

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 489 of 2012

- Rakesh Yadav, S/o Bhim Yadav @ Bhajau Yadav, aged about 28 years, R/o Shri Ram Chowk, Tikrapara, Raipur (CG)

---Appellant.

Versus

- State of Chhattisgarh, through Police Station Tikrapara Raipur, District Raipur (CG)

---Respondent.

For the Appellant	:-	Mr. Santosh Das, Mr. Pawan Ku. Kashyap, Advocates.
For the State	:-	Mr. Anurag Verma, PL.

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

Order on Board by Manindra Mohan Shrivastava, J.
22.03.2021

This appeal is directed against the judgment of conviction and order of sentence dated 31.03.2012 passed by Sessions Judge, Raipur in Sessions Trial No.170/2011, whereby and whereunder the appellant has been held guilty for the offence under Section 302 IPC and sentenced to undergo Life Imprisonment with fine of Rs.1000/-, plus default stipulation.

2. The prosecution case is that the appellant was not happy with his wife and was doubting her character which led to frequent quarrel between them. According to the prosecution case, a day before the date of incident there was a quarrel and the deceased/wife left the house and went to live along with the sister-in-law. On the date of incident the appellant/husband came there and took the wife back to the matrimonial house. The complaint of quarrel was being made by the deceased time and again to her mother also and therefore, on that very day the mother and the sister both came to the house of the appellant. The appellant used to reside with his wife and minor child in the upper

floor of the house. When the sister Kumari Manki Yadav (PW-10) went upstairs to meet her sister, she found the appellant coming out with the child and his cloths were seen stained with blood. When PW-10 entered the room she found her sister lying in pool of blood. According to the prosecution it is the appellant who killed his wife by hammering her on vital parts with a heavy piece of stone (used in the kitchen) resulting in multiple injuries, as many as 9 in number, some of which proved to be fatal.

3. The dead body was sent for postmortem after completion of inquest proceedings and in the postmortem the doctor found as many as 8 injuries and the opinion was that the death was due to excessive bleeding caused by multiple injuries and was opined to be homicidal in nature. Upon completion of investigation charge-sheet was filed, the appellant denied charges and therefore, he was put to trial. The prosecution case was of circumstantial evidence of there being frequent quarrel between the husband and wife, wife leaving the matrimonial house a day before the incident, she being brought back to the house by the husband on the date of incident, sister of the deceased (PW-10) and other witnesses finding dead body lying in pool of blood and the presence of the appellant with stained cloths worn by him. The motive as alleged by the prosecution was that the appellant was doubting the character of his wife – the deceased which ultimately led to murder.

4. The accused was examined under Section 313 Cr.P.C in respect of incriminating circumstances and evidence appearing against him in the evidence led by the prosecution. While appellant denied those evidence and circumstances, he pleaded innocence and stated that he has been falsely implicated. No defence witness was examined.

5. Relying upon the circumstantial evidence led by the prosecution, the learned trial Court held that the appellant was guilty of commission of offence. This has given rise to the present appeal.

6. Learned counsel appearing for the appellant would argue that in the present case, the prosecution case rests only on circumstantial evidence as there is no eye witness, therefore, the trial Court ought to have recorded a clear finding with regard to completion of chain of circumstances pointing only towards the guilty of the accused but the circumstantial evidence which has been led by the prosecution is not free from doubt and merely because the deceased happened to be the wife of the appellant it has been assumed that the appellant must have killed his wife. Learned counsel for the appellant would next argue that even if, the case of the prosecution is accepted that the appellant had assaulted, the criminal overt act as alleged on the appellant would not travel beyond the scope and ambit of Section 304 IPC because it is a case of exception of sudden and grave provocation. He would argue that even according to the prosecution the appellant was doubting the character of his wife and that led him to kill therefore, it would be a case of an exception carried out under Section 300 IPC and the conviction of the appellant in any case is liable to be altered to that under Section 304 IPC. As the appellant has undergone more than 8 years of jail sentence, altering the sentence as prayed, the appellant be set at liberty.

7. On the other hand, learned State counsel would argue that the conviction of the appellant is based on circumstantial evidence which have been found proved by the trial Court from the evidence of prosecution witnesses regarding homicidal death, quarrel, motive,

presence of the appellant and the deceased in the same house, appellant failing to explain how his wife sustained multiple injuries and died homicidal death and presence of blood in the cloths of the appellant. He would argue that though the prosecution witnesses have stated that the appellant was doubting character of his wife, it is not a case that all of a sudden the appellant had seen his wife in compromising position with a third person and out of sudden and grave provocation, he assaulted his wife so as to bring it within the net of any of the exceptions under Section 300 IPC. He would argue that this would on the other hand, constitute a strong motive to murder. He further argued that the manner in which the prosecution witnesses have stated regarding the incident and what happened a day before that followed by immediate presence of the appellant in the room as stated by PW-10, the Court below committed no illegality in drawing an inference based on proved circumstantial evidence that in all probability, it is the appellant the appellant alone who must have committed the offence.

8. We have heard learned counsel for the parties, perused the records and the judgment of the trial Court.

9. The case of the prosecution is based on circumstantial evidence. In order to prove the case of the prosecution the learned trial Court has examined as many as 6 circumstantial evidence in Paragraph 25 of the judgment. These circumstantial evidence have been found reliable.

10. The first circumstantial evidence considered and found proved by the trial Court is that the appellant was doubting the character of his wife and used to quarrel with her. Bhajau (PW-3) – the father of the appellant has stated that his son was residing with his wife in the third

floor of the house and there used to be quarrel between them but he does not know why such quarrel were taking place. Smt. Jhula Bai (PW-9) – the mother of the deceased has deposed that her daughter was married to the appellant 5 years before and the appellant was doubting the character of her daughter and used to quarrel with her. In the cross-examination this witness has admitted that after marriage there was no dispute between the husband and wife and even before the incident there was no dispute. She has also admitted that the appellant in the state of intoxication used to quarrel with the deceased. Manki Bai (PW-10) – the sister of the deceased has stated that the appellant and his wife/deceased used to quarrel and the operative reason for such quarrel was that he was doubting her character.

11. The evidence of the aforesaid witnesses prove one thing that the relationship between the appellant and the deceased were somewhat stained and there used to be quarrel between them. Evidence has come on record that because of the quarrel, a day before the date of incident, the deceased had gone to the house of sister-in-law where from she was brought back. PW-9 – mother of the deceased has stated the appellant was doubting the character which is also corroborated from the evidence of PW-10 who also states that the appellant was doubting the character of the deceased. The evidence of there being frequent quarrel between them is in abundance as stated by the prosecution witnesses.

12. The second and third circumstantial evidence found proved by the learned trial Court is that two days before the date of incident, the appellant had come back from his in-laws house, along with the wife and had quarrel with the deceased due to which she went to the house

of the Kamti Bai (PW-7), sister-in-law. This particular fact has been proved from the evidence of Kamti Bai (PW-7), mother Jhula Bai (PW-9) and sister-in-law of the appellant Manti Bai (PW-10). The evidence of these 3 witnesses, clearly shows that two days before the date of incident, the appellant had come back from in-laws house along with the wife and there used to be quarrel between them. Kamti Bai (PW-7) has also clearly deposed that a day before the date of incident, the deceased had come to her house complaining that appellant was indulging in physical violence and therefore, she has left the matrimonial house. She stayed there overnight and on the next day the accused came to her house and took her along with him, though she was not willing to go along with him stating that she would go back only when her mother comes but yet the appellant insisted and took her to his house.

13. The fourth and fifth circumstantial evidence relied upon by the prosecution is that the appellant had gone to his house inside the room along with his wife and child and when the mother and sister of the deceased came to his house, he came downstairs along with the child and there were blood stains in his full pant. Evidence in this regard is clearly stated by Jhula Bai (PW-9) and Manki Yadav (PW -10). They are the mother and sister and of the deceased. PW-9 has stated that in the previous night Uma Bai (deceased) had informed to her in phone that the appellant was quarreling with her therefore, she came to the house of sister-in-law and she called her. When next day she came to the house of the appellant along with her daughter Manki (PW-10) she inquired about her from appellant's sister-in-law Girija (PW-1) who told her that the deceased has come back half an hour before and is staying in her room. Thereafter, her daughter Manki (PW-10) went upstairs and

immediately cried and at that time the appellant came down running with the child and his full pant was stained with blood. When this witness along with other went upstairs in the room, they found that Uma Bai was lying in the pool of blood and there were injuries seen on her face, chest and neck. She has further stated that thereafter they went to the police station and report was lodged. In the cross-examination, she has stated that prior to the date of incident there was no quarrel and admits that the accused was a drunkard and was advised not to drink and take up employment. She has admitted that in state of intoxication, the appellant used to enter into quarrel with the deceased. From the evidence of this witness it is clear that when this witness went to the house of the accused and inquired about her daughter she was told that they are in the room upstairs and when her younger daughter went up stairs the deceased was found in pool of blood and the appellant was coming down with his child. On this particular aspect of the evidence, nothing could be elicited in the cross-examination to disbelieve this particular version.

14. The aforesaid version of Jhula Bai (PW-9) is fully corroborated in all material particular by her daughter Ku. Manki (PW-10) who has also stated that upon receipt of painful call from the sister that appellant is quarreling with her she had gone to the house of the appellant and they were informed that Uma is staying upstairs and when she went up there, she heard certain beating sound and she saw the appellant coming down stairs with the child and when she went to the room she saw her sister lying in pool of blood. The only thing elicited in her cross-examination is that prior to the incident the appellant used to quarrel with the sister but no report was lodged but then as far as the immediate presence of the appellant in the house along with the his

wife and that too in peculiar circumstances of he coming down stairs and the wife at the same time found in the room lying in pool of blood could not be impeached.

15. The sixth circumstantial evidence of stone stained with blood is said to have been recovered from the room of the appellant and the appellant's cloths were also seized which have been proved from the evidence of prosecution witnesses. Both have been found to be stained with blood as per the report of FSL.

16. The aforesaid circumstances having been proved by the prosecution beyond reasonable doubt, it was for the appellant to come out with explanation as he was obliged to disclose in view of provision contained in Section 106 of the Evidence Act as to under what circumstances his wife sustained number of injuries on her body and died homicidal death. In this regard neither in the cross-examination nor in the examination of the accused defence has emerged which could be said to be plausible and possible as also constituting an explanation as required under Section 106 of the Evidence Act. The evidence on record is also clear that the appellant and the wife used to reside in the third floor of the house and the only third member in the room was a minor child. Not only this, proved circumstances are that a day before the date of incident there was a quarrel between the appellant/husband and the deceased/wife and that was so much so that deceased had left the house, she came to live along with sister-in-law and on the next day, the husband had come and insisted to take her back despite reluctance on the part of the deceased followed by immediate presence of the appellant in the house, he coming downstairs with his cloths stained with blood and the deceased having been found dead in the

room, are all incriminating circumstances. The postmortem report proved by doctor (PW-6) and his evidence clearly shows that the deceased was bitterly beaten in a cruel manner with a heavy object, stone, so much so that she received as many as 9 injuries including some fatal injury resulting in excessive bleeding leading to death. The postmortem report, evidence of the doctor and his opinion that it was the homicidal death could not be substantially disputed. The accused having failed to explain the injuries leading to death of his wife, complete the chain of circumstance to draw an inference that in all probability it is the appellant and the appellant alone who must have killed his own wife.

17. The last submission of learned counsel for the appellant that the conviction of the appellant may be altered to the one under Section 304-II IPC, does not hold water. As we could gather from the argument the said submission is built up on the prosecution story that the appellant was doubting the character of his wife and therefore, is pressing into service Exception 1.

In order to attract the aforesaid Exception a plausible defence has to be set up that the offender was deprived of the power of self control by grave and sudden provocation and caused death. However, present is not a case where the appellant found his wife in compromising position with a third person. The only evidence which has come is that the appellant was doubting her character. Perhaps, this could be categorized as a provocation but certainly not a sudden provocation. On the contrary, this only provides a strong motive. Therefore, no case of Exception to Section 300 is made out.

18. In the result, we do not find any good ground to interfere with the judgment of conviction and order of sentence. Accordingly, appeal is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay