

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 779 of 2011**

- Phulbaj S/o Nankaram Chouhan, aged about 34 years, resident of village Amalbhiti, Devitikra, Police Station Darima, District Sarguja, CG

---- Appellant**Versus**

- State Of Chhattisgarh, Through Station House Officer, Police Station - Darima, Distt. Sarguja (CG)

---- Respondent

For appellant :	Shri Shaktiraj Sinha, Advocate.
For Respondent/State :	Shri Avinash Mishra, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice C.B. Bajpai,

Judgment On Board by Justice Pritinker Diwaker**09/12/2015:**

This appeal arises out of the judgment of conviction and order of sentence dated 05.07.2011 passed by Additional Sessions Judge, Ambikapur District Sarguja in S.T. No.102/2010 convicting the accused/appellant under Section 302 and sentencing him to undergo imprisonment for life with fine of Rs.1000/- plus default stipulations.

2. As per the prosecution case, on 4.1.2010 at 3 pm FIR Ex. P-2 was lodged by Nankaram (PW-1) – the father of the appellant alleging that marriage of the appellant with the deceased namely Deepmala had taken place about 12 years back and out of their wedlock three issues were born. Allegedly, on that day at about 10 am when he was taking bath in the nearby well, he heard the cries of his sister-in-law Rasmatia and immediately thereafter he rushed to the spot followed by his wife Rampatia where he saw that the accused/appellant had assaulted his wife (deceased) on the temple and

made her fall down on the ground. It is alleged, that at that time the accused/appellant was carrying blood coated axe in his hand and was to give second blow but he prevented him by catching hold of his both hands. After this witness snatched axe from the accused, he (appellant) went towards the well for rubbing tobacco paste. Thereafter, his daughter-in-law (deceased) was taken to the hospital where the doctor declared her brought dead. It is also alleged that as the deceased had used the words "black cat" for the accused/appellant in lighter vein, he grew angry and dealt the fatal axe blow at her. Based on this FIR, offence under Section 302 IPC was registered against accused/appellant. *Merg* intimation (Ex.P-2) was recorded at 3.30 pm on that day itself followed by inquest being conducted vide Ex. P-3. Dead body was then sent for postmortem examination on 4.1.2010 which was conducted by G.L. Koushal (PW-12) vide report Ex. P-18. After investigation, *challan* was filed by the police under Section 302 IPC followed by framing of charge under the same section.

3. So as to hold the accused/appellant guilty, prosecution has examined as many as 15 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above, by the judgment under assail herein.

5. Counsel for the accused/appellant submits that as the accused/appellant was suffering from insanity and unsoundness of mind, he was not aware of the consequences of his act and therefore, is entitled for the protection under Section 84 of IPC. He has placed his reliance on the decisions of Supreme Court in the matter of **P.S.V.L.N. Sastry v. Advocate General, High Court of Andhra Pradesh (2007) 15 SCC 271**, in the matter of **State of Rajsthan v. Shera Ram Alias Vishnu Dutta (2012)**

1 SCC 602 and in the matter of **State of Rajsthan v. Vidhya Devi (2011) 15 SCC 228**.

He further submits that even assuming that it is the appellant who caused injury to the deceased, but it was not with any premeditation at all, rather on account of the taunt passed on by the deceased calling him 'black cat' he got angry and caused injury to her and being so, his conviction under Section 302 IPC is not sustainable in the eye of law and at the most he can be convicted under Section 304 (Part-I) IPC.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same. He submits that ground of insanity is not available to the accused/appellant as it has not been taken during trial and no such statement is made by the witnesses at the time of investigation. He submits that considering the seriousness of injuries and the weapon used in the incident, the appellant has rightly been convicted under Section 302 IPC. He further submits that based on the memorandum of the accused Ex. P-22, axe was seized under Ex. P-23 and as per the FSL report Ex. P-27 blood was found on it, though in the serological report blood group could not be confirmed on account of it being disintegrated. He further submits that though the witnesses to memorandum and seizure namely Kamleshwar Yadav (PW-14) and Lalit Kumar (PW-15) have turned hostile, they have admitted their signatures on the disclosure statement and seizure memo. According to the State counsel, even the investigating officer has duly supported the case of the prosecution.

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

8. Nankaram (PW-1) – the father of the accused and the lodger of FIR has not supported the case of the prosecution and has been declared hostile. He however has admitted his signature on the FIR Ex. P-2 lodged by him. In paragraph No. 8 he has stated that two months prior to the incident, his son had become insane and during that

period he lost his senses and was not aware of what he was doing. Rampatia (PW-2), Jaikarram Chouhan (PW-3), Ravi Chouhan (PW-4), Rasmatia (PW-5) and Shyampati (PW-6) who are mother, uncle, cousin and aunts of the accused have also not supported the case of the prosecution and have been declared hostile. Ranbaj Chouhan (PW-7) – the brother of the deceased has also not supported the case of the prosecution and has been declared hostile. In paragraph No.4 he has however stated that for last few days accused/appellant had gone mad and had no sense of taking food etc. and the doctors had advised for admission in the bedlam. Tekmania (PW-8) is the witness who came to know about the incident after it had already taken place. Samaji Devi (PW-9) is the mother of the deceased and a hearsay witness to the incident. She has denied the fact that the appellant was suffering from any mental disease. Sundar Sai Gandharva (PW-10) is the father of the deceased who has not stated anything specific. Ram Kumar (PW-11) is the Patwari who prepared spot map Ex. P-7. Dr. G.L. Koushal (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-18 stating that there was a sharp cutting chop wound on the left ear measuring $2\frac{1}{2} \times \frac{1}{2} \times 1\frac{1}{2}$ inch, traverse cutting of ear in middle bone beneath the ear mastoid, blood clot present in face and neck. Cause of death according to this witness was hemorrhagic shock caused by chop wound on left ear (head) and the death has been opined to be homicidal in nature. U.L. Dewangan (PW-13) is the investigating officer who has duly supported the case of the prosecution. Kamlewar Yadav (PW-14) and Lalit Kumar (PW-15) have not supported the case of the prosecution and have been declared hostile. They however admitted their signatures on memorandum Ex. P-22 and the seizure made under Ex. P-23.

9. As regards the argument of the counsel for the appellant that at the time of incident, the accused/appellant was suffering from insanity or unsoundness of mind, this Court could not lay its hand even on a single substantive piece of evidence which is

suggestive of the same. In the entire trial, this point has not been raised and established by leading any reliable evidence. No medical papers to show that the appellant was suffering from any such mental ailment or the opinion of the medical expert has been brought on record. While dealing with the point of insanity or unsoundness of mind the Apex Court has in many cases – some of them being - **Surendra Mishra v. State of Jharkhand** reported in **(2011) 11 SCC 495**; **Mariappan v. State of Tamil Nadu** reported in **(2013) 12 SCC 270**; **Sheralli Wali Mohammed v. The State of Maharashtra** reported in **(1973) 4 SCC 79**; **Oyami Ayatu v. The State of Madhya Pradesh** reported in **(1974) 3 SCC 299**; **Bhikari v. The State of Uttar Pradesh** reported in **AIR 1966 SC 1**, has unequivocally held that unless pleaded and proved during trial, the accused/appellant is not entitled to derive the protection of Section 84 IPC simply by raising the issue at a belated stage. Here also, the defence has not been in a position to prove in accordance with law that the cognitive faculties of the accused were so impaired that he was not in a position to see the repercussions of his act and since it has not been done, the accused/appellant cannot disown his guilt of murdering his wife. Further, the act of the accused in denying charges, pleading trial, alibi and innocence in 313 statements makes this Court to draw an inference that his mental faculties were not so impaired to provide him the strength to wriggle out of the rigor of law. Counsel for the appellant has tried his best to put up his case by taking support from several case laws but all of them being on different footing, could not convince the judicial mind of this Court. Thus, in these circumstances and keeping in mind the aforesaid legal position, the appellant is held to be dis-entitled to have the protection of Section 84 of IPC.

10. Evidence however makes it clear that on 4.1.2010 it is the accused/appellant who killed his wife by causing injury with axe. Though the eyewitnesses have not supported the case of the prosecution yet as the body of the deceased was

recovered from inside his house and no satisfactory explanation has been offered by him in his 313 Cr.P.C. statement, he cannot be absolved from his guilt. Furthermore, on the disclosure statement of the accused Ex. P-22, seizure of blood stained axe was made under Ex. P-23 duly confirmed by FSL report Ex. P-27. Though the serological report could not be determinative of the blood group on account of disintegration of blood, FSL report can very well be used against him in view of the other evidence on record such as recovery on the disclosure statement of the accused himself. Even the autopsy surgeon has also proved the death to be homicidal in nature. This Court however finds some force in the argument of the counsel for the appellant that there was no prior intention or premeditation on the part of the accused/appellant to commit the murder of his wife and the incident occurred on account of deceased passing certain taunts against the accused/appellant calling him "black cat" which made him grow angry and having become impulsive he dealt the solitary axe blow on his temple which subsequently took her life. Being so, this Court thinks it proper and in the interest of justice to convict the appellant under Section 304 (Part-I) IPC by bringing his act within exception 4 to Section 300 IPC keeping in mind the fact that there was no premeditation on his part and the act was done in the heat of passion.

11. in view of above, the appeal is allowed in part. Conviction of the accused under Section 302 IPC is set aside and he is now convicted under Section 304 (part-I) IPC and sentenced to undergo RI for 10 years.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(CB Bajpai)

Judge

Jyotishi