

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 195 of 2015

- Rambriksh Bargah S/o Munniram Bargah Aged About 50 Years
Occupation Cultivator, R/o Village Bakila, P.S. Lundra Distt. Surguja C.G.,
Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through PS Lundra Distt. Surguja C.G.

---- Respondent

For Appellant
For Respondent

Shri H.S. Ahluwalia, Advocate
Shri Adil Minhaj, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

13/08/2018

1. By this criminal appeal, the accused/appellant has challenged the legality and propriety of the judgment of conviction and order of sentence dated 4.12.2014 passed by the Sessions Judge, Surguja in S.T. No.31/14 by which he has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default to undergo additional RI for 3 months.
2. In the present case name of deceased is Malho Bargah.
3. Briefly stated, the case of the prosecution is that accused/appellant and deceased are husband and wife and they were residing in village Bakila. It is further case of the prosecution that in the night intervening 28-

29/12/2013 the accused/appellant committed murder of his wife by causing as many as 21 injuries on various parts of her body by hammer & crowbar. After killing his wife, the accused/appellant went to his brother Thakur and informed him that the deceased died due to injuries sustained by her on account of her head being hit against the door-frame of house. Merg intimation (Ex.P-16) was recorded at the instance of Lalsai (PW-6), brother of deceased, who came to know about the death of deceased from the nephew of accused/appellant. Inquest (Ex.P-2) was prepared on 29.12.2013 on the body of deceased. Body was sent for post-mortem examination which was conducted by Dr. Jai Kumar Patel (PW-3) on 30.12.2013 and he noticed following injuries:-

- Bruise of 7x1.5 cm on right side of abdomen.
- Abrasion of 6x4cm in size on right wrist
- Abrasion of 4x2cm in size on left elbow
- Bruise of 4x3 cm in size on right knee, lateral & anterior side.
- Bruise of 2x1cm in size on right mid sheen, lateral part.
- Abrasion of 2x1cm in size on left knee
- Bruise of 2x2.5cm in size on lateral part of right thigh.
- Bruise of 3x2cm in size on right thigh, 5cm below Injury No.7.
- Bruise of 2x2cm on left side of waist.
- Abrasion of 1x1cm in size on left elbow exterior aspect.
- Bruise of 2x2cm in size on medial part of left elbow
- Abrasion of 8x7cm in size on upper surface of right elbow
- Abrasion of 12x1-1.5cm in size, irregular, on back
- Abrasion of 3x2cm in size over on medial aspect of right scapula.
- lacerated wound of 4x3cm in size on lower part of mid occipital region
- Bruise of 0.5x0.5cm on left lateral side of neck.
- lacerated wound of 2x1cm in size on occipital region
- Abrasion of 1x1cm in size on left eye, lateral corner
- Bruise of 6x6cm in size, nearly circular and covering left upper part of forehead.

- Small lacerated wound of 0.5x0.5cm in size on forehead
- Bruise of 4x3cm in size on right maxillary prominence lateral surface.

The cause of death assigned by the doctor was cardio respiratory arrest and death was homicidal in nature. On the memorandum of accused/appellant (Ex.P-4), one hammer, crowbar, saree, cover of quilt & vest were seized vide seizure memo Ex.P-5. Seized articles were sent for chemical examination to the Forensic Science Laboratory and as per report of FSL, the articles seized at the instance of accused/appellant were found to be bloodstained.

4. After completion of investigation, charge sheet for the offences punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed by the trial Court against the accused/appellant. To substantiate the charge, the prosecution has examined 07 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.
5. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;
 - it is not a case of direct evidence but the conviction of the appellant is entirely founded on circumstantial evidence but the chain of circumstances relied upon by the prosecution is not such which leads to the hypotheses of guilt of the appellant only and therefore he is entitled to be acquitted.
 - Though blood on the articles seized at the instance of appellant was found in the report of F.S.L, but the prosecution has utterly failed to establish origin of the blood and thus the recovery is immaterial.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He submits that the deceased received as many as 21 injuries inside the house; the accused/appellant had given a false information that the deceased had received injuries on account of her head being hit against the door-frame, whereas the autopsy surgeon has categorically stated that the injuries sustained by the deceased could not have been possible from the door frame. The submission of false information clearly shows that deceased had not sustained injuries accidentally and it is the accused/appellant who caused grievous injuries to her by hammer & crowbar which resulted in her death. He further submits that though there is no serological report in respect of origin of human blood found on the hammer & crowbar seized at the instance of accused/appellant, but report of FSL is positive and the accused/appellant failed to offer any explanation as to how the blood came on these articles seized at his instance, therefore, absence of report of serologist is not fatal to the prosecution. He further submits that the manner in which assaults were carried out leave no doubt that accused/appellant had acted with the intention to kill the deceased, therefore, his conviction under Section 302 of IPC is just and proper.
8. We have heard counsel for the parties and perused the impugned judgment and record of the trial Court.
9. Bifna Bargah (PW-1) did not support the prosecution case and turned hostile.
10. Thakur Prasad (PW-2), sister of accused/appellant, has not supported the prosecution case and turned hostile. However, he has admitted that the accused/appellant was residing with the deceased in the village.

11. Dr. Jai Kumar Patel (PW-3) is the person who conducted post-mortem examination over the body of deceased vide Ex.P-10 and noticed the injuries as described above. He has denied the suggestion that injuries found on the body of deceased could be possible if the head of deceased is hit against the door-frame. He has further denied suggestion that even if the head of any person is repeatedly hit against a door-frame, the injuries as suffered by the deceased could not have been possible.
12. Anamika Rajwade (PW-4) is the Patwari who prepared the spot map vide Ex.P-14. Komo Das (PW-5) is the village Kotwar. He is witness of memorandum (Ex.P-4) and seizure memo (Ex.P-5), however, he has not supported the prosecution case and turned hostile.
13. Lalsai (PW-6), sister of deceased, is the person who gave intimation to the police regarding the death of deceased. Nothing incriminating has been deposed by this witness against the accused/appellant.
14. S.L. Nagendra (PW-7) is the Investigating Officer and he has duly supported the prosecution case.
15. Close scrutiny of the evidence available on record makes it clear that accused/appellant and deceased, being husband & wife, were residing together under the same roof and on 29.12.2013 the deceased was found lying dead in the house with 21 injuries over her body. Accused/appellant informed Thakur Prasad (PW-2), brother of deceased, that the deceased died due to injuries sustained by her on account of her head being hit against the door-frame of house. However, Dr. Jai Kumar Patel (PW-3), who conducted post-mortem examination over the body of deceased vide Ex.P-10, had opined that cause of death was cardio respiratory arrest and death was homicidal in nature. This witness (PW-3) has denied the suggestion that injuries found on the body of deceased could be possible if the head of deceased is hit against the door-frame. He has further

denied suggestion that even if the head of any person is repeatedly hit against a door-frame, the injuries as suffered by the deceased could not have been possible. Hence, it is established by medical evidence that death of deceased was homicidal and not accidental, as tried to be depicted by the accused/appellant. Thus, the information given by accused/appellant that the deceased sustained injuries on account of her head being hit against the door-frame of house stands falsified in view of the medical evidence and therefore it is an incriminating circumstance against the appellant. Since the information given by accused/appellant regarding the manner in which the deceased sustained injuries stands falsified by medical evidence, therefore, this itself is sufficient to say that false information given by accused/appellant is sufficient to establish the guilt against him.

Apart from above, during the crucial period the deceased and accused/appellant were only inmates of the house where the deceased was found lying dead with several injuries on her body and as per post mortem report, the death of deceased was homicidal in nature, and therefore, in view of the provisions of Section 106 of the Evidence Act, it was incumbent upon the accused/ appellant to explain as to how the deceased died a homicidal death as also how the deceased sustained injuries. However, instead of offering such explanation, the accused/appellant ventured to give false information regarding the manner in which the deceased sustained injuries turning the needle of suspicion towards him. This circumstance, therefore, provides missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.

Furthermore, one hammer and crowbar were seized at the instance of accused/appellant, the same were sent to the chemical examiner, who found that the same are stained with human blood. When these weapons

were sent to the autopsy surgeon for ascertaining as to whether the injuries found on the body of deceased could be inflicted by the same, he specifically stated, after examining the same, that the injuries sustained by the deceased could be possible by those weapons. However, there is no explanation from the accused/appellant as to how the blood stains are there in the hammer & crowbar seized at his instance. True it is that there is no serological report opining the origin of blood found on the recovered plastic pipe, but the bloodstained weapons were recovered on the basis of information given by accused/appellant and therefore, he has to explain the blood stains found therein, which he failed to do so, and therefore it has to be inferred that the blood stains found on the hammer & crowbar (weapons of offence) are that of the deceased. Thus, the recovery of bloodstained weapons at the instance of appellant is an additional link in the chain of circumstances against the accused/appellant.

16. Thus, the above analysis clearly shows that the circumstances projected by the prosecution complete the chain of link and established that, in all probabilities, the act must have been done by the accused/appellant and none else. Hence, the findings recorded by the trial Court convicting the accused/appellant under Section 302 IPC are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.
17. In the result, we find no merits in the appeal and the same is, hereby, dismissed. Since the accused/appellant is already in custody, there is no need of his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

roshan/-