

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 813 of 2010**

1. Smt. Tulsi Bai, W/o Late Budhwarsingh Gond, aged about 50 years, R/o Village Piparkhar (Maraitola), Police Station Mahamaya, District Durg (C.G.)

---- Appellant**Versus**

1. State Of Chhattisgarh Through - The Police Station, Mahamaya, District Durg (C.G.)

---- Respondent

For Appellant.	:	Shri Deepak Kumar Singh, Advocate
For Respondent.	:	Shri Chandresh Shrivastava, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board By**Pritinker Diwaker, J****16/09/2015**

This appeal arises out of the judgment of conviction and order of sentence dated 16.09.2010 passed by the Additional Sessions Judge (F.T.C.), Balod, District Durg in S.T.No.43/2009 convicting the accused/appellant under Section 302 IPC and sentencing her to undergo imprisonment for life and pay fine of Rs.200/- with default stipulation.

02. In the present case, name of the deceased is Budhwar Singh and the accused happens to be his first wife. It is alleged that on 11.11.2009 when the deceased along with his second wife Binda Bai was working in the field, the accused/appellant came there and threatened to kill him. In retaliation, the deceased assaulted her with

lathi who with a view to save herself, threw a stone of about 1 kg at the deceased which hit his head as a result of which he fell down and blood started oozing. Thereafter, second wife of the deceased immediately took him to her house where he succumbed to the injuries sustained by him on 13.11.2009. At the instance of Chaituram (PW/1)- brother of the deceased, merg Ex.P/2 was recorded followed by FIR Ex.P/1 registered on 13.11.2009 against the accused/appellant under Section 302 IPC. Inquest over the body of the deceased was conducted vide Ex.P/6. Postmortem examination on the body of deceased was conducted on 14.11.2009 by PW-10 Dr. R. Ramteke who gave his report Ex.P/13 opining the cause of death to be head injury and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Sections 302 IPC and charge was also framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that even if the entire prosecution case is taken as it is, the

accused/appellant cannot be convicted under Section 302 IPC and at best his act would fall within the ambit of Section 304 Part-II IPC;

(ii) that it is the deceased himself who first tried to assault the accused/appellant with lathi, and in order to save herself she might have thrown the stone at him, which unfortunately hit his head resulting in his death;

(ii) that if the accused/appellant is not going to be acquitted of the charge under Section 302 IPC, by convicting her under Section 304 Part-II IPC she may be sentenced to the period already undergone by her who is already in jail since 15.11.2009.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law.

07. We have heard learned counsel for the parties and perused the material available on record.

08. PW-1 Chaitu Ram is brother of the deceased at whose instance FIR (Ex.P/1) and merg (Ex.P/2) were registered. PW-2 Binda Bai, the sole eye-witness to the incident while supporting the prosecution case has stated that on the date of incident when she along with the deceased was working in the field, the accused/appellant came there, threatened of his life. In furtherance of altercation between the two, deceased gave a lathi blow to the accused/appellant who in turn also picked up a stone lying there and aimed at his head as a result of which he fell down and blood started oozing. Thereafter, this witness took the deceased to her house where he succumbed to his injury on 13.11.2009.

In cross-examination, this witness has not stated anything else but remained firm to what she has stated in the examination-in-chief. PW-4 Balram Singh and PW-5 Bhav Singh Oti are the witnesses of memorandum of accused/appellant, inquest Ex.P/6 and seizure of stone Ex.P/7, who have duly supported the case of prosecution. PW-6 Santram is the witness of inquest Ex.P/6. PW-7 Sarju Ram declared hostile. PW-8 Ghanshyam Singh - Kotwar of village is the witness of spot map Ex.P/12 prepared by the Patwari. PW-9 Santram Thakur - Patwari prepared spot map vide Ex.P/12. PW-10 Dr. R. Ramteke is the autopsy surgeon who conducted postmortem on the body of the deceased vide Ex.P/13 and found injury/symptoms as mentioned below:-

- (i) Lower abdominal distension present; eyes semi closed and congested. Both pupils dilated; mouth closed; upper frontal teeth seen. Tongue was inside the mouth. Clotted blood was present in both nostrils.
- (ii) Lacerated wound of 1 ¼" x ¾" x 1" x deep on middle of upper forehead, base filled with clotted blood.
- (iii) Underneath frontal bone was fractured (depressed fracture) and clotted blood was present under the scalp.
- (iv) Subdural haematoma of 2 ½ " x 2" present on right parietal region of the brain.

He has opined that the cause of death of deceased was head injury and death was homicidal in nature.

09. PW-11 N.S. Netam is investigating officer who has duly supported the prosecution case.

10. If the evidence of the witnesses and the other material available on record is taken in to consideration, prima-facie it appears that the accused/appellant has killed the deceased by causing injury over his

head by aiming a big piece of stone at him. However, getting little deeper in to the material on record, it comes to the forefront that on the ill-fated day while the deceased was working in his field in the company of his second wife, the accused/appellant who happens to be his first wife came there and developed certain altercation with him threatening of life. This attitude of the accused/appellant enraged the deceased and being enslaved by anger he inflicted a lathi blow to the accused/appellant who in retaliation picked up a piece of stone and hit the same against the head of the deceased which ultimately proved fatal leading to his death on 13.11.2009. Thus from all the surrounding circumstances, it cannot be said that the accused/appellant was the aggressor, rather it is the deceased himself who first opened an assault at the accused/appellant and it is in a bid to save herself from the attack of the deceased, the accused/appellant caused head injury to him by picking up the stone and aiming the same at the deceased. Thus the manner and circumstances in which the injury was caused to the deceased is axiomatic and makes it amply clear that the accused/appellant had not nurtured any intention much less the premeditation of causing such bodily injury which ultimately would result in the death of the deceased. That being the position the act of the accused/appellant is squarely covered with Exception 4 to Section 300 IPC.

11. In the aforesaid view of the matter, conviction of the accused/appellant under Section 302 IPC as has been done by the Court below is not sustainable in the eye of law and her act would at the most make her liable for conviction under Section 304 Part-II IPC.

It is done accordingly.

12. In the result, the appeal is partly allowed. Conviction of the accused/appellant under Section 302 IPC is hereby set aside and she is convicted under Section 304 Part-II IPC. As informed to this Court, the accused/appellant has already remained in jail for about 5 years and 10 months and therefore it appears to be in the interest of justice if she is sentenced to the period already undergone by her. Order accordingly. Needless to say the accused/appellant shall be released forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(I.S. Uboweja)
JUDGE