to how the deceased died a homicidal death as also how she sustained injuries on her person. However, instead of offering such explanation, the accused/appellant ventured to give false information to the police

that on the date of incident she had been consuming excessive liquor since morning and that when he woke up at about 6 pm he found her lying dead. The said information also stands falsified from the postmortem report of the deceased where there is no mention of liquor being found in the body of the deceased. All these circumstances if taken together unerringly point towards the guilt of the accused that it is he who killed the deceased.

12. As regards the argument that in the facts and circumstances of the case, at best the appellant is liable to be convicted under Section 304 Part-I or II of IPC, the same is not acceptable to us. There is nothing on record to show that the incident occurred all of a sudden in the heat of passion upon a sudden quarrel between the deceased and the appellant or that there was any such provocation by the deceased to the appellant which deprived him of the power of self-control leading to commission of the offence. What happened within the four corners of the house in question was within the special knowledge of the appellant, but instead of disclosing the real facts he chose to give false information to the police. This apart, considering the nature and extent of injuries, the manner in which the crime was executed as well as the conduct of the appellant, we are of the opinion that under no circumstance the case of the appellant is covered by any of the exceptions to Section 300 of IPC and his conviction under Section 302 of IPC appears to be strictly in accordance with law. Similarly, his conviction u/s 201 of IPC for giving false information to the police regarding the offence is also just and proper.

13. In the result, we find no substance in the appeal and the same is, hereby, dismissed. Since the accused/appellant is already in custody, there is no need of his surrender, arrest etc.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Gautam Chourdiya)
Judge

Khan