

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 534 of 2011**

1. Makhan Manjhawar son of Sukhlal Manjhawar, aged about 37 years, R/o Gurama, Police Station Kartala, District Korba, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Kartala, District Korba, CG.

---- Respondent

For Appellant: Shri Jitendra Gupta, Advocate
 For Respondent/State: Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice I.S. Uboweja****JUDGMENT ON BOARD****Pritinker Diwaker, J****25/02/2016**

This appeal has been filed against the judgment of conviction and order of sentence dated 05.04.2011 passed by Sessions Judge, Korba, in Sessions Trial No. 67/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/-, plus default stipulation.

2. Briefly stated facts of the case are that on 26.2.2009 at 10 AM the accused/appellant committed the murder of his wife Koushaliya Bai by causing one injury on her head with the help of pestle (*Moosli*) and then went to the house of his cousin Hira Singh (PW-11) and narrated the incident to him. It is alleged that when Banshi Ram (PW-1) came to the house of the accused/appellant, he was sitting near the deadbody and on being asked he informed him

to have killed his wife. *Merg* intimation Ex. P-6 was given on 26.2.2009 at about 8.5 PM at the instance of Ganesh Ram (PW-5) and then FIR Ex. P-7 was registered at about 8.15 PM under Section 302 IPC. Inquest was conducted on 27.2.2009 vide Ex. P-13 followed by postmortem examination which was conducted by Dr. R.K. Divya (PW-10) who gave his report Ex. P-8 stating that he noticed number of injuries (*to be discussed later*) and opined the cause of death as coma due to compression of brain as a result of head injury and the death was homicidal in nature. After completion of investigation, charge-sheet was filed against the accused/appellant under Section 302 IPC followed by framing of charge under the same section.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 13 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 the appellant has been convicted on the basis of circumstantial evidence but in fact there is no such circumstance which could make the basis for his conviction under Section 302 IPC;
- (ii) that even if the entire case of the prosecution is taken as it is, at best the accused/appellant can be convicted under Section 304 (Part-I) or 304 (Part-II) IPC as the accused/appellant caused only one injury to the deceased; and

(iii) that as the accused/appellant is in jail since 27.2.2009 the sentence imposed on him may be reduced to the period already undergone by convicting him either under Section 304 (Part-I) or 304 (Part-II) IPC.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits 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 apart from extrajudicial confession made by the accused/appellant before Banshi Ram (PW-1), it is a case of house murder for which no explanation has been offered by him in his statement recorded under Section 313 of the Code of Criminal Procedure and therefore, the conclusion drawn by the Court below holding the accused/appellant guilty under Section 302 IPC is fully justified. Further, referring to the medical evidence the State counsel submits that impact of the injury could be visualised from the multiple fractures on the head of the deceased and for that also the conviction of the accused/appellant under Section 302 IPC is just and proper.

7. Heard counsel for the parties and perused the evidence on record.

8. Banshi Ram (PW-1) is the witness before whom the accused/appellant made extrajudicial confession. This witness has stated that on being informed by Hira Singh (PW-11) about the incident, he went to the house of the accused/appellant and saw the body of the deceased lying there with bleeding injury on her head. This witness has further stated that on being asked, the accused/appellant told him that as his wife got angry with him, he killed her by causing injury with pestle (*Moosli*). He is also the

witness to the memorandum of the accused/appellant Ex. P-1 and the seizure of pestle (*Moosli*) made under Ex. P-2. Janpat Ram (PW-2), Balmati (PW-6), Udvaso Bai (PW-7), Balduram (PW-8), Chandramati (PW-9), Hira Singh (PW-11) and Behanu (PW-13) have not supported the case of the prosecution and have been declared hostile. Mahendra Das (PW-3) is the village Kotwar who reached the spot after the incident had taken place. He is also the witness to inquest. Ganesh Ram (PW-5) is the witness who gave merger intimation Ex. P-6 and lodged FIR Ex. P-7 and he too has been declared hostile. Dr. R.K. Divya (PW-10) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-8 describing the injuries noticed by him which are as under:

Large contusion over right temporal, right parietal bone, scalp region and haematoma was present, multiple fracture of right parietal bone and right temporal bone present. Rigor mortis passed off from neck, shoulder joints, elbow joints, wrist joints and lower limbs. Cause of death was coma due to compression of brain as a result of head injury, and the death was homicidal in nature. In his query report Ex. P-14 this witness has stated that the injuries present on the body of the deceased could have been caused with the pestle (*moosli*) seized by the prosecution.

S.S. Rajput (PW-12) is the investigating officer who has duly supported the case of the prosecution.

9. We have exhaustively gone through the evidence before us. It is not disputed that the death of the wife of the accused/appellant has taken place in his house and as there is nothing on record to show that the said house was in the occupation of any other person except the accused/appellant and his children, the onus lies on him

to explain as to how and under what circumstances she died but here he has utterly failed to do so. Secondly, Banshi Ram (PW-1) has clearly stated that after being informed by Hira Singh (PW-11) when he went to the house of the accused/appellant and asked about the incident, he made a confession before him of killing his wife by assaulting with pestle (*Moosli*) as she had exhibited her anger to him. Furthermore, the doctor (PW-10) who conducted the postmortem examination on the body of the deceased has stated in his report Ex. P-8 that he noticed multiple fractures on her head and the said injuries could have been caused with the pestle seized by the prosecution. The material available before is as such that we are not inclined to accept the submission of the counsel for the appellant to bring the act of the accused/appellant within the sweep of Section 304 (part I or Part II) as it is a clear cut case under Section 302 IPC.

10. Findings of the Court below convicting the accused/appellant are thus held to be based on due appreciation of the evidence of the witnesses and we approve the same accordingly.

11. Appeal being without any substance is thus dismissed and the judgment under challenge is maintained. Appellant is already in jail and hence no further order regarding his surrender etc. is necessary.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(I.S. Uboweja)

Judge