

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 236 of 2015

- Daras Ram Rathiya S/o Chakar Singh Rathiya, Aged About 30 Years, Caste Kanwar, Occupation Rajmistri, R/o Village Aamapali, Tahsil And Police Station Lailunga, District Raigarh, C.G. Presently R/o At Village Tihlirampur, Police Station Tamnar, District Raigarh Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh S/o Through Station House Officer, Police Station Tamnar, District Raigarh C.G. , Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri B.K. Chakraborty, Advocate
Shri Rahul Tamaskar, 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 27.12.2014 passed by the Sessions Judge, District Raigarh in S.T. No.185/14 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.5,000/-, in default to undergo additional RI for 2 years.
2. In the present case name of deceased is Santoshi, wife of accused/appellant.
3. Briefly stated, the case of the prosecution is that Santosh Bai, second wife

of accused/appellant, was found dead in her house on 19.7.2014 at about 8 in the night. On that day itself at about 11 in the night, FIR (Ex.P-1) was lodged by Bhanu Prasad (PW-1), neighbour of deceased, against the accused/appellant under Section 302 of IPC. Inquest (Ex.P-3) was prepared over the body on 20.7.2014. Body was sent for post-mortem examination which was conducted by Dr. Savitri Tigga (PW-6) on 20.7.2014 and she noticed following injuries:-

- Black colour abrasion at the right temporal region of 2x1.5cm in size.
- Scratch at right side of skull of 2x2.5cm in size.
- Multiple small abrasions at right temporal region of 1x 0.5 & 0.5x0.5cm in size.
- Bruise over left ear, left upper cheek.

The cause of death assigned by the doctor was head injury (fracture of skull) leading to cardio respiratory failure and death was homicidal in nature. After completion of investigation, charge sheet for the offence 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.

4. 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.
5. 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.

- the deceased died in her house on account of the injury sustained by her as a result of fall on the ground in drunken condition.
- even if the entire prosecution case is accepted to be true, the appellant is liable to be convicted under any lesser offence and not under Section 302 of IPC as has been done by the trial Court.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 302 of IPC are based on due appreciation of the evidence on record and there is no infirmity in the same warranting interference in exercise of appellate jurisdiction.

7. We have heard counsel for the parties and perused the impugned judgment and record of the trial Court.

8. Bhanu Prasad Sahu (PW-1), lodger of FIR & neighbour of accused & deceased, has stated that on coming to know that accused/appellant has been beating his wife (deceased) for a long time, he along with his nephew Narendra & brother Laxmi Sahu had gone to the house of accused/appellant and found the deceased lying in dead condition. Injury was present on the face and blood was oozing from it. At that time, the accused was present on the spot and he was in drunken condition. The accused tried to flee but stopped by him. Thereafter he went to the police station and lodged the FIR (Ex.P-1). This witness remained firm in his cross-examination.

9. Mahesh Kumar (PW-2) did not support the prosecution case and turned hostile.

10. Narendra Sahu (PW-3) is the owner of the house wherein the accused and the deceased resided together as tenants. He has stated that on

coming to know about the incident from Mahesh over telephone, he had gone to the house of accused/appellant, at that time accused/appellant was sitting inside the house and on being asked, the accused told that he has given 2-3 slaps to his wife and she is not getting up. Thereafter, he along with others had gone to the police station to lodge the report of the incident.

11. Laxmi Prasad Sahu (PW-4) has deposed in the similar manner as has been deposed by PW-1 & PW-3.

12. Kumar Prasad Yadav (PW-5) is the person in whose house earlier the accused and the deceased were residing as tenants, however, as they used to quarrel with each other after consuming alcohol, therefore, he ousted them from his house. Though he has not supported the prosecution case and turned hostile, but admitted in the cross-examination that accused used to quarrel with his wife (deceased) frequently.

13. Dr. Savitri Tigga (PW-6) is the person who conducted post-mortem of the body of deceased and noticed the injuries as mentioned above. She opined that the cause of death was head injury (fracture of skull) leading cardio respiratory failure and death was homicidal in nature. She has further opined that all the injuries present on the body of deceased were ante mortem in nature.

14. R.K. Mishra (PW-7) is the police person who recorded FIR (Ex.P-1) and thereafter sent a copy of the same to the Court of Judicial Magistrate 1st Class, Gharghoda and obtained receipt thereof.

15. B.P. Mishra (PW-8) is the investigating officer who has duly supported the prosecution case.

16. From the evidence available on record it is clear that the deceased and the appellant were residing together in a tenanted accommodation in

village Tihirampur and were frequently engaged in quarrels. On 19.7.2014 the deceased was found dead inside the house which was in the occupation of two only (deceased and appellant). According to autopsy surgeon, she noticed multiple abrasions including fracture of skull on the body of deceased and opined the death to be homicidal in nature. Evidence further reflects that at the relevant time the accused/appellant was the only surviving inmate of the said house. Thus, once the death is proved to be homicidal, it has become obligatory on the part of accused/appellant to explain properly and convincingly as to how the deceased sustained injuries and died because apart from him there was no third person in the house at the relevant time. However, instead of being fair while explaining the things, the accused/appellant tried to make out the defence that on account of fall on the ground in a drunken condition, she suffered injuries which ultimately resulted in her death. In the cases involving house murder, it has time and again been held by the Apex Court that it is the inmate (s) of the house who has to offer satisfactory explanation as to how the death occurred but in this case instead of discharging his legal burden, the accused remained indulging in an unsuccessful bid of equivocation, which is not permissible in law. This apart, accused/appellant had confessed before Bhanu Prasad (PW-1) & Narendra Sahu (PW- 3) that he had given 2-3 slaps to the deceased and she is not getting up. From the evidence of these witnesses, who have duly supported the prosecution case, it appears that the confession made by accused/appellant was voluntary. The defence has not been able to elicit anything from them to indicate that the confession was not voluntary. Hence, the conduct of accused/appellant in coming forward with a false explanation regarding the manner in which the deceased had sustained injuries coupled with his confessional statement is sufficient to

link accused/appellant with the murder of his wife (deceased).

17. In view of the above, we are of the considered view that 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.

18. 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/-