

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 187 of 2014

- Smt. Leela Bai W/o Shyam Singh Dhanuهار Aged About 35 Years R/o Village Sirli - Pali, PS Pali, Civil And Rev. Distt. Korba C.G.

**---- Appellant
In Jail**

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Pali, Distt. Korba (C.G.)

---- Respondent

For Appellant : Shri Dharmesh Shrivastava, Advocate
For Respondent/State : Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

28/04/2016

This appeal arises out of the judgment of conviction and order of sentence dated 31.1.2014 passed by the Additional Sessions Judge, Katghora, Korba in ST No.50/2013, convicting the accused/appellant under Section 304 Part-I of IPC and sentencing her to undergo RI for 10 years and pay a fine of Rs.1000/- with default stipulation.

02. Brief facts of the case are that on 5.4.2013 at about 3 pm when Puratanbai (deceased) was sitting in the house of Ramsingh, the accused/appellant reached there, caught hold of her hair, threw her on the floor, sat on her chest and then beat her by leg and fists, causing various injuries on her chest, stomach, ribs, head and leg. The incident

was witnessed by PW-2 Urmila Bai, PW-3 Ramsingh, PW-4 Parmeshwari, PW-5 Ratansingh and PW-6 Smt. Pramilabai. After arrival of Harelal, husband of injured Puratanbai, at about 5 pm, Puratanbai narrated the entire incident to him. As on account of severe beating, injured Puratanbai was not in a position to walk and speak, she was first taken to Govt. Hospital, Pali and then to Korba, from where she was referred to CIMS, Bilaspur, where she died on 9.4.2013 during treatment. Merg intimation Ex.P/1 was recorded on 9.4.2013 and on the same day, FIR (Ex.P/2) was registered against the appellant under Section 302 of IPC. Inquest over the dead body was prepared vide Ex.P/4. Dead body was sent for postmortem examination, which was conducted on 9.4.2013 by Dr.Anil Kumar Saraf (PW-8) vide Ex.P/8 wherein he noticed abrasions on both legs, face, neck, chin, lacerated wound on parietal region, bleeding from nose and ear, injury on occipital region and opined that the cause of death was coma due to injury over right parietal and occipital region. After investigation charge sheet was filed against the appellant under Section 302 of IPC followed by framing of charge accordingly by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses. Statement of the accused 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, by the impugned

judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits that even if the entire prosecution case is taken as it is, the appellant is liable to be convicted under Section 323 or in the alternative, 304 Part-II of IPC because there was no intention or premeditation on the part of the appellant to commit murder of the deceased, the incident occurred all of a sudden in the heat of passion and that the appellant did not use any weapon for making assault. He further submits that the appellant is in jail since 17.5.2013 and therefore, after converting her offence into 323 or 304 Part-II, her sentence may be reduced to the period already suffered by her.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that brutality of the offence can be seen from the postmortem report where number of injuries have been noticed by the autopsy surgeon on the body of the deceased, including fracture of ribs. He submits that on account of severe beating by the appellant, there was excessive bleeding from ear and nose and injuries to parietal and occipital region, which ultimately proved to be the cause of her death. Thus, conviction of the appellant under Section 304 Part-I of IPC being based on proper appreciation of the evidence needs no interference by this Court.

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

08. PW-2 Urmila Bai, eyewitness to the incident, while supporting the prosecution case, has stated that on the date of incident, she was sitting in the house of Ramsingh along with the deceased and some other persons, the appellant came there and after holding hair of the deceased, threw her on the floor, sat on her chest and caused her injuries with leg and fists. She has stated that the persons present there intervened in the matter and injured Puratanbai was taken to Korba hospital from where she was taken to CIMS, Bilaspur where she died. In cross-examination, she remained firm and reiterated as to the manner in which the deceased was assaulted by the appellant.

09. PW-3 Ramsingh, in whose house the incident had taken place, an eyewitness to the incident, has also supported the prosecution case and stated that on the date of incident when the deceased along with others was sitting in his house, the appellant after reaching his house caught hold of the deceased by hair, threw her on the floor, sat on her chest and then assaulted her by legs and fists and despite their intervention, she continued to assault the deceased. This witness also remained firm in his cross-examination. PW-4 Ku. Parmeshwari, PW-5 Ratan Singh and PW-6 Smt. Pramilabai, other eyewitnesses to the incident, have also made similar statements as has been made by PWs-2 & 3.

10. PW-8 Dr. Anil Kumar Saraf conducted postmortem on the body of the deceased on 9.4.2013 vide Ex.P/8 and noticed following injuries:

- (i) abrasion on both legs lower 1/3 (4 x 2 cm),
- (ii) abrasion on left side of face (3 x 2 cm)
- (iii) abrasion on neck (3 x 1 cm)
- (iv) abrasion on cheek (2 x 1 cm)
- (v) lacerated wound on head left parietal (3 x 1 x 0.5 cm)

(vi) crack mark present on right side of rib (3rd & 4th).

On internal examination, the doctor found brain membrane, larynx, windpipe, both lungs, intestinal membranes, liver, kidney etc. congested, there was contusion (2 x 1 cm) over left parietal region with blood clot and one injury (2 x 1 cm) over occipital region. In his opinion, the cause of death was coma due to injury over right parietal and occipital region.

11. PW-9 V.S. Maravi, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 5.4.2013 it is the accused/appellant who assaulted the deceased Puratanbai by legs and fists repeatedly as a result of which she sustained multiple abrasions as also lacerated wound on head and fracture of ribs, which ultimately led to her death on 9.4.2013 while undergoing treatment in hospital. The incident was witnessed by PW-2 Urmila Bai, PW-3 Ramsingh, PW-4 Parmeshwari, PW-5 Ratansingh and PW-6 Smt. Pramilabai, who have categorically stated about the act of the appellant, they remained firm in their cross-examination and there is no deviation at all. As such, there is no reason for this Court to doubt the veracity of these witnesses. This apart, medical evidence also lends due support to the prosecution case. Thus, on the basis of above ocular and medical evidence, involvement of the accused/appellant in commission of the offence stands established beyond all reasonable doubt.

13. Next question which arises for consideration of this Court is

whether act of the accused/appellant makes her liable to be convicted under Section 304 Part-I or 323 or 304 Part-II of IPC?

14. From the evidence it appears that the appellant assaulted the deceased by legs and fists only, she did not use any weapon, nor did she take any undue advantage and after being assaulted the deceased survived for about four days. This being the position, it cannot be said that the appellant had the intention of causing death of the deceased, but at the same time it cannot be denied that the appellant had the knowledge that by making such severe assault on a woman of 45 years, she may succumb to those injuries. In these circumstances, the appellant is definitely liable to be convicted under Section 304 Part-II of IPC. As regards the quantum of sentence, considering the act of the appellant, in the opinion of this Court, sentence of seven years' RI would meet the ends of justice.

15. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 304 Part-I of IPC, she is held guilty under Section 304 Part-II of IPC and sentenced to undergo RI for seven years. She is reported to be in jail, therefore, no further order regarding her surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge