

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 380 of 2015

Reserved on : 14/08/2018

Delivered on : 25/09/2018

- Maddu Diler, S/o Raipurha Diler, aged about 27 years, R/o Labhandi Basti, P/S Telibandha, District Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through Telibandha Police Station, District Raipur (C.G.)

---- Respondent

For Appellant	:	Shri B.M. Rao, Advocate
For Respondent/State	:	Shri V.A. Govardhan, Penal Lawyer

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

C.A.V. Judgment

Per Gautam Chourdiya, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 19.02.2015 passed by 2nd Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No.170/2014, whereby, the Appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Imprisonment for life and fine Rs.5,000/-, in default of payment additional R.I. for 6 months.

2. In the present case, the name of deceased is Pooja Diler. Case of the prosecution, in brief, is that on the date of incident i.e. 21.05.2014 at about 4.30 to 5.00 pm near Tanbe village Labhandi accused/Appellant Maddu Diler was

assaulting his wife Pooja Diler by cement brick and wooden stick because of which she fell down in the courtyard of the house of the accused/Appellant. At that time, Satyavan Baghel (PW-7), Manoj Chandrakar (PW-2), Santuram Aadil (PW-5), Kallu @ Rakesh (PW-1), Satya Narayan Kurrey (PW-13), Khanna Sultan (PW-8), Naresh Bharti (PW-10) and others neighbors had seen the incident. Due to beating by accused/Appellant to his wife she became unconscious, immediately Satyavan Baghel (PW-7) called 108 ambulance and took her to District Hospital, Raipur for treatment where she was declared dead and OPD report (Ex.P-11) was prepared. Prior to death of the deceased, Satyavan Baghel (PW-7) lodged unnumbered *Dehati Nalishi* No. 0/2000 vide (Ex.P-12) at Telibhanda Police Station. Merg No.23/14 vide (Ex.P-21) was registered at the instance of constable Sunil Yadav. Assistant Sub Inspector of Police Station, Telibhanda lodged the FIR (Ex.P-20) and merg under Section 307 of IPC against the accused/Appellant.

3. Inquest report (Ex.P-2) was prepared in presence of witnesses. Postmortem was conducted by Dr. Nitin Barmate (PW-9) vide Ex.P-15, and he found following injuries:

- (1) Abrasion present over face, around lateral angle of right eye, 3 x 3 cm reddish,
- (2) Abrasion present over right angle of mouth and right upper lip, 2.2 x 1.2 cm, reddish,
- (3) Abrasion present over face, 1 cm below nose, 1 x 1 cm reddish,
- (4) Two abrasion present over left zygomatic region of face, 1.5 x 1 cm and 1 x 0.3 cm, reddish,
- (5) Abrasion present over left mandibular region of face, 0.6 x 0.1 cm, reddish,
- (6) Contusion present over left side of chin and mandibular region, 4 x 4 cm, reddish.

- (7) Two abrasion present over right sub mandibular region, 4 cm below chin, 0.5 cm apart from each other, 0.6 x 0.5 cm each, reddish,
- (8) Two abrasion present over left shoulder, posterolateral by 2 x 2 cm & 1 x 1 cm, reddish,
- (9) Multiple abrasion present over right elbow joint, 1 x 1 cm to 0.5 x 0.51 cm, reddish,
- (10) Contusion present over right illicre region and upper 1/3rd of right thigh, 13 x 8 8.5 cm, reddish.
- (11) lacerated wound present over right illicre region, 1.5 cm above right anterior superior illicre spine, 2 x 0.5 cm x muscle deep, margin irregular and blood infiltrated.
- (12) Lacerated wound present over right illicer region, 0.6 cm above right anterior superior illicre spine, 2 x 0.3 cm x muscle deep. Margin irregular and blood infiltrated.
- (13) Two abrasion present over left illicre region, 4 x 4 cm and 3 x 2.7 cm, reddish.
- (14) Multiple abrasion present over right thigh, 6 x 6 cm to 1 x 1 cm, reddish.
- (15) Multiple abrasion present over right knee joint, 4 x 3 to 1 x 1 cm, reddish.
- (16) Abrasion present over upper 1/3rd of right leg, 3 x 1.5 cm, reddish.
- (17) Abrasion present over middle 1/3rd of right leg, 3 x 0.5 cm, reddish.
- (18) Multiple abrasion present over left leg, 3 x 3 cm to 1 x 1 cm, reddish.
- (19) Abrasion present over right scapular region of back, 2 x 1 cm, reddish.
- (20) Abrasion present over left scapular region of back, 1 x 1 cm, reddish.
- (21) Abrasion present over left side of lower back, 2.5 x 1 cm, reddish.

(22) Tear (lacerated wound) present over vaginal region (wall) near urethral opening, 1 x 0.6 cm x tissue deep. Margin irregular and blood infiltrated.

Due to these injuries she died and her death was homicidal.

4. As per memorandum (Ex.P-4) cement brick and piece of wooden stick were seized from accused/Appellant, seizure memo (Ex.P-5) was prepared and accused/Appellant was arrested on 22.05.2014 vide Ex.P-6. According to FSL report (Ex.C-1) human blood was found on the piece of wooden stick, soil and nighty of the deceased. After completion of investigation including recording of statements of eye witnesses by Investigating Officer under Section 161 of Cr.P.C. Charge-sheet was filed against the accused/Appellant under Section 302 of IPC.

5. So as to hold the accused/appellant guilty, the prosecution has examined as many as 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Criminal Code of Procedure, in which he denied the guilt and pleaded innocence and false implication. In defence accused/Appellant has examined only one witness namely Raipurha (DW-1) in support of his case.

7. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant mentioned as para-1 of this judgment, hence this appeal.

8. Counsel for the accused/Appellant submits that:-

1. Learned trial Court has committed an error to convict the accused/Appellant.
2. Learned trial Court did not appreciate all the evidences available on record. Most of the eye witnesses have turned

hostile and do not support the prosecution story.

3. Deceased Pooja Diler wife of accused/Appellant was alcoholic and the accused/Appellant was not present at the time of incident. Accused/Appellant was falsely implicated in this case. The impugned judgment of the trial Court was against the facts and law available on record which is liable to be set aside.

9. On the other hand, learned Penal Lawyer appearing on behalf of the State opposed these arguments and supported the judgment of the trial Court. It has been argued by the State counsel that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

10. We have heard the counsel for the respective parties and perused the evidence available on record.

11. The death of Pooja Diler wife of accused/Appellant occurred on 21.05.2014 and merg intimation (Ex.P-21) was recorded by Ratan Singh Netam (PW-12) and thereafter inquest report (Ex.P-2) was prepared in presence of Satyavan Baghel (PW-7) by Ratan Singh Netam (PW-12). Thereafter, dead body was handed over as per Ex.P-7 for rituals. As per inquest report (Ex.P-2), multiple injuries were found on the body of the deceased and this is not disputed by the defence. Dr. Nitin Barmate (PW-9) conducted the postmortem and opined that the death occurred due to multiple injuries, found on the body of the deceased as mentioned in para 3 of this judgment and the death was homicidal in nature.

12. Prosecution witnesses Kallu @ Rakesh (PW-1), Manoj Chandrakar (PW-2), Savita (PW-5), Satyavan Baghel (PW-7), Khanna Sultan (PW-8) and Naresh Bharti (PW-10) have stated that they have seen the wife of accused/Appellant

lying in the courtyard in injured condition and immediately thereafter Satyavan Baghel (PW-7) called the ambulance and informed the police about the incident on phone. After receiving the information about the incident Police reached the spot and found that accused/Appellant had badly beaten his wife by wooden stick and cement brick. Injured Pooja Diler was taken to the hospital for treatment where she was declared dead. After knowing the fact that the deceased has died, FIR was lodged against the accused/Appellant under Section 307 of IPC. This fact is not disputed by defence.

13. Prosecution case is based on eye witnesses account and memorandum. Kallu @ Rakesh (PW-1), Manoj Chandrakar (PW-2), Savita (PW-4) and Satyavan Baghel (PW-7) have turned hostile and not supported the prosecution case.

14. Santuram Aadil (PW-5) stated that at about 4.00 pm he was going to the pond for defecation then he saw the accused/Appellant beating his wife with a stick. When he came back from defecation he saw that there was a crowd near the accused/Appellant's house. When he went to the crowd he saw that the accused/Appellant's wife was lying unconscious, then the Police came and ambulance reached. They sent Pooja Diler to the Hospital. Santuran Aadil (PW-5) affirms this fact in his statement and in cross examination as well. Khanna Sultan (PW-8) stated in his statement when he was near the house of the accused/Appellant he saw that the accused/Appellant was quarreling with his wife Pooja Diler, after sometime when he came back he saw that there is a crowd near the accused/Appellant's house. Wife of the accused/Appellant was sent to the hospital for treatment in ambulance and he also affirms this fact in his deposition. Naresh Bharti (PW-10) also stated in his statement that on the date of incident near about 4.30 to 5.00 pm he heard accused/Appellant beating his wife and his wife was lying in the courtyard of the accused/Appellant's house. Satya Narayan Kurrey (PW-13) also supported prosecution case that at

about 4.00 to 4.30 pm, he was sitting near the Ghasidas temple in village Labhandi with his friends. When he heard the noise of quarrel near the accused/Appellant's house, he went there and saw the accused/Appellant holding a wooden stick and beating his wife with that, at that time Pooja Diler wore a nighty. Due to beating his wife by accused/Appellant, Pooja Diler fell into the ground inside the house, which was visible from outside. They all have supported the prosecution story as they all are eye witnesses to this incident.

15. There is no reason to disbelieve the statements of Santuram Aadil (PW-5), Khanna Sultan (PW-8), Naresh Bharti (PW-10) and Satya Narayan Kurrey (PW-13) eye witnesses of this case as they have no enmity with the accused/Appellant. They all are neighbors of the accused/Appellant residing in the same area and there is no major contradictions or omissions in the statements of all the above eye witnesses.

16. *Dehati Nalishi* (Ex.P-12) and FIR (Ex.P-20) were promptly lodged by Satyavan Baghel (PW-7) and Ex.P-20 specifically mentioned the name of the eye witnesses present when the accused/Appellant was assaulting his wife. However, Satyavan Baghel (PW-7) has turned hostile, but other eye witnesses have duly supported the prosecution story beyond all reasonable doubts that accused/Appellant was assaulting his wife and the injuries were caused by the accused/Appellant to his wife, which led to her death. As per memorandum (Ex.P-4) of the accused/Appellant, piece of wooden stick and cement brick were seized from him, however, the witness of memorandum report (Ex.P-4) has turned hostile.

17. There is no reason to disbelieve the statement of Ratan Singh Netam (PW-12) regarding memorandum report (Ex.P-4) and property seizure memo (Ex.P-5) as the same has not been challenged in cross examination and as per FSL report human blood was found on piece of wooden stick and nighty of the

deceased and there is no explanation from the accused/Appellant about that. Spot map (Ex.P-9) was proved by Nomeswar Verma (PW-3) and there is no dispute regarding the place of the incident.

18. Raipurha (DW-1) father of the accused/Appellant was also examined by the Appellant in support of his defence. Raipurha (DW-1) stated that his daughter-in-law was addicted to alcohol and used to quarrel with the other peoples daily. Raipurha (DW-1) further stated that at the time of incident accused/Appellant was not present at the place of incident as he was in his working place. In his cross examination, Raipurha (DW-1) admitted this fact that when incident happened, he was not present so plea of alibi of accused/Appellant has no substance. Eye witnesses clearly stated that the accused/Appellant was assaulting his wife. We have gone through the entire evidence and material available on record which make it clear that it was the accused/Appellant who assaulted the deceased with the help of piece of wooden stick and cement brick and come to the conclusion that the learned trial Court has rightly convicted the Appellant/accused under Section 302 IPC.

19. We do not find any reason to interfere with the judgment of conviction and order of sentence passed by the trial Court. The appeal has no merits. The same deserves to be and is accordingly dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge