

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20-2-2019

Delivered on 28-3-2019

CRA No. 533 of 2009

- Bhagat Ram s/o. Sukh Ram Nagwanshi, aged about 35 years r/o. Rupdega, PS Raigarh at present r/o. Tulsi Nagar, Korba, PS Korba, Dist. Korba (CG).

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate Korba PS City Kotwali, Korba, Dist. Korba (CG).

---- Respondent

For Appellant : Mr. Manoj Mishra, Advocate

For respondent/State : Mr. Afroz Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 27-6-2009 passed by the 2nd Additional Sessions Judge (FTC), Korba District Korba (CG) in Session Trial No. 90 of 2007 wherein the said Court has convicted the appellant for the commission of offence under Section 304 Part II of the IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.2,000/- with default stipulations.

2. In the present case, name of the deceased is Basanti Bai. Said Basanti Bai died of drowning in a canal. The said deceased

was wife of the appellant. On investigation, it is found that on 28-8-2007 deceased and the appellant both were sleeping in the house of one Guruvari Bai in a state of drunkenness. After leaving the house of Guruvari Bai, they consumed liquor in the hotel of Prem Das Shrivastava and some altercation took place between them while they were returning from the hotel of said Prem Das and at the same time appellant threw his wife in canal and dead body of deceased was found near Amhamuda gate of canal at village Masaniakurd. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Conviction is based on confessional statement of the appellant which is not reliable because there is no motive to kill the wife by the appellant.
- ii) The story of last seen is also not proved satisfactorily, therefore, it is not a case of criminal intention of the appellant.
- iii) The trial Court has not evaluated the

evidence in its true perspective,
therefore, finding of the trial court is
liable to be set aside.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. From the statement of Dr. R.D. Gupta (PW/11), it is established that the deceased died due to drowning and she died within 48 hours of the examination i.e., 6-9-2007. From the evidence of Guruwari Bai (PW/1) it is established that the appellant was in the company of the deceased and both were in drunken condition. As per version of PW/5 Maniram appellant informed him that he sent the deceased Basanti Bai to village Behma lonely in a bus from Korba. From the evidence it is clearly established that deceased was wife of the appellant and both were seen in a state of drunkenness and thereafter no one saw the deceased Basanti Bai alive. As the appellant being husband of the deceased was custodian of Basanti Bai, it is for him to

explain as to when he parted with his wife and where and at what time he parted with his wife, but he did not explain anything before the trial court. In absence of explanation by the appellant, Section 106 of the Indian Evidence Act, 1872 comes into play which says when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. But that burden was not discharged by the appellant and his defence is mere denial which is merit-less.

7) Looking to the entire evidence, the trial Court opined that it is the appellant who is author of the crime and participated in drowning of his wife in a canal. The trial Court further opined that pushing the deceased in a canal may be an act of culpable homicide because it was not certain whether she will die or not by the act of the appellant, therefore, the trial Court opined that it is a case under Section 304 Part II of IPC. After re-assessing the evidence, there is nothing on record to infer contrary to what is recorded by the trial Court. Conviction of the appellant under Section 304 Part II of IPC is hereby affirmed. The trial Court awarded seven years for the said offence. The sentence awarded by the trial Court cannot be termed as harsh or unreasonable or disproportionate.

8. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju