

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1177 of 2015

Judgment Reserved on : 22.1.2021

Judgment Delivered on : 01.2.2021

Samrit @ Chatar, Son of Late Moharsai, Aged about 55 years, Occupation Agriculture, Village Mendrakhurd, Police Station Gandhi Nagar, Civil and Revenue District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Gandhi Nagar, District Surguja (Ambikapur), Chhattisgarh

--- Respondent

For Appellant : Shri Govind Ram Miri, Advocate
For Respondent/State : Shri Roshan Dubey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 5.8.2015 passed by the Sessions Judge, Surguja at Ambikapur in Sessions Trial No.43 of 2015 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304 Part II of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.200/- with default stipulation

2. Case of the prosecution, in nutshell, is that Fulbasiya (deceased) was wife of the Appellant. Their marriage was solemnised 1 year prior to the incident. On 10.1.2015, the Appellant and the

deceased visited the house of Basant (PW6) for celebration of *Chherta* festival. There they took meal and consumed liquor. After taking meal, other villagers, who had also gathered there for celebration of the said festival, returned. Since the deceased had got heavily drunk and was unable to walk, Basant (PW6) asked the Appellant and the deceased to stay at his house in the night. The Appellant did not agree to stay and dragging the deceased by her hair he took her towards the school. Thereafter, Basant (PW6) closed the door of his house and slept. In the next morning, dead body of the deceased was found beside the school. Shankar (PW1) informed about the death to Sukhsharan (PW5), brother of the deceased. Sukhsharan (PW5) went to the spot. He saw that the Appellant was sitting at the spot. On being asked, the Appellant told him that the deceased was heavily drunk and even on being asked by him she was not agree to return home and, therefore, he dragged her by her hair and he also assaulted her by his fists and kicks as a result of which she died. The matter was reported by Sukhsharan (PW5) on the basis of which First Information Report (Ex.P6) and Morgue Intimation (Ex.P8) was registered. Inquest proceeding (Ex.P3) was conducted. *Post mortem* examination over the dead body was conducted by Dr. Sanjay Singh (PW4). *Post mortem* report is Ex.P4. Statements of witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, a charge-sheet was filed against the Appellant. A charge under Section 302 of the I.P.C. was framed against the Appellant by the Trial Court.

3. To rope in the Appellant, the prosecution examined as many as 8 witnesses. Statement of the Appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the guilt, pleaded innocence and false implication. 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 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being any clinching and sufficient evidence on record the Trial Court has wrongly convicted the Appellant. It was further submitted that even if the entire case of the prosecution is taken as it is, it appears that the deceased was heavily drunk. The Appellant took her with him dragging her by her hair. While dragging, the Appellant also assaulted her by his fists and kicks as a result of which she died. The Appellant had no intention to commit murder of the deceased. The Appellant himself was heavily drunk and, therefore, he was not aware that his act will result into death of the deceased. Therefore, at the most, the act of the Appellant falls within the ambit of Section 325 of the I.P.C. He is in jail since 12.1.2015. Therefore, he may be sentenced to the period already undergone by him.
6. Per contra, Learned Counsel appearing for the State opposed the submissions put-forth on behalf of the Appellant. He submitted that the Trial Court has rightly convicted and sentenced the Appellant.

7. I have heard Learned Counsel appearing for the parties and perused the entire record of the Trial Court including the statements of the witnesses with utmost circumspection.
8. It is not in dispute that the deceased was wife of the Appellant. On the date of incident, the Appellant and the deceased had gone to the house of Basant (PW6) for celebration of *Chherta* festival. Other villagers had also gathered there for the celebration. All the gathered persons took meal and consumed liquor. Regarding the incident, Basant (PW6), in his Court statement, has deposed that after taking meal, the other villagers returned. The deceased had got heavily drunk and was unable to walk. The Appellant tried to make her walk, but she could not walk. On this, Basant (PW6) asked the Appellant and the deceased to stay at his house in the night. The above statement of Basant (PW6) has not been rebutted during his cross-examination. Virtually, in his statement recorded under Section 313 of the Cr.P.C., the Appellant himself has admitted all these facts.
9. Basant (PW6) has further deposed that the Appellant did not agree to stay at his house and dragging the deceased by her hair he took her towards the school. Thereafter, this witness closed his door. The above statement of this witness has not been duly rebutted during cross-examination. This witness has remained firm in his statement during cross-examination. Thus, it is well established that on the date of incident, after return of the other villagers from the house of Basant (PW6), the Appellant took the deceased with

him by dragging her by her hair in her drunken condition.

10. Shankar (PW1) has deposed that next day, at about 5:00 a.m., when he was present at his house, the Appellant came to his house and called him out. The Appellant told him that in the last night he had taken the deceased with him in her drunken condition from the house of Basant (PW6) by dragging her by her hair and while dragging he had also slapped her twice as a result of which she died. Thereafter, this witness went to the spot and saw there the dead body of the deceased. According to this witness, thereafter he went to Sukhsharan (PW5), brother of the deceased and informed him about the incident. The above statements of this witness have not been rebutted during his cross-examination.
11. Sukhsharan (PW5), brother of the deceased has deposed that Shankar (PW1) came to his house and told him that the deceased was lying dead beside the school. Sukhsharan (PW5) went to the spot and saw there dead body of the deceased. He also saw that the deceased had sustained injuries over her head. He has further deposed that at that time the Appellant was not present at the spot. Thereafter, he went to the police station and lodged a report of the incident. After declaring him hostile, this witness has admitted the fact that after lodging of the report when he again went to the spot, at that time, the Appellant told him there that when the deceased was not agree to return home he had dragged her by her hair and while dragging he had also assaulted her by his fists and kicks. The above statement of this witness has also not been rebutted

during his cross-examination.

12. Dr. Sanjay Singh (PW4) conducted *post mortem* examination over the dead body of the deceased. The *post mortem* report is Ex.P4. According to Ex.P4, a haematoma was present in upper portion of the scalp below the skin and another haematoma was present in right parietal region of the brain. 3rd, 4th and 5th ribs of right side and 5th and 6th ribs of left side were found fractured. According to this witness, cause of the death was head injuries and mode of the death was coma. This witness has categorically stated that looking to the injuries sustained by the deceased, it cannot be said that the head injuries would have taken place due to dashing of the deceased with the *chabutara* (a small platform).
13. On a minute examination of the evidence adduced by the prosecution, it is clear that the deceased was wife of the Appellant. On the date of incident, both had gone to the house of Basant (PW6) for celebration of *Chherta* festival. From the unrebutted statement of Basant (PW6), it is also clear that after return of the other villagers from his house after celebrating the festival, the Appellant dragged the deceased by her hair towards the school. In the next morning, her dead body was found beside the school. When the Appellant himself had taken the deceased with him from the house of Basant (PW6), how her dead body was found beside the school has not been explained by him. Furthermore, from the statement of Shankar (PW1), it is also established that in the next morning, at about 5:00 a.m., the Appellant himself came to his

house and called him out and made extra judicial confession before him. From the statement of Sukhsharan (PW5), brother of the deceased also, it is established that after lodging report of the incident by him, the Appellant made extra judicial confession before him. Though from the evidence of the witnesses it appears that the Appellant himself was drunk, no evidence is available on record to show that he was heavily intoxicated and, therefore, he was not in a state to sense and understand that what was being done by him. Hence, the argument that the Appellant himself was heavily drunk and, therefore, he was not aware that his act will result into death of the deceased has no force. After going through the entire evidence led by the prosecution, in my considered view, the Appellant has rightly been convicted. His sentence also does not warrant any interference.

14. The appeal is dismissed.

Sd/-
(Arvind Singh Chandel)
JUDGE