

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.34 of 2018

Chhote, S/o Ramratan Dhangad, Aged about 45 years, Resident of Dhangad Para Sariya, Police Station – Sariya, District Raigarh (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh, through Police Station Sariya, District Raigarh (CG)

---- Respondent

For Appellant: Mr.Sunil Sahu, Advocate
For State/Respondent: Mr.Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board
(02.12.2021)

Sanjay K. Agrawal, J

1. This criminal appeal by the accused / appellant under Section 374 of the CrPC is directed against the judgment of conviction and order of sentence dated 23.10.2008 passed by the Additional Sessions Judge, Sarangarh, District Raigarh in Sessions Trial No.11/2008, whereby learned Additional Sessions Judge has convicted the appellant for offence under Section 302 of the IPC and sentenced him to undergo imprisonment for life and fine of ₹ 1000/-, in default of payment of fine to further undergo RI for three months.
2. Case of the prosecution is that on 16.9.2007 at about 1.30 a.m. at

village Dhangadpara Sariya, District Raigarh, the appellant caused murder of his wife Baishakha (since deceased) by wooden log and thereby committed the offence. It is further case of the prosecution that on 16.9.2007 Ramdayal (PW-1) lodged the report at 2.40 a.m. that he was informed by his aunt Dhanmati (mother of the appellant herein) that her son Chhote (appellant herein) is assaulting his wife Baishakha, but it was ignored by him. Again Dhanmati came and informed that her son has murdered his wife Baishakha, then he (Ramdayal) informed the said fact to Sanatan (PW-6) and Shyamlal Dhangad (not examined) and then they informed to Reshan Pradhan (PW-2) and they went to the house of the appellant where deceased Baishakha was lying dead. Pursuant to which, FIR was registered vide Ex.P-1 and thereafter vide Ex.P-2 merger intimation was registered. Inquest of dead body of deceased Bishakha was prepared vide Ex.P-4. Dead body of deceased Bishakha was sent for postmortem to Primary Health Center, Sariya, where Dr.Devraj Behra (PW-4) conducted postmortem and submitted his report vide Ex.P-8. Memorandum statement of the accused was recorded vide Ex.P-5 and on the basis of his memorandum statement, one bloodstained wooden log and gamcha were seized from the appellant vide Ex.P-6. Bloodstained soil, plain soil and bangles were recovered from the spot vide Ex.P-7. Seized articles were sent for chemical examination to the State Forensic Laboratory. The accused / appellant was arrested. After recording of statement of the prosecution witnesses under Section 161 of the CrPC, the accused was charge-sheeted for

offence under Section 302 of the IPC, which was committed to the Court of Session, Raigarh, in which the appellant / accused abjured the guilt and entered into defence.

3. In order to bring home the offence, the prosecution has examined as many as 11 witnesses and exhibited 15 documents Exs.P-1 to P-15. Statement of the accused under Section 313 of the CrPC was recorded in which he denied the guilt and taken the defence of *alibi*. However, he examined none in his defence.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 23.10.2008, found the accused guilty for the aforesaid offence holding that the death of deceased Bishakha was homicidal in nature and death was caused in the house of the appellant in which only the deceased and the appellant were present and convicted him under Section 302 of the IPC and sentenced as aforementioned, against which, this criminal appeal has been preferred.
5. Mr.Sunil Sahu, learned counsel appearing for the appellant / accused, would submit that the learned Additional Sessions Judge has committed grave legal error in convicting the appellant for offence under Section 302 of the IPC as the prosecution has failed to prove its case beyond reasonable doubt. He would further submit that Rajkumar (PW-3) (son of the appellant and the deceased) has turned hostile and has not supported the case of the prosecution and only on the basis of memorandum statement of the accused / appellant, he has been convicted, which is liable to

be set-aside and the appeal deserves to be allowed. Alternatively, he would submit that the appellant's case would fall within the ambit of Section 304 Part-I or Part-II of the IPC.

6. On the other hand, Mr.Rajendra Tripathi, learned Panel Lawyer for the respondent / State, would support the impugned judgment and submit that the prosecution has proved its case beyond reasonable doubt and the appellant has given false explanation that he was not present in the house on the date of offence, which runs contrary on the basis of para-3 of statement of Ramkumar (PW-3) (his son), who has clearly proved that the appellant was present in the house on the date of offence, as such, the appeal deserves to be dismissed.
7. We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
8. The first question for consideration would be, whether the death of deceased Bishakha was homicidal in nature, which the trial Court has held that the death was homicidal in nature considering the injuries which the deceased suffered in vital part of the body as cause of death is excessive heamorrhage caused by rupture of vital organ like liver and lungs and fracture of bones and ribs. In wooden log, blood was found in article 'D' in report dated 5.4.2008, which was also sent to Serologist & Chemical Examiner, Govt. of India, Kokkatta, but no such Serologist report is available in the record.
9. After hearing learned counsel appearing for the parties and after

going through the records and considering the nature of injuries and number of injuries, which the deceased suffered in vital part of the body, which is apparent from postmortem report Ex.P-8 and rupture of vital organ like liver and lungs and fracture of bones and ribs, we are unable to hold that the death was not homicidal in nature. Accordingly, we hereby affirm that the death of deceased Bishakha was homicidal in nature.

10. The question is whether the death was caused by the appellant by participating in the offence and he has committed the murder of the deceased.

11. It is the case of the prosecution that on the date of offence i.e. late night (early morning of 16.9.2007), the appellant was assaulting his wife Bishakha. Rajkumar (PW-3) (his son), child witness, who has been examined, has been granted permission to ask the leading questions by the Court on 21.8.2008. During the course of examination while answering the leading question, he has clearly stated that on the date of offence, his father and mother both were quarrelling and on that account, he had left his house and he was sleeping in Ganesh pandal. The aforesaid statement of quarrel between his father and mother was not even rebutted by further cross-examination by the appellant, as such, it is established that on the date of offence, the quarrel took place between the appellant and his wife Bishakha. It is established from the record that murder of Bishakha took place inside the house of the appellant as his son Rajkumar (PW-3) had already left the house

on account of dispute between them, which is apparent from statement of Rajkumar (PW-3) and dead body of deceased Bishakha was found inside the house of the appellant, which is duly proved by Ramdayal (PW-1) and Resham Pradhan (PW-2), as such, it is established fact that the death of deceased Bishakha took place inside the house of the appellant herein and vide postmortem report Ex.P-8, it is quite evident that the deceased suffered nine injuries in the house of the appellant and the death of deceased Bishakha was homicidal in nature as held hereinabove. The appellant was her husband and he was required to explain as to how the deceased – his wife, has suffered grievous nine injuries resulting into her death, as he was the only person in his house at the time of incident, which he has not explained.

12. In the matter of **Harijan Bhala Teja v. State of Gujarat**¹, the Supreme Court has held that where the postmortem report establishes homicidal nature of death and since the accused was only person who staying with his wife at time of her death, therefore, it is for the accused to show in what manner she died and relying upon Section 106 of the Indian Evidence Act in paragraph 19 of the report it was held as under: -

“19. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death.”

1 AIR 2016 SC 2065

13. Likewise, in the matter of Gajanan Dashrath Kharate v. State of Maharashtra², where the accused (Gajanan Dashrath Kharate) alleged to have killed his father and accused has not offered any explanation for homicidal death of his father, conviction was affirmed by the Supreme Court by holding as under in paragraph 14: -

“14. Upon appreciation of oral evidence and the circumstance of the recovery of blood stained clothes of the accused and the conduct of the accused in not offering any explanation for the homicidal death of his father, by concurrent findings, the trial court and the High Court rightly convicted the appellant-accused under Section 302 IPC and we do not find any reason to interfere with the impugned judgment.”

14. Similarly, in the matter of State of Andhra Pradesh v. Patchimala Vigneswarudu alias Vigganna alias Ganapathi³, the Supreme Court having found that there is evidence of last seen and where the motive and homicidal death are proved by medical evidence, restored the conviction.

15. Reverting to the facts of the present case in light of aforesaid legal position, it is quite vivid that the prosecution has proved the homicidal nature of death and it has also been proved by circumstantial evidence that the deceased was wife of the accused / appellant and they were staying together on 16.9.2007. It has also been established that the quarrel took place between the appellant and his wife, which forced their son Rajkumar (PW-3) to leave the house and to stay in Ganesh

² AIR 2016 SC 1255

³ (2016) 4 SCC 611

pandal in the night and it was for the appellant to explain as to how his wife suffered nine grievous injuries in vital parts of her body i.e., in liver & lungs and fracture of bones & ribs. While denying the guilt at the time of framing charge, the appellant took a plea that his wife was intoxicated and fell over the door and suffered injuries. However, while replying specific question put to him under Section 313 of the CrPC, the appellant has stated that he has falsely been implicated and has taken the defence of *alibi* that he has gone out for work and his wife Bishakha was intoxicated and fell over the door and suffered injuries, which is not corroborated either by ocular or by medical evidence. Not only this, pursuant to memorandum statement of the accused / appellant vide Ex.P-5, bloodstained wooden log was recovered from his possession vide Ex.P-6, which was sent for chemical examination. In our opinion, the above chain of circumstances is complete and leads only to one conclusion that it was the accused / appellant who caused the death of the deceased and he alone committed the murder of his wife / deceased. The view taken by the learned Court of Sessions that the chain of circumstances is complete is correct and he has properly analyzed medical evidence and circumstantial evidence to come to the conclusion that death of deceased Bishakha was homicidal in nature and it was the appellant who alone had committed the murder of deceased Bishakha.

16. At this stage, learned counsel for the appellant, would

submit that the appellant's case would fall within the ambit of Section 304 Part-I or Part-II of the IPC as it is the case of grave and sudden provocation. After hearing learned counsel appearing for the parties and after going through the records, we do not find any evidence to prove the said fact by defence, as such, we are unable to hold that it is the case of grave and sudden provocation, by which offence under Section 302 of the IPC can be converted to Section 304 Part-I or Part-II of the IPC. Accordingly, we reject the argument advanced by learned counsel for the appellant.

17. Accordingly, the criminal appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-