

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1264 of 2017

Sabir alias Shabbir Khan, S/o. Men Khan, aged about 41 years, R/o. Shanti Nagar Balgi, P.S. Bankimongara, District Korba (CG)

---- Appellant

Versus

State of Chhattisgarh Through Station House Officer, Police Station Balko, Korba, District Korba (CG)

---- Respondent

For the Appellant :- Mr. B.N. Nande, Advocate
For the respondent :- Mr. Lalit Jangade, Dy. GA

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

Judgment on Board By Manindra Mohan Shrivastava, J.
10.06.2021

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 16.12.2009 passed by the Second Additional Sessions Judge (FTC), Korba District Korba, in Sessions Trial No. 10/2008 whereby and whereunder the appellant has been held guilty for commission of offence under Sections 302 and 201 IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 2000/- under Section 301 IPC, RI for three years and to pay fine of Rs. 1000/- under Section 201 IPC with default stipulations with a direction to run the sentences concurrently.

2. Prosecution case in brief is that, deceased Jhul Bai was residing with the appellant as his wife. Written report (Ex.P-6) was lodged in Police Station on 19.10.2007, in which it was stated that the appellant buried his wife in the nursery. Santosh Singh (PW-9) the son of the deceased informed the incident to police that the appellant assaulted his mother Jhul Bai. Upon lodging of the report, it was treated as mere intimation also recorded as Ex.P-27. Upon investigation, police came out with the case that the appellant had assaulted his wife with the help of an iron pipe on different parts of the body due to which, she sustained injuries. She was found in the well wherefrom she was taken out and on the next day she died.
3. After coming to know about the burial of the body, the same was exhumed and upon preparation of inquest the dead body was sent for postmortem. Postmortem was conducted by Dr. R.S. Kanwar (PW-7), who prepared his report Ex.P-9. The postmortem report, disclosed that multiple injuries were found on various parts of the body including head injuries. In the opinion of Dr. R.S. Kanwar (PW-7), cause of death was hemorrhagic shock due to head injury and the duration was within 36 hours from the time of postmortem. Upon completion of usual investigation, recording of case diary, statement of the witnesses, the police filed charge sheet, upon committal of case to the Court of Sessions, charges were framed.

4. The appellant abjured guilt and he was put to trial. In order to prove its case, the prosecution examined as many as 15 witnesses. The accused was also examined under Section 313 CrPC with regard to incriminating evidence appearing against him in the evidence led by the prosecution. The appellant pleaded innocence. No defence witnesses was examined. Learned trial Court relied upon the eye-witness account of Santosh Singh (PW-9), child witness, the injuries found on the body of the deceased and the postmortem report as also the evidence of the Doctor (PW-7) that the cause of death was hemorrhagic as a result of head injury, which was said to be caused by the appellant with the help of an iron pipe, held the appellant guilty of commission of offence under Section 302 IPC.
5. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would submit that the appellant was entitled to be acquitted ought to be giving benefit of doubt because the evidence of child witness does not inspire confidence. He would argue that the learned trial Court itself has not fully relied upon the evidence of the child witness and a part of the evidence has been rejected. Insofar as, his evidence of pushing the deceased into the well is concerned, he would argue that the child witness also suppressed that in injured condition, the deceased was taken in auto and first she was taken to the house of her father (PW-8), and when he expressed his inability then only the dead body was taken by the appellant for burial. This shows that the child witness

was not only exaggerating the incident but also suppressing material aspect and therefore, it would not be safe to convict the appellant without any independent corroboration of the evidence of the child witness. Next submission of learned counsel for the appellant is that even according to child witness (PW-9), when the appellant was assaulting his mother, he ran towards the house of his aunt. That means he had gone to the house of his aunt and the incident of quarrel and assault has been disclosed by his mother but the prosecution did not examine any other independent adult witness, who could corroborate the evidence of child witness Santosh Singh (PW-9). Therefore, non-examination of other independent adult witness raises doubt on the veracity of the evidence of the child witness. Further submission of learned counsel for the appellant is that the trial Court in its judgment has disbelieved that part of the evidence of the child witness which says that the appellant had pushed the deceased into the well. Having recorded a finding that it is doubtful that the appellant pushed the deceased into the well or the deceased herself fell into the well accidentally, existence of single head injury made it doubtful whether that injury was caused because of an assault or because of fall into the well. It is argued that possibility of deceased sustaining head injury due to fall in the well cannot be ruled out and suggestion to this was effect was also given to Dr. R.S. Kanwar (PW-7), though denied. It is next submitted that in the present case, the background in which the incident had happened clearly shows that the deceased and the appellant both were

intoxicated and in the state of intoxication the deceased started abusing and creating noise and as a reaction to that, the appellant picked up an iron pipe used in the kitchen for airing fire. Not only this, after the deceased fell into the well the appellant called persons nearby informing that the deceased had fallen into the well and she was taken out of the well with the help of other and thereafter while she was being taken to the house of her father in an auto unfortunately on the way she died. All these show that the appellant had no intention to cause death of the deceased, though in the heat of moment and in the state of intoxication, he may have picked up an iron pipe to teach lesson to the deceased.

6. On the other hand, learned counsel appearing for the State would argue that the evidence of PW-9, the child witness is natural and inspires confidence because he has very naturally given the details of the incident, in which he stated that his mother was intoxicated and she was making noise, abusing and then the appellant picked up an iron pipe and assaulted on the entire body by removing her clothes. Learned state counsel would submit that this evidence of the child witness could not be doubted merely because the child witness had seen from a distance of about 40-50 meters while standing in front of the house of his aunt that the appellant was seen pushing the deceased into the well. He would argue that even if, the trial Court has disbelieved the part of the testimony of the child witness, it is legally permissible to rely upon the reliable part of the evidence by application of the general principles of law of evidence. He would further argue that the

child witness has emphatically stated in his evidence that the appellant assaulted the deceased on her head, back and abdominal part which is corroborated from the medical evidence. There is only one head injury and the possibility of sustaining head injury due to fall in the well is ruled out by Doctor (PW-7) who has cleared stated in his cross examination that the nature of injury sustained by the deceased on her head could not be caused by fall on a stone. It is further argued that though the parties were in state of intoxication, there is no evidence on record to prove that the appellant was so intoxicated that he lost his control and did not know the consequence of his act. It is not a case of free fight because there is no evidence that the deceased was also fighting with the appellant and both of them were assaulting each other. The very act of the appellant in assaulting the deceased with the help of iron pipe on her head makes the case of culpable homicide amounting to murder.

7. We have heard learned counsel for the parties and perused the record and the impugned judgment.
8. As far as finding of learned trial Court regarding homicidal death of deceased Jhul Bai, the same does not warrant any interference. Finding is based on uncontroverted testimony of Doctor (PW-7), who conducted the postmortem of the deceased. Doctor (PW-7) clearly spelled out that apart from receiving multiple injury on various parts of body, the deceased had sustained head injury which was bone deep. The death was caused because of shock and hemorrhage in the brain, as a direct result of injury due to

which, the deceased succumbed to death. At this juncture, we need to consider the argument raised by counsel for the appellant that the death was not homicidal in nature but it was as a result of unfortunate accident of deceased falling into the well. The defence of the deceased falling into the well is sought to be built up by giving a suggestion to doctor (PW-7) in his cross-examination. However, the doctor has clearly stated that the injury on head could not be caused by falling on any stone. Moreover, we find that PW-9, the child witness has clearly stated that the appellant had assaulted the deceased on various parts of the body including her head also. There is only one injury found on the head. It is not the case that there were multiple injuries on the head so as to say that it has become doubtful whether the fatal injury was caused by an assault of iron pipe or caused by fall into the well.

9. The evidence of the child witness (PW-9) the son of the deceased inspire confidence. We have gone through the evidence of the child witness, he has given details of the incident. He has deposed that the appellant assaulted his mother with the help of an iron pipe used in the kitchen. He has empathetically deposed that the appellant assaulted his mother on the back, head and abdominal part. He further deposed that his mother was assaulted in the night by the appellant. He has further stated that it is the appellant who pushed his mother into the well. Learned trial Court has recorded a finding that it is doubtful whether the deceased was pushed into the well or she fell because of an accident.

Except this part of the evidence of the child witness, rest of the part of evidence of this witness has been believed by the trial Court. The child witness has stated that the appellant had also assaulted his younger brother Vijay. There is evidence on record to show that Vijay also sustained injury. This witness has empathetically stated that the appellant had repeatedly assaulted his mother. This is also corroborated from the medical evidence because on the body of the deceased, multiple injuries have been found and it is not a case where she was subjected to only one or two injuries.

10. Learned counsel for the appellant has argued and we also find from the evidence on record that the manner in which the incident happened it cannot be said that the appellant had intention to cause death because there is overwhelming evidence by the prosecution witnesses themselves that when the deceased fell into the well during the course of assault, the appellant himself came out and called people in the neighborhood informing that the deceased had fallen into the well and then other persons helped and the deceased was taken out of the well and kept in the house over night and next day, the appellant had hired an auto rickshaw of PW-4 and in that auto, he was taking the deceased who at that time was alive though in the injured condition, to the house of her father. This fact has been stated by Santosh Chouhan (PW-4) the auto driver. Janak Dewangan (PW-8) father of the deceased has stated that the appellant had come with the body of the deceased and when he disowned stating that she is now

married in other caste then only the appellant had taken the body. All these evidence on record, taken together, support the submission of the learned counsel for the appellant that at the time of assaulting the deceased the appellant may not having intention to cause death. However, in view of provision contained in section 299 IPC, it would be a case of culpable homicide even if, there is no intention but the death was caused by doing an act with an intention of causing bodily injury which is likely to cause death, or with the knowledge that by such act he is likely to cause death, it would be a case of culpable homicide.

The evidence on record does not prove that there was any sudden and grave provocation. The evidence of Santosh Singh (PW-9), the eye witness is that on the date of incident, both appellant and the deceased were intoxicated and before the onset of quarrel the deceased was in the state of intoxication creating noise. The appellant asked her not to make noise and when she did not stop, she was assaulted. All these facts have been elicited in the cross-examination of Santosh Singh (PW-9) but even if this entire evidence is taken as it is, it would not constitute a case of grave and sudden provocation. Definitely, it could be a cause for an annoyance for the appellant but then, it would not be a case of sudden and grave provocation so as to cause death of deceased.

11. Even if, there is an evidence on record that both the appellant and the deceased were drunk, in order to attract provision under section 85 IPC, the appellant is not entitled to any benefit only on the basis of evidence that in the night when the incident

happened, the appellant and the deceased both were in drunken state. The provisions contained in section 85 IPC provides that nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

The law, therefore, does not carve out exception in cases of voluntary intoxication and that is not an excuse for commission of a crime. In the present case, it has neither emerged from the evidence of the prosecution nor from the defence that the intoxication of the appellant was involuntary or without his knowledge.

12. The aforesaid discussion made in the light of section 85 IPC makes it clear, that in the present circumstances, unless there is evidence to show that the appellant was in such a state of intoxication that he was completely beside his mind altogether at the time of incident.
13. In the result, we do not find any good ground to interfere with impugned judgment of conviction and order of sentence. The appeal, therefore, fails and is hereby dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge