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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 165 of 2013

1. Teej Ram Rathiya S/o. Hari Ram, Aged about 54 years, Occupation Agriculture
2. Parmila Rathiya W/o. Late Ravilal Rathiya, Aged about 29 years,

Both resident of village Chharratangar; Police Station Punjipathara, District Raigarh (C.G.)

---- Appellants

Versus

State of Chhattisgarh through District Magistrate Raigarh, Police Station Tahsil and District Raigarh Chhattisgarh

---- Respondent

For the Appellants :- Mr. Vineet Kumar Pandey. Advocate
For the Respondent :- Mr. Neeraj Mehta, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

15.04.2019

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 10.01.2013 passed By the Second Additional Sessions Judge, Raigarh, in Sessions Trial No. 141/2011 wherein and whereunder the appellants have been held guilty for commission of offence under Sections 302

and 201 IPC and sentenced them to undergo rigorous imprisonment for life imprisonment and to pay fine of Rs. 2000/- under Section 302 IPC and Rigorous imprisonment for 3 years and to pay fine of Rs. 1000/- under Section 201 IPC with default stipulations.

2. The prosecution case is that merg intimation (EX.P-1) was given in the Police Station by Bhog Singh Rathiya (PW-1), the father of the deceased informing the death of his son because of consumption of poison. Merg intimation also says that deceased Ravilal was not keeping well and was suffering from tuberculosis and was taking certain treatment. On 03.06.2011 he had taken liquor and because of long illness he consumed poison. After taking aforesaid merg intimation, merg inquiry was done and the dead body was sent for postmortem. Dr. Vijay Kumar Lakra (PW-10), who conducted the postmortem found the eyes protruded, both the lips had swelled, the face as well as the temporal part of the head had become blue and black. Evidence of the doctor further says that there was swelling on both sides of chest with the light blue colour marks thereon, the two arms and thighs were also swelled and turned blue. According to his opinion, the cause of death was cardio-respiratory arrest as a result of excessive internal bleeding in the head and the death was homicidal in nature. The FIR was registered as Ex.P-14 on 10.06.2011 in which, it was alleged that the appellants had quarreled with the deceased because the deceased had come to the house in intoxicated condition

and started quarreling with his wife and gave an explanation that the deceased consumed poison but in postmortem report the cause of death was not because of consumption of poison but it was homicidal in nature.

3. The investigation culminated in filing of a charge sheet against the appellants on the allegation that there was quarrel between the deceased and his wife, the appellant No. 2, due to which, the appellant No.1 assaulted and killed the deceased. The appellants were proceeded against in trial upon framing of charges for commission of offence under Sections 302 and 201 IPC. The appellants having abjured their guilt, were put to trial.
4. The prosecution came out with the circumstantial evidence of homicidal death of the deceased stating that, though, the incident had taken place in the same house where the deceased and the appellants were residing, yet, the appellants have failed to offer any satisfactory explanation as to how the deceased suffered injuries leading to his unfortunate death and instead of offering proper explanation, they have come out saying that the deceased died on account of consumption of poison, which gets falsified from the medical evidence.
5. Learned counsel for the appellants would argue that the entire case of the prosecution is shrouded in mystery, in inasmuch as, even the cause of death is not proved with the clinching evidence. He would argue that the condition of the body, as observed by the doctor who conducted the postmortem and the

cause of death, as opined by him, do not prove it beyond reasonable doubt that the death itself was homicidal in nature and it could possibly be because of consumption of poison also. He would argue that the kind of injury and blue spots which have been found, do not conclusively prove that it was a result of assault by a club and it is quite improbable that there would be internal haemorrhage without there being any external injury on the temporal part of the head or any other part of the body. The next submission of learned counsel for the appellant is that even according to the prosecution, the deceased was the husband of appellant No.2 and son-in-law of appellant no.1. The memorandum of the appellant No.1, taken by the prosecution itself shows that the allegation of assault is only on appellant no.1 and not on appellant No.2. Even the allegation of giving false information is only on appellant No.1, therefore, in these circumstances, even though, the genesis of dispute between the deceased and appellant No. 2 his wife, it cannot be said that she also shared common intention with the father in giving assault to her own husband with intention to cause death. Next submission learned counsel for the appellants is that according to the prosecution itself, the deceased was intoxicated and he was quarreling with his wife - the appellant No.2 and at that stage, it is alleged, the appellant No.1 gave certain assault to him. He would argue that the prosecution case itself does not prove that there was an intention to cause death as there was no strong motive on the part of the appellant No.1 to kill his

own son-in-law on a petty allegation. He would argue that may be, because of some compression or assault, some internal injury might have resulted leading to death, therefore, in these circumstances the conviction of the appellants would not travel beyond the scope of section 304 Part-II IPC. The appellant No.1 having undergone almost 8 years of jail sentence, his conviction may be altered to that under Section 304 Part-II IPC and he may be sentenced for the period already undergone.

6. On the other hand, learned State counsel would argue that the deceased and the appellants were residing in one house and the doctor's opinion is that the deceased died homicidal death, therefore, it was for the appellants to explain as to how deceased sustained various injuries on various parts of his body. He also argued that a false explanation was offered to all that the deceased died due to consumption of poison, whereas, in the postmortem, no poison was found nor it was a case of death due to poisoning but due to internal bleeding caused by superficial by external injuries found on the body of the deceased. In addition, the motive has also been proved that the deceased was a drunkard and he was quarreling with his wife, the appellant No. 2, he has been murdered by the accused/appellants.
7. We have heard learned counsel for the parties and perused the record.

8. It is not in dispute that the deceased was found dead in his own house and the evidence on record led by the prosecution proved this fact on which there is no dispute.
9. As far as cause of death is concerned, we find that Doctor (PW-10) who conducted the postmortem noticed various injuries, blackness, blueness over the body and then finally came to the conclusion that it was a case of homicidal death particularly taking into consideration the fact that there were injuries on the chest and on the temporal part of the head which turned blue and that dura inside the head bone found ruptured and heamotoma was also present on the head. In the cross examination, nothing could be elicited to doubt the opinion of the doctor particularly in the light of various injuries sustained by the deceased.
10. The evidence on record shows that when the witnesses reached the house of the deceased and the appellants, it is the appellant No.1 who came out with an explanation that the deceased died due to consumption of poison which however, turned out to be a false explanation, because the doctor has clearly opined that no poison was found and it is not a case of death due to poisoning. Therefore, this explanation becomes false.
11. The appellants have not explained how the deceased sustained various injuries in different part of the body, particularly chest, thighs and on the temporal part of the head. No plea of alibi

has also been set-up. However, we found that the prosecution itself has come out with the case, as stated in the memorandum of appellant No.1 that he gave assault to his son-in-law with the help of club and a club is said to have been recovered at his instance. Thus, according to the prosecution also, the assault was given by appellant No.1 and not by appellant No.2. Nobody has seen the incident of quarrel. Even if we accept the prosecution story that the genesis of dispute was because the deceased being in drunken state started quarreling with his wife and the assault given by the appellant No.1 on his son-in-law because of such quarrel between the deceased and the appellant No.2, without anything more, is not sufficient to draw an inference that the appellant No. 2 shared common intention to kill her husband on a petty dispute.

12. The injuries do not show that the appellant No.1 acted in any cruel or unusual manner, therefore, on the totality of circumstances which have been proved by the prosecution which led to death of the deceased, in our opinion, the prosecution evidence at the most establishes that the assault was given by appellant No.1 and not by the appellant No.2, the wife of the deceased. In the result, as far as appellant No.2 is concerned, we are inclined to grant her benefit of doubt and acquit of the charges of commission of offence under Section 301 and 201 of the IPC.

13. In the circumstances, the conviction of the appellant No.1 is altered to that of under Section 304 Part II IPC and he is

sentenced for the period already undergone by him. The appeal of appellant No. 2 is allowed and the appeal of appellant No. 2 is partly allowed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge