

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.695 of 2014**

Saroj Ekka, son of Manohar Ekka, aged about 23 years, resident of Dhundhrudand, Choki-Dokda, Police Station Kansabel, Civil and Revenue District Jashpur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Incharge, Arakshi Kendra Kansabel, District Jashpur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Anil S. Pandey, Advocate
For Respondent	:	Shri Amit Kumar Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

3.9.2019

- The instant appeal has been preferred against the judgment dated 18.7.2014 passed by the Additional Sessions Judge (FTC), Jashpur in Sessions Trial No.60 of 2012, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304 Part-I of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500/- with default stipulation

- Case of the prosecution, in brief, is that deceased Sanjeev Kujur was *jija* (brother-in-law) of the Appellant. The deceased was running a *dhaba* (a small restaurant) beside the road. At about 11:00 p.m., the Appellant telephonically informed Uday Kumar Tigga (PW15) that the deceased was sleeping in the *dhaba* along

with a woman. Thereafter, Uday Kumar Tigga (PW15), Pyara Tigga (PW14) and Gourishankar Sai (PW17) reached the spot. There they found the deceased in unconscious condition. At the spot, Sunita (PW8) (wife of the deceased), Amarmani Tirki (PW3) and David (not examined) and an unknown woman were present along with the Appellant. On being asked by Uday Kumar Tigga (PW15), Pyara Tigga (PW14) and Gourishankar Sai (PW17), the Appellant told them that he assaulted the deceased due to his anger because the deceased was sleeping with an unknown woman. Uday Kumar Tigga (PW15) informed the incident to father of the deceased, namely, Paval Kujur (PW11). Paval Kujur (PW11) reached the spot along with his wife. There they found Sanjeev Kujur (the deceased) in unconscious condition. They took him to Holi Cross Hospital, Kunkuri. The hospital sent information regarding admission of injured patient Sanjeev Kujur to Police Station Kunkuri, which was recorded by police in Rojnamcha Sanha (Ex.P9). Injured Sanjeev Kujur was referred to higher medical centre for treatment and, therefore, he was taken to Ranchi Institute of Medical Science (RIMS) where he was admitted. In the meanwhile, police registered offence and after investigation a charge-sheet was filed against the Appellant for offence punishable under Sections 294, 323 and 307 of the Indian Penal Code. Charges were framed against him under Sections 294, 323 and 307 of the Indian Penal Code. After filing of the charge-sheet, on 12.5.2012, Sanjeev Kujur was brought back to home because his health could not recover in the hospital. Thereafter, on 2.6.2012, he died at home. A morgue (Ex.P15) was recorded. Inquest (Ex.P17) was done. Post mortem examination over the dead body was conducted by Dr. Ajit Kumar Minj (PW20).

He gave his report (Ex.P13) in which he reported that cause of death was septigenic shock which resulted due to injury suffered over the head. Supplementary statements of witnesses were recorded. Thereafter, a supplementary charge-sheet was filed for offence punishable under Section 302 of the Indian Penal Code. Accordingly, the Trial Court, in place of charge under Section 307 of the Indian Penal Code, framed charge under Section 302 of the Indian Penal Code against the Appellant.

3. In support of its case, the prosecution examined as many as 24 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness has been examined in his defence.
4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the Trial Court because there is no evidence against him on record. There is no eyewitness in the case. The Appellant has been convicted only on the basis of extra judicial confession made by him before Pyara Tigga (PW14), Uday Kumar Tigga (PW15) and Gourishankar Sai (PW17). The alleged extra judicial confession made by the Appellant is suspicious. It is further submitted that even if the prosecution case is taken as it is, the charge under Section 304 Part-I of the Indian Penal Code is not proved because as per the

opinion given by Dr. Ajit Kumar Minj (PW20) death of the deceased took place after 6 months of the incident and cause of death as admitted by Dr. Ajit Kumar Minj (PW20) was non-getting of proper treatment and negligence which resulted into septigenic shock.

6. Learned Counsel appearing for the State opposes the above submission and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that the deceased was *jija* (brother-in-law) of the Appellant. There is also no dispute that there is no eyewitness in the case. The case of the prosecution is based on the statements of Pyara Tigga (PW14), Uday Kumar Tigga (PW15) and Gourishankar Sai (PW17) before whom the alleged extra judicial confession was made by the Appellant as also on the statements of the treating doctor and the autopsy surgeon.
9. Amarmani Tirki (PW3) and Sunita (PW8) are sisters of the Appellant. Sunita (PW8) was married with the deceased. Both these witnesses have deposed that on getting information of quarrel, they reached to the *dhaba* of the deceased. There they saw that the deceased was lying in unconscious condition.
10. Paval Kujur (PW11), father of the deceased has also stated that Uday Kumar Tigga (PW15) gave him a telephonic call at about 11

p.m. then he reached the spot. There he saw the deceased in injured condition. The Appellant, David (not examined), Amarmani Tirki (PW3), Sunita (PW8) and an unknown woman were also present there. Paval Kujur has further deposed that on being asked by him what wrong was done by his son (the deceased), the Appellant tried to assault him also. The above statement of this witness is not rebutted during his cross-examination.

11. Pyara Tigga (PW14), Uday Kumar Tigga (PW15), Imiliya Tigga (PW16) and Gourishankar Sai (PW17) have also stated that the Appellant had telephonically informed Uday Kumar Tigga that the deceased was sleeping with a woman in his *dhaba* and he also called him there. When they reached the spot, the deceased was found in unconscious condition in the *dhaba*. Witnesses Pyara Tigga (PW14), Uday Kumar Tigga (PW15) and Gourishankar Sai (PW17) have further stated that they asked from the Appellant, then the Appellant admitted that he assaulted the deceased due to his anger because the deceased was sleeping with a woman. Pyara Tigga (PW14), Uday Kumar Tigga (PW15), Imiliya Tigga (PW16) and Gourishankar Sai (PW17) have also remained firm during their cross-examination on this point.

12. On a minute examination of the above evidence, it is clear that the deceased was found in injured and unconscious condition in his *dhaba*. Prior to that, as stated by Paval Kujur (PW11), when he asked from the Appellant that what wrong was done by his son (the deceased) then the Appellant tried to assault him also. From the statements of Pyara Tigga (PW14), Uday Kumar Tigga (PW15), Imiliya Tigga (PW16) and Gourishankar Sai (PW17), it is also clear

that when they reached at the spot, at that time, the Appellant was present at the spot and he made extra judicial confession before them regarding the assault given by him to the deceased.

13. Now, the only question which remains to be considered is whether on the basis of the evidence adduced by the prosecution before the Trial Court the act committed by the Appellant falls within the ambit of Section 304 Part-I of the Indian Penal Code or not.

14. As per the prosecution story, the incident took place on 26.11.2011. Dr. Vinod Lakda (PW4) is the witness who first examined the deceased in injured condition on 27.11.2011. At that time, the deceased was unconscious. He found following injuries:

- (i) one black mark over the eyelid of left eye,
- (ii) swelling over left occipital region,
- (iii) one abrasion over right toe and
- (iv) one abrasion over left elbow.

As stated by this witness, the patient was referred to a higher centre for better treatment. The deceased was further treated at RIMS, Ranchi.

15. Dr. Thomas Justin Minj (PW13) has deposed that on 27.11.2011 a CT Scan of the deceased was done at Nagarmal Modi Seva Sadan, Ranchi in which a haemorrhagic contusion and a blood clot were found on the right side of head (temporal region). This witness has further deposed that on 18.1.2012, the deceased was

discharged from Nagarmal Modi Seva Sadan and was referred to RIMS, Ranchi. In RIMS, this witness examined the deceased in which he found that an infection had taken place in the chest. As per the prosecution story, the deceased was admitted in the RIMS, Ranchi, but when his health could not recover in the RIMS then he was got discharged from the RIMS and was taken back to home. Thereafter, the deceased died at home on 2.6.2012.

16. Dr. Ajit Kumar Minj (PW20) conducted autopsy over the dead body of the deceased. As opined by him, he found an injury over the head of the deceased which appeared to be six months old. He found cause of death to be septigenic shock which was a result of the injury suffered over the head. This witness has further stated that he found that the death occurred due to septigenic infection in the head which took place due to negligence done in treatment or due to non-providing of better treatment.
17. From the above discussion, it is also clear that only one injury was found over the head of the deceased. He died after six months of the incident. As opined by Dr. Ajit Kumar Minj (PW20), the deceased died due to septigenic infection which took place due to non-providing of better treatment or negligence done during treatment. The deceased was real *jija* (brother-in-law) of the Appellant. The incident took place all of a sudden because the deceased was found sleeping with an unknown woman. Since the deceased was a real brother-in-law of the Appellant, he assaulted the deceased due to his anger. Intention of the Appellant was to commit murder of the deceased or he had knowledge that his assault would result into death of the deceased is not established.

Therefore, the act of the Appellant, in my considered view, falls within the ambit of Section 325 of the Indian Penal Code. Hence, in place of Section 304 Part-I of the Indian Penal Code, the Appellant is convicted under Section 325 of the Indian Penal Code.

- 18.** As regards sentence, it is reported that the Appellant has already suffered jail sentence for about 2 years 7 months and 19 days. He is facing the *lis* since 26.11.2011, i.e., for about 8 years. Taking into consideration the facts and circumstances of the case, I am of the view that the ends of justice would be served if the Appellant is sentenced for the period already undergone by him and with fine of Rs.500/-. Ordered accordingly. In default of payment of fine, the Appellant shall be liable to undergo additional rigorous imprisonment for 1 month. If any amount has already been paid towards fine, the same shall be adjusted in the amount of fine imposed today.
- 19.** Consequently, the appeal is allowed in part to the extent indicated above.
- 20.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge