

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 334 of 2011

Rama Singh @ Rama, S/o Late Bechan Singh Gond, aged about 33 years, r/o Vikrampur, Police Station- Sonhat, District Koriya (CG)

– Appellant

Versus

State of Chhattisgarh, through Station House Officer Arakshi Kendra, Baikunthpur, District - Koriya

– Respondent

For Appellant : Shri Bharat Rajput, Advocate
For Respondent / State : Shri Mahesh Mishra, Panel Lawyer

**Hon'ble Shri Justice T. P. Sharma &
Hon'ble Shri Justice Inder Singh Uboweja**

JUDGMENT

22.04.2015

Per **T.P. Sharma, J.:-**

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 28.02.2011 passed by the First Additional Sessions Judge, Manendragarh at Baikunthpur, District- Koriya in Sessions Trial No.45 of 2010, whereby and whereunder, after holding the appellant guilty for causing homicidal death amounting to murder of his wife- Indrakunwar, and concealing the evidence of criminal case, the trial Court has convicted the appellant under Sections 302 and 201 IPC and sentenced him to undergo

imprisonment for life and fine of Rs.1,000/-, in default, additional RI for three months & RI for seven years and fine of Rs.1,000/-, in default, additional RI for three months respectively.

- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, in the intervening night of 11th and 12th February, 2010, the appellant has caused injury to his wife- Indrakunwar by blunt object on the ground of suspicion. She became unconscious, then the appellant telephoned sister of his wife, namely, Manmati (PW-2) and made extra judicial confession. Then she came to his house, and again the appellant made extra judicial confession before her, thereafter, he brought the injured to the hospital for treatment, where he informed the doctor name of injured as Jaykunwar instead of Indrakunwar and also informed that it is a case of vomiting and loose motion. Dr.D.K.Chikenjury (PW-16) examined her vide Ex.P/15-A and found following injury and symptom:
 - i) She was unconscious;
 - ii) Injury over the head.

She was referred to the District Hospital, Baikunthpur for expert treatment. The doctor also issued chit for medicine vide Ex.P/14. On 12.02.2010, she died at 3.10 am. Death was intimated to Baikunthpur Police vide Ex.P/16. Finally, Morgue was recorded vide Ex.P/20. FIR was registered vide Ex.P/25. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P/1, inquest over the dead body of the deceased was prepared vide Ex.P/2. Spot map was prepared vide Ex.P/27. Bloodstained and plain soil were recovered from the spot vide Ex.P/5. Dead body of the deceased was sent for autopsy to the District Hospital, Baikunthpur. Dr.S.S.Gupta (PW-15) conducted autopsy vide Ex.P/22 and found following injuries and symptoms:-

- i) Face swollen;
- ii) Contusion present over face;
- iii) Bleeding coming out from mouth and nostrils;
- iv) Contusion and swelling over the head ;
- v) Contusion over chest of 3 x 2 cm;
- vi) Contusion and swelling over right palm;
- vii) Fracture of 5th left rib;
- viii) Rupture of left lung of 1.2 x 1/2 cm.

Mode of death was syncope and death was homicidal in nature.

- 4) Sealed clothes of the deceased were seized vide Ex.P/12. Bloodstained clothes of the deceased were seized vide Ex.P/6. Other documents were seized vide Ex.P/7. During

the course of investigation, the appellant was taken into custody, he made disclosure statement of broken bangles and clothes vide Ex.P/8 and the same were recovered at his instance vide Exs.P/9 and P/10.

- 5) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Baikunthpur, who in turn, committed the case to the Court of Sessions, Baikunthpur, from where learned Additional Sessions Judge received the case on transfer for trial.
- 6) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as eighteen witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
- 7) After providing opportunity of hearing to the parties, the trial Court has convicted & sentenced the appellant as aforementioned.
- 8) We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 9) Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the

evidence of Manmati (PW-2), sister of the deceased, who is interested witness, her evidence is not sufficient for proving the guilt of the appellant. Even otherwise, as per para 3 of her evidence, appellant has caused injury to deceased on sudden provocation on the ground of suspicion. He himself has taken the injured to the hospital for treatment. It further shows that appellant has not caused injury with intent to cause her death.

- 10) On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that evidence of Manmati (PW-2) and other witnesses are sufficient to prove the guilt of the appellant that he has caused injury to the deceased resulting into her death amounting to murder and has further suppressed the evidence of criminal case.
- 11) In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
- 12) In the present case, homicidal death as a result of fatal injuries found over the body of the deceased has not been substantially disputed on behalf of the appellant. Even otherwise, it is also established from the evidence of Shivpal Singh (PW-1), Manmati (PW-2), Morgue Intimation (Exs. P/16 and P/20), FIR (Ex.P/25) Dr. D.K.Chikenjury (PW-16), Dr. S.S. Gupta (PW-15), Injury Report (Ex.P/15-A) and autopsy

report (Ex.P/22) that death of deceased Indrakunwar was homicidal in nature.

- 13) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of Manmati (PW-2), sister of the deceased. As per her evidence, appellant telephoned to one Lallansingh, nephew of this witness, then she talked on telephone with the appellant, to whom the appellant made extra judicial confession that he has assaulted the deceased, then she visited the house of the appellant where she saw her sister, who was unconscious. Being asked, appellant further made extra judicial confession that he has assaulted his wife on the ground of suspicion, thereafter, the appellant took the injured to hospital for treatment where she died. This part of evidence is unchallenged in her cross-examination which clearly reveals that the appellant has made extra judicial confession that he has assaulted his wife although on the ground of suspicion. Death of the deceased has been caused on account of injury found upon her head and chest including injury upon lungs. This evidence is sufficient to prove the fact that appellant has caused homicidal death of the deceased and also suppressed the evidence of criminal case by showing name of the deceased as Jaykunwar

instead of Indrakunwar, and also by mis-informing the illness of the deceased.

- 14) As regards the question of motive, in case of direct evidence motive loses its importance. Even otherwise, motive is only an aid in criminality and can be inferred on the basis of nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only the person concerned would be in a position to explain that what was his intention or motive behind commission of any act.
- 15) In the present case, as per evidence of Manmati (PW-2), appellant has caused injury to his wife on the ground of suspicion and when she became unconscious, then he has taken her to the hospital for treatment. This shows that he has committed homicidal death of the deceased, but not amounting to murder. He has tried his level best for treatment of the deceased, but, at the time of causing such injury, that too upon chest and head, atleast he was having knowledge that by his such act, the deceased may die. Repeated assault of the appellant shows that his act squarely falls within the ambit of Section 304 Part I of the IPC, not under Section 302 IPC along with Section 201 IPC.

- 16) After appreciating the evidence available on record, learned Additional Sessions Judge has convicted the appellant as aforementioned.
- 17) While convicting and sentencing the appellant under Section 201 IPC, the Court below has not committed any illegality, but while convicting and sentencing the appellant under Section 302 of the IPC, the Court below has not considered the aforesaid facts and circumstances and thereby committed illegality.
- 18) Consequently, the appeal is partly allowed. Conviction and sentence of the appellant under Section 201 of the IPC is hereby maintained. Conviction under Section 302 of the IPC is altered to Section 304 Part I of the IPC and he is sentenced to undergo RI for ten years. The appellant is in custody since 27.02.2010. He is entitled to set off for the period of his detention.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE