

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1387 of 2016****Judgment Reserved on 02/08/2018****Judgment Delivered on 06/ 09/2018**

- Pusana S/o Sadhuva Kodaku, aged about 50 Years, R/o Village Kotpali, Police Station- Balrampur, District- Balrampur-Ramanujganj, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh, Through Police Station- Balrampur, District- Balrampur-Ramanujganj, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Suresh Tandan, Advocate.
For State/Respondent	:	Shri Anil Pillai, Dy. A.G.

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 16.08.2016 passed by learned Additional Sessions Judge, Ramanujganj, District Balrampur-Ramanujganj, C.G. in Sessions Trial No.158/2011, whereby, the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 302 of Indian Penal Code.	R.I. for life and fine of Rs.500/- in default of payment of fine further R.I. for 50 days.

2. As per prosecution case on 19.02.2011 at 9:30 A.M., on the basis of information received from Baja Kodaku PW-2 merg intimation 11/2011 was recorded vide Ex.P-18. After Merg inquiry, on 22.02.2011 FIR Ex.P-12 was registered against appellant/accused under Sections 302 and 201 of IPC. The prosecution story is that on the date of incident i.e. 10.02.2011, accused/appellant quarreled with his wife Bhadani, aged about 45 years, and assaulted her by club, legs, hands and fists, as a result of which she became unconscious. Thereafter, accused/appellant and his son took Bhadani Bai inside the home, where in the next morning the deceased died and appellant/accused intimated to villagers and Baja Kodaku (co-brother of appellant) that the deceased has died due to pain in chest. After this information given by the accused/appellant to villagers, the dead body was buried as per rituals of their community. However, after 10 days the information was received by Baja Kodaku PW-2 from villagers i.e. Mangru, Shanichari that Bhadani died because the appellant/accused had beaten and assaulted her with club, legs, hands and fists. On this information given by Baja Kodaku PW-2, Merg Ex.P-18 was recorded on 19.02.2011 and FIR was lodged vide Ex.P-12 under Sections 302 & 201 of IPC. Dead body of the deceased was exhumed vide Ex.P-1 in presence of villagers and Ex.P-2 inquest report was prepared. Postmortem was conducted by Dr. R.S. Markam PW-6, who gave his report vide Ex.P-8. He noticed following injuries on the body of the deceased:-

- i) A oily like substance applied over the whole body which also in turmeric colour, whole body cool, face was

chapped & peeling of whole skin, Redish mark present on the nape of neck & post side of chest which showing the mark of injury. After pressing them it goes into depth without resistance, foul smell comes through the body.

ii) Fracture of III, IV, V left vertebral ribs and impingement into the post side of left and right lungs at the proximal to the thoracic vertebra.

3. Memorandum of the accused/appellant was recorded vide Ex.P-4. On the basis of memorandum, club was seized vide Ex.P-5. Spot Map Ex.P-6 was prepared by I.O, Kanhaiya Tiwari (PW-8). During the investigation it was found that in presence of Mangru and Shanichari accused/appellant assaulted his wife and after that she became unconscious. Thereafter, accused/appellant and his son took Bhadani in their home where in the next morning deceased died and accused/appellant intimated to villagers and Baja Kodaku (co-brother of appellant) that deceased died due to pain in chest.
4. After completion of investigation charge sheet was filed against the accused/appellant under Sections 302 & 201 of IPC. However, while framing charge the trial Court framed charge against the accused/appellant under Section 302 of IPC.
5. So as to hold the accused/appellant guilty, the prosecution examined 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C in which he denied the circumstances appearing against him in the prosecution case,

pleaded innocence and false implication.

6. 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.

7. Learned counsel for the appellant submits as under:

i) that appellant was convicted only on the statements of PW-3 Shanichari and PW-5 Mangru and both are not eye witnesses.

ii) that conduct of the accused/appellant was very normal after the incident.

iii) that nature of death of deceased was not stated by Doctor.

iv) that trial Court has committed error in appreciating the evidence of prosecution witnesses. No seizure was proved as required under the law and no blood stains proved on the club seized by the accused/appellant.

The impugned judgment has been passed ignoring the material facts and the law governing the field and therefore, the same is liable to be set aside.

8. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that the trial Court after due appreciation of the entire evidence on record has rightly

convicted the appellant/accused under Section 302 of IPC and there is nothing on record to disturb the said finding.

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

10. PW-6 Dr. R.S. Markam, the Autopsy Surgeon, has stated that death of the deceased was homicidal. In his statement i.e. para nos. 3, 4 & 5 he specifically proved that grievous injuries were there on the body of the deceased. According to him, cause of death was excessive bleeding, injury to internal parts of lungs that fracture of III, IV, V, left vertebral ribs and impingement into the post side of left and right lungs at the proximal to the thoracic vertebra and that the death was homicidal. His statement remains unchallenged in cross-examination. Further more in cross-examination, he has denied the suggestion that the injuries found on the body of the deceased could be caused as a result of her burial.

11. It is stated by PW-3 Shanichari in her statement that when appellant/accused was beating his wife by club, legs, hands and fists, she (Shanichari) immediately informed Mangru about the same and asked him to save the deceased (Bhadani). In her statement in para-2 she clearly admitted that when accused was beating his wife she was present. Thereafter, she requested Mangru to intervene in the matter. Next day accused/appellant falsely informed the villagers that the death of deceased was due to pain in chest. PW-3 Shanichari has remained firm in her cross-examination and

as such there is no reason to disbelieve this witness. PW-5 Mangru also supported the statement made by PW-3 Shanichari. He stated in his para-1 that when PW-3 Shanichari came to this witness and informed that accused/appellant was beating his wife, he rushed to the place and saw the appellant/accused holding club in his hand and at that time his wife (deceased) was lying on the floor. She was breathing slowly and next morning he heard that she died. He also confirmed this fact that accused/appellant had informed the villagers that due to illness his wife died. He also stated in para-2 that accused/appellant assaulted her and threw her on the floor and thereafter accused/appellant took away his wife with the help of his son to his home and next day he heard about the death of Bhadani. In his cross-examination this witness has further stated that it is the appellant who assaulted the deceased.

12. Thus from the above, it is evident that PW-3 Shanichari and PW-5 Mangru both are the eye witnesses to the incident and stated that Bhadani was beaten by the appellant/accused by club, legs, hands and fists. When accused/appellant was beating his wife, both were witnessing the same continuously till the accused/appellant took away his wife from the place of incident and next morning accused informed the villagers falsely that due to illness his wife has died. As per statement of the witnesses and Postmortem report, it is clearly proved that the death of deceased was homicidal. There is no reason to disbelieve the statements of PW-3 Shanichari and PW-5

Mangru, which further gets support from the Postmortem report of the deceased.

13. Counsel for the appellant argued that there is no evidence that blood was found on the club as there is no FSL report on record. Memorandum was recorded before PW-1 Balendra, who has been declared hostile by the prosecution and likewise, another witness to memorandum and seizure namely Rajesh Chaudhary (PW-4) has also turned hostile.

14. It is true that the witnesses of memorandum and seizure PW-1 Balendra and PW-4 Rajesh Chaudhary have turned hostile, however, they have admitted their signatures on the relevant documents. This apart PW-8 Kanhaiya Tiwari, the Investigating Officer has duly supported the memorandum and seizure proceedings.

15. Considering the over all facts and circumstances of the case, there is no reason to disbelieve the evidence of Investigating Officer (PW-8). It is true that the club seized at the instance of appellant/accused does not bear any blood stains, as there is no FSL in this regard. However, on this ground alone the entire prosecution case cannot be disbelieved, particularly when the eyewitnesses have specifically stated about the act of the appellant/accused and the same has been duly corroborated by the medical evidence as well.

16. For the reasons stated above, we are of the opinion that the findings of guilt recorded by the trial Court are based on

proper appreciation of the evidence adduced by the prosecution and there is no illegality or infirmity committed by the Court below requiring interference by this Court.

17. In the result, the appeal being without any substance is liable to be dismissed 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

Akhilesh