

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 101 of 2015

- Poshan Yadav S/o Tek Singh Yadav Aged About 30 Years R/o Village Chouranga, PS Simga, Distt. Baloda Bazar C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through PS Simga, Distt. Baloda Bazar C.G.

---- Respondent

For Appellant	:	Shri Suresh Verma, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, P.L.

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

Judgment on Board by Justice Pritinker Diwaker

31/07/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 10.12.2014 passed by the Additional Sessions Judge, Bhatapara, Distt. Baloda Bazar (CG) in ST No.H-08/2014, convicting the appellant under Section 302 of IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.2000/- with default stipulation.

02. In the present case, name of the deceased is Shantibai, wife of the accused/appellant. It is alleged that on 29.12.2013 at about 8 pm the appellant and the deceased had a quarrel and witnessing the said quarrel, mother of the appellant Dukalhinbai (DW-1) came out from the house shouting "appellant is killing the deceased". At the relevant time,

the complainant Keshav (PW-1), Umesh (PW-4), Deepnarayan (not examined) and Chhotu (PW-3) were sitting outside the house and upon hearing the shout of DW-1, they rushed to the room of the appellant and saw the appellant sitting on the chest of the deceased and pressing her neck. The witnesses made an attempt to intervene in the matter, however, they were asked to go away by the appellant. At the instance of PW-1 Keshav, Dehati Nalishi (Ex.P/2) was recorded on 29.12.2013 at 11 pm. Immediately thereafter at 11.10 pm Dehati Merg (Ex.P/1) was recorded and numbered merg Ex.P/9 was also registered on 30.12.2013 at 00.45 hours. Inquest on the dead body was conducted vide Ex.P/6 on 30.12.2013 and thereafter, the dead body was sent for postmortem which was conducted on the same day vide Ex.P/10 by PW-7 Dr. A. Sharma. The autopsy surgeon noticed multiple scratch marks over the neck, mark of rope was also seen on neck and that hyoid bone was broken. In his opinion, the cause of death was asphyxia, however, in respect of nature of death, the doctor opined that it may be homicidal or suicidal and will be ascertained through police investigation. While framing charge, the trial Judge charged the appellant under Section 302 of IPC.

03. So as to hold the accused guilty, the prosecution examined 9 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. In his defence, he examined Dukalhinbai as DW-1.

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 in para-1 of this judgment.

05. Counsel for the appellant submits as under:

- that the most important witness of the prosecution Smt. Dukalhinbai has not been examined by the prosecution and she was examined as DW-1. This witness has categorically stated that she saw the deceased lying in the house and at that time the door was closed from inside and the accused was not there.
- that the evidence of other so-called eyewitnesses is also not of such a nature which could uphold the conviction of the appellant.
- that the postmortem report of the deceased also does not support the prosecution case.
- that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part-I or II of IPC because the incident occurred all of a sudden in the heat of passion without there being any premeditation on the part of the appellant to commit murder of his wife.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

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

08. PW-1 Keshav is an eyewitness to the incident and the first informant. He has stated that at the relevant time he along with Umesh

(PW-4), Deepnarayan, Ravi and Chhotu (PW-3) were sitting near the pond and warming themselves by fire. At that time, mother of the appellant came there shouting, "appellant is killing Shantibai" and sought for help, on which they went to save Shantibai, found her lying on the floor and the appellant keeping one leg on her chest and another on the floor. The appellant was pressing the neck of the deceased with his hands. Seeing them the appellant asked them to run away from there and therefore, they went out and informed about the incident to Kotwar Rupendra (PW-2). In cross-examination, but for minor contradictions he remained firm and reiterated as to the manner in which the deceased was killed by the appellant.

09. PW-2 Kotwar has stated that he was informed by Dukalhinbai that her son was killing the deceased. PW-3 Chhotu in examination-in-chief has though supported the prosecution case but in para-7 has denied the suggestion that he witnessed the incident. PW-4 Umesh, other eyewitness to the incident, has made almost similar statement as has been made by PW-1 and described as to the manner in which the deceased was done to death by the appellant. PW-7 Dr. A. Sharma conducted postmortem on the body of the deceased on 30.12.2013 vide Ex.P/10 and noticed multiple scratch marks as well as mark of rope on neck and fracture of hyoid bone. In his opinion, the cause of death was asphyxia, however, in respect of nature of death, the doctor opined that it may be homicidal or suicidal and will be ascertained through police investigation. PW-8 RD Sahu, ASI, assisted in the investigation. PW-9 Narendra Kumar Banchhor, investigating officer, has supported the prosecution case.

10. DW-1 Dukalhinbai, mother of the appellant, has stated that after having his meals the appellant left the house and when she (this witness) woke up to attend the call of nature, she saw the deceased lying dead in her room, the door was bolted from inside and at that time the accused/appellant was not there. In cross-examination she, however, states that she was sleeping in her room whereas the appellant and the deceased were sleeping in a separate room and no one else was there.

11. Close scrutiny of the evidence makes it clear that on 29.12.2013 it is the accused/appellant who killed his wife Shantibai by pressing her neck. The incident has been witnessed by PW-1 Keshav, PW-3 Chhotu and PW-4 Umesh. However, PW-1 & PW-4 have fully supported the prosecution case and have described as to the manner in which the deceased was done to death by the appellant. Mother of the appellant Dukalhinbai (DW-1) has though not been examined by the prosecution and has been examined as a defence witness where she has stated that at the time of incident the appellant was not present in the house, but in view of the unrebutted evidence of PW-1 & PW-4 coupled with the medical evidence duly corroborating the same, the evidence of DW-1 appears to be a bit unnatural and does not appeal to reason, particularly considering the fact that at one place she states about absence of the appellant at the relevant time whereas at another place she admits the fact that at the relevant time the appellant and the deceased were sleeping in one room and she was sleeping in a separate room in the house in question. Thus, if viewed from another angle, present case falls in the category of "house murder" and in such

an eventuality, the burden lies on the accused/appellant to explain as under what circumstances the deceased died as required under Section 106 of the Evidence Act. However, in his statement recorded u/s 313 of CrPC the appellant instead of offering explanation to the incriminating circumstances has made bald denial of all the proved circumstances inculcating him. Thus, considering the overall evidence, involvement of the appellant in the crime in question stands proved beyond all reasonable doubt.

12. As regards the argument that in the facts and circumstances of the case, the appellant can at best be convicted under Section 304 Part-I or II of IPC, we find no force in it. Considering the manner in which the appellant killed the deceased despite intervention by the witnesses by pressing her neck with such a force that her hyoid bone got fractured which led to her instantaneous death, it can safely be inferred that while doing so, he not only had the intention to kill the deceased but also had every knowledge that such an act of his would result in the death of his wife/deceased. Being so, his conviction under Section 302 of IPC cannot be faulted with.

13. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As the appellant is already in jail, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Gautam Chourdiya)
Judge