

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1136 of 2013**

- Raju Nag S/o Late Mukul Lal Aged About 40 Years R/o Kushth Ashram, Gautam Nagar, Sector-11, Zone 01, Khursipar, PS Khursipar, Distt. Durg C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through SHO, PS Khursipar, Distt. Durg C.G.

---- Respondent

For Appellant	: Smt. I. Lakra, Advocate
For Respondent/State	: Shri Anand Verma, Dy.GA

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava, J.

28/01/2019

This appeal is directed against the impugned judgment of conviction and order of sentence dated 1st August 2013 passed by Sessions Judge, Durg in ST No. 08/2013 by which the appellant has been held guilty of the commission of the offence under Section 302 IPC and sentenced to undergo imprisonment for life.

2. Prosecution story is that the appellant murdered his wife by strangulating. According to the prosecution, children of the deceased had come out weeping and called PW-1 in the house who saw the dead body of Jaya Bai and intimated to the police leading to recording

of mereg intimation Ex.P-1 followed by FIR in Ex.P-1A in police station at the instance of PW-1. As per the prosecution story, as stated in the FIR, the dead body of Jaya was found in her house and blood was oozing out from her nostrils. According to the FIR informant, daughter, of the deceased informed that her father Raju Nag had entrusted money with his wife Jaya which he asked her to take out for purchasing clothes on the festival of Diwali. When Jaya expressed her inability saying that she does not have money with her, appellant got enraged and in a fit of anger, he strangulated his wife by wrapping a cloth around her neck which led to asphyxia. Inquest over dead body was prepared in the presence of witnesses and dead body was sent for postmortem. Dr. Raj Kumar Nayak PW-6 conducted postmortem and prepared postmortem report. According to the doctor's opinion, Jaya died due to asphyxia caused by strangulation and ligature marks were seen around her neck. Appellant was tried for commission of murder of his own wife which, the appellant abjured therefore, he was tried for commission of murder of his own wife. Case of the prosecution was based primarily on the circumstantial evidence that Jaya Bai died homicidal death in her own house and except children, the appellant alone was there as the male and major member of the family and therefore it is the appellant who murdered his wife as he failed to explain how his wife sustained injuries. Learned trial court relied upon the circumstances led by the prosecution to hold that in all probability, the appellant and the appellant alone must have killed his own wife.

3. The principal argument of counsel for the appellant is that even if it is held proved that in a certain given circumstances the appellant

killed his own wife, the story as revealed out from the prosecution case and what is reflected from the FIR and the statement of the children of the deceased, namely PW-3 and PW-5 is that the unfortunate incident took place in a fit of anger, when the appellant asked his wife to take out the money which he had deposited with her for purchasing clothes during Diwali festival, but the wife expressed inability saying that she does not have any money. Counsel for the appellant, taking her argument further, would submit that this circumstance is the backdrop of the event in which the appellant suddenly strangled his wife out of fit of anger, in a moment, which would come under Exception 4 of Section 300 IPC and therefore, it would be culpable homicide not amounting to murder. It is argued that the appellant is suffering from leprosy as reflected from his arrest memo Ex.P-18, the conviction may be altered to Section 304 Part II IPC and sentenced for the period already undergone. As he has undergone more than six years of RI. Though feebly, it has also been argued that as the present case is based only on circumstantial evidence, prosecution is required to prove its case by clinching evidence and mere presence in the house, is not enough to hold the appellant guilty.

4. On the other hand, State counsel would argue that it has been proved from overwhelming evidence on record that the appellant was at home with his wife in the night and that Jaya died homicidal death because of asphyxia caused by strangulation and ligature marks were found on her neck. Conduct of the appellant provides additional link because he did not come out with any explanation as to how his wife sustained injury. Once it is proved that the appellant and his wife were sleeping together in the house, failure on the part of the appellant to

explain how his wife sustained injury which burden was on the appellant being husband, facts which was specially within his knowledge, provides additional link and fills up the gap to make it full proof to draw inference that in all probability, it is the appellant, who must have killed his wife. State counsel on the aspect of sentence part submits that as no such plea was taken in defence, therefore the appellant is not entitled to raise defence at this stage that whatever he had done, was in a fit of anger, in a sudden quarrel, without any premeditation.

5. We have heard counsel for the parties and perused the records.

6. Homicidal death of Jaya Bai is not substantially in dispute in view of the specific and categoric evidence of the doctor who conducted postmortem and deposed before the Court regarding nature and extent of injury with regard to the cause of death. PW-6 has deposed that upon examination, tongue was found protruded and caught between teeth. There were blood clots found in both the nostrils, face was swollen and ligature marks were present all around the neck. Thyroid cartilage was damaged and hematoma was also found and there were ligature marks. In his opinion, cause of death was asphyxia due to strangulation. Though, he has been subjected to cross-examination, nothing material could be elicited to doubt the veracity of evidence with regard to the nature, extent of injury and cause of death.

7. The presence of the appellant in the house is also proved from the evidence of the prosecution. PW-3, appellant's own daughter who has deposed that in the night, she along with her brother Hemant,

Samir and mother Jaya Bai had gone to sleep and the appellant had also taken meals along with them and had gone to sleep. PW-5, son of the appellant has also given similar statement and has categorically stated that his father was present in the house. This evidence has remained un-controverted, therefore, it is clear that the appellant was very much present in the house along with the three children namely Kumari Hemlata aged 10 years, Hemant and Samir. There is nothing to show that except three children ,there was any`body else in the family, in the house, when Jaya died homicidal death after having sustained injury.

8. The appellant having failed to establish any plea of *alibi* , in view of provisions contained under Section 106 of the Evidence Act, was required to explain the circumstances under which his wife sustained injury and died homicidal death, because he being present in the house and having slept with his wife and children in the house, this fact was especially within his knowledge. The appellant has failed to explain these circumstances. Neither in his examination under Section 313 Cr.P.C. nor any explanation has emerged from the cross-examination of this witness by giving any suggestion, therefore, the appellant's presence in the house along with this wife and children and failure to explain as to how his wife sustained injury, points only towards the guilt of the appellant and it can safely be held that the appellant and the appellant alone must have killed his wife.

9. It now takes us to other submission of counsel for the appellant that the circumstances in which death was caused, the conviction of the appellant may be altered to that under Section 304 IPC. To base

this submission, we examine the material on record. We find that the prosecution story as stated in the FIR Ex.P-1A is that prior to the incident there was a quarrel between the appellant and his wife Jaya. FIR contains that the appellant was demanding money which he had deposited with the wife so that he could purchase clothes on the festival of Diwali and when the wife expressed her inability saying that she had no money left, the appellant got furious and in this fit of anger, he wrapped a cloth around the neck of his wife and strangled her to death. PW-3 daughter of the appellant has admitted in para 3 of her evidence that on the issue of giving money there was a quarrel between her father and mother which, according to her, was told to her by others and the memorandum Ex.P-8, said to have been recorded by the police during investigation also contains similar incident of appellant demanding money from his wife and wife refusing to give and then leading to quarrel and strangulation.

10. Even though, the appellant has not taken any specific defence in his examination under Section 313 Cr.P.C., nevertheless, this court looking to the circumstances of the case, may examine material to trace plausible course of event which may have led to the incident to find out whether a case under Exception 4 of Section 300 IPC would be made out.

Having considered the aforesaid evidence on record and the circumstances of the case, the possibility of the dispute having taken place between the appellant and his wife on the issue of demand of money and refusal by wife and then the appellant enraged when the money deposited by him with his wife was not given even after

demand in order to purchase clothes during festival of Diwali, cannot be ruled out. Hemant Kumar Nag (PW-5), son of the appellant has clearly admitted that there was quarrel between the father and his mother on this issue. It, therefore, appears quite probable that in such a situation, all of a sudden, when quarrel arose between husband and wife, the appellant fastened the cloth (*gamchha*) around the neck of his wife and strangled her which was without premeditation to cause death. It was apparently a sudden reaction on the part of the appellant. Therefore, as this could be a possible view, we are inclined to lean in favour of the accused/appellant and hold that present would a case of culpable homicide not amounting to murder, punishable under Section 304 Part II IPC.

11. In the overall circumstances of the case, though, we are inclined to alter the conviction of the appellant to that under Section 304 Part II IPC, in our opinion, the appellant must undergo a minimum sentence of 10 years, if not more. The view which we have taken to confine sentence to 10 years is also in the background of appellant's own condition because in his arrest memo, it is stated that the appellant at that time was suffering from leprosy.

12. Appeal accordingly is partly allowed in the manner and to the extent that while conviction of the appellant is altered to that under Section 304 Part II IPC he is sentenced to 10 years RI.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge