

**(2018) 08 CHH CK 0106**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 180 Of 2015

Babulal Sharthi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Aug. 8, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 302, 304
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Pritinker Diwaker, J; Gautam Chourdiya, J

**Bench:** Division Bench

**Advocate:** Manoj Mishra, Ravindra Agrawal

**Final Decision:** Dismissed

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**Judgement**

Pritinker Diwaker, J

1. This appeal has been filed against the judgment of conviction and order of sentence dated 07.11.2014 passed by Additional Sessions Judge

Katghora, in Sessions Trial No. 83/2013 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life

and pay fine of Rs. 1000/-, plus default stipulation.

2. Name of the deceased in this case is Samund Kunwar - the wife of the accused/appellant. It is alleged that on 4.6.2013 at about 8-9 PM the

accused/appellant killed her by inflicting number of club injuries resulting in her instantaneous death. After committing her murder, the

accused/appellant went to Kiran Kumar (PW-1) and Smt. Shivkumari (PW-2) and by giving the key of his house he informed them about his wife

being killed by him and also asked them to perform her last rites. He made extra-judicial confession before Ku. Manisha (PW-3) and Shiv Sagar (PW-

4) with regard to killing his wife. At the instance of PW-4 - the son of the deceased and accused, FIR was lodged against the accused/appellant under

Section 302 IPC. After drawing inquest Ex. P-12, the dead-body was sent for postmortem examination which was conducted by Dr. Rudrapal Singh

Kanwar (PW-7) who gave his report Ex. P-10. After completion of investigation, police filed challan against the accused/appellant u/s 302 IPC

followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 11 witnesses. Statement of the

accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That on the date of incident there was no quarrel between the deceased and the accused, and it appears that being under the influence of liquor, he

had beaten the deceased which unfortunately resulted in her death.

(ii) That even if the entire case of the prosecution is taken as it is, the act of the accused/appellant cannot entail his conviction under Section 302 and

at the most he can be held guilty under Section 304 (Part-I) or 304 (Part-II) IPC.

(iii) That the so-called extra-judicial confession made by the accused/appellant before PW-3 and PW-4 is a very weak type of evidence and therefore,

cannot be made a basis for conviction of the accused/appellant.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant

under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that considering the

number and nature of injuries inflicted by the accused/appellant and also the extra-judicial confession made before PW-3 and PW-4, the findings

recorded by the Court below are fully justified and no interference therewith is called for in this appeal. State counsel also referred to the evidence of

PW-1 and PW-2 who too have clearly stated that the accused/appellant came to them, gave key of his house, informed about killing the deceased and also asked them to do her last rites.

7. Heard counsel for the parties and perused the material available on record.

8. Kiran Kumar (PW-1) has stated that on the night of incident he came to know through PW-4 that the accused/appellant had consumed liquor and was beating the inmates, on which, he consoled him saying that it was a routine matter and by morning he would be alright. He has further stated that the accused/appellant came to him, handed over the key of the house, informed about killing the deceased and asked for doing her last rites.

Thereafter, this witness is stated to have gone to the house of the accused and seen his wife lying dead with bleeding injuries on her hand and

leg. In paragraph No. 7 he however resiled from his version and stated that the accused/appellant had not informed him anything about performing the

last rites of the deceased nor did he throw the key of his house. He has stated that the accused/appellant did not name anyone while disclosing the

said fact and that at that time his daughter, daughter-in-law, son and brother were also present. Smt. Shiv Kumari (PW-2) - wife of PW-1 has stated

that on the date of incident at about 8 PM she was informed by her brother-in-law and sisters-in-law (Devrani and Nanad) about the quarrel between

the accused and the deceased. Thereafter, according to this witness, in the next morning accused came to her house, threw key of his house, informed

about the death of the deceased and also asked to do her last rites. In paragraph No. 7 of her deposition she however turned back from her version

and stated that she did not witness any quarrel nor anything like that was disclosed to her by anyone. Ku. Manisha (PW-3) - daughter of the accused

and the deceased has stated that the accused/appellant made extra-judicial confession before her regarding committing murder of the deceased. Shiv

Sagar (PW-4) - the son of the deceased though has been declared hostile yet he has stated that the accused/appellant confessed before him about

killing the deceased and also asked for performing her last rites. He has further stated that on the fateful night the accused had picked up quarrel with

his mother (the deceased herein) and when he tried to intervene, he was also abused by him. According to this witness, after seeing the quarrelsome

activities, he left the house and in the next morning the accused/appellant made extra-judicial confession regarding commission of murder of the

deceased, and when he got back home, his mother was lying dead. Smt. Ritu Sagar (PW-5) and Rakesh Sonwani (PW-

10) have not supported the case of the prosecution and have been declared hostile. Binda Bai (PW-6) and Ajay Sagar (PW-8) are the witnesses to

inquest. Dr. Rudra Pal Singh Kanwar (PW-7) is the witness who conducted postmortem examination on the body of the deceased and gave his report

Ex. P-10 stating that he noticed three injuries, being abrasion on the left leg, swelling on wrist and shoulder and lacerated wound on the right temporal

region with gross swelling and fracture of right skull bone (temporal bone). Cause of death, according to this witness, was cardio-respiratory failure

due to head injury and the death was homicidal in nature. Bajrang Kulaste (PW-9) is the Patwari who prepared spot map Ex. P-13. Vivek Sharma

(PW-11) is the investigating officer who has duly supported the case of the prosecution.

9. Appraisal of the evidence thus makes it clear that in the night of occurrence the accused/appellant being under the influence of liquor had picked up

quarrel with the deceased, started beating her which ultimately led to her death. Record also shows that when the quarrel was going on between the

deceased and the accused, the other inmates of the house including children went to the house of elder brother of the accused. From the evidence of

PW-1, PW-2, PW-3 and PW-4 it is manifest that on the next day in the morning hours the accused/appellant came to them and made a disclosure

about killing the deceased and also asked them to perform her last rites. That apart, postmortem report Ex. P-10 goes to show that deceased had

suffered three injuries including fracture of skull bone and the death was homicidal in nature. Defence has not brought anything on record that the

extra-judicial confession made by the accused before PW-1, PW-3 and PW-4 was not voluntary and truthful. Rather the record shows that apart from

being voluntary and truthful, it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. Another

important point here is that the incident took place inside the house where no third person was present at the relevant time except the two and

therefore, burden lies on the accused to explain as to how all that had happened but he did not offer any explanation in his 313 Cr.P.C statement in this regard. He cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on him to offer any explanation - Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681.

10. In the aforesaid view of the matter, the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC appear to be based on appreciation of the evidence on record and being so no interference therewith can be made in this appeal. Accordingly, the appeal has no substance and it is dismissed as such. Judgment impugned is confirmed. As the appellant is already in jail, no order to surrender etc. is needed.