

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.481 of 2000

Baldev S/o Somaruram, age 26 years, R/o Village Golhaghat, P.S. Baikunthpur, District Korea, Madhya Pradesh (now Chhattisgarh)

---Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh) through P.S. Baikunthpur, District Korea, Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellant	:	Shri D.N. Prajapati, Advocate
For State/Respondent	:	Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

29/2/2016

1. The Appellant stands convicted under Section 302 IPC and sentenced to life imprisonment with fine of Rs.200/- by the Additional Sessions Judge, Baikunthpur dated 9.2.2000 in Sessions Trial No.305 of 1998.

2. FIR, Exhibit P-1 was lodged under Section 307 IPC on 10.6.1998 at 7:20 p.m. by Ghasiram, PW-1, father of the deceased Harinandan regarding the assault on the latter earlier at 12:00 p.m. at the house of the Appellant. The injured was taken for treatment to Baikunthpur and was later referred to Manendragarh or Ambikapur. Due to paucity of funds he was taken back home and ultimately died on 30.9.1998, 3 months 20 days later. Section 302 IPC was then added.

3. Learned Counsel for the Appellant submitted that the deceased had forcibly intruded into his house when no one was home and sexually assaulted his wife, Ramesh Kumari, DW-1. The Appellant suddenly

happened to return home. The deceased having been caught in the act attempted to assault the Appellant and in the scuffle suffered injuries from his own Tangi. The Appellant had no intention to kill the deceased. They were neighbours. Relations were cordial between them according to the prosecution witnesses and the deceased was also a regular visitor to his house. If the intention was to cause death, nothing prevented the Appellant from repeating the assault to ensure that death would ensue immediately. PW-5, Birsai deposed that the Appellant had told him that he was assaulted twice by the deceased with Tangi and that the deceased had also assaulted Ramesh Kumari, DW-1 twice on the head with 'danda'. Ramesh Kumari, DW-1 also stated that the deceased had come with a Tangi.

4. Ramesh Kumari, DW-1 lodged a police report on 11.6.1998 at 5:30 p.m. against the deceased regarding the sexual assault made on her. Mukteshwar Singh, Assistant Sub-Inspector, DW-3, deposed having sent the witness for MLC. The police after investigation had found the allegations true but closure report had to be submitted because the injured was deceased in the meantime. The Appellant had therefore acted under grave and sudden provocation on the spur of the moment having seen the deceased outraging the modesty of his wife in his own house. In his defence under Section 313 Cr.P.C., the Appellant had stated that the door was closed and he had to force it open.

5. A Tangi cannot be described as a dangerous weapon of assault. It is an agricultural instrument available in the house of every agriculturist. The Appellant having acted under grave and sudden provocation essentially made only one assault on the neck. It was more with the intention to teach the deceased a lesson. The offence under Section 302 IPC is therefore not made out. Death cannot be said to be strictly attributable to the injury caused by the Appellant. The injured was advised to go to

Manendragarh or Ambikapur for better treatment instead of which he went home. Proper treatment if availed could have saved his life. Death occurred more than 3½ months later due to lack of proper treatment leading to further complications of septic and meningitis along with bed sores etc. The Appellant has already undergone approximately 2 years and 3 months of custody. He has suffered enough. The incident occurred in June, 1998. He has had the scepter of the appeal hanging over his head with the uncertainty of what may follow, which also constitutes trauma for him. Considering all these factors, conviction would be appropriate under Section 324 IPC to the period undergone considering the maximum period of custody prescribed in the same is 3 years.

6. Learned Counsel for the State opposing the appeal submitted that the deceased and the Appellant were neighbours. Their houses were barely 10 steps away from each other. PW-7, Jagsai, the brother of the deceased has deposed that there was a land dispute between the parties. A Panchayat had been held. The father of the deceased was in possession of the lands and the Appellant wanted it back. In cross-examination, no question was asked to the witness in this regard.

7. The defence of grave and sudden provocation has not been proved by the Appellant. Contrary to the statement of PW-5, that the Appellant was assaulted twice by the deceased with Tangi, no injuries have been found on the Appellant. Ramesh Kumari, DW-1 has also deposed that she did not see any injury on person of the Appellant. DW-1, Ramesh Kumari was assaulted twice on the head with 'danda' as mentioned by PW-5, Birsai and was sent for MLC by DW-3, Mukteshwar Singh, Assistant Sub-Inspector but there is no injury report. The FIR was lodged promptly the same day under Section 307 IPC and Section 302 IPC was added after the injured was deceased on 30.9.1998. The defence that the deceased was caught outraging the

modesty of the Appellant's wife is an after-thought as the First Information Report to that effect has been lodged the next day on 11.6.1998 at about 5:30 p.m., i.e., nearly more than 30 hours after the occurrence. In the FSL report, blood is confirmed to have been found on the sample of earth seized from the spot and also on the Tangi used for assault. There is no evidence that the deceased had entered the house of the Appellant with a Tangi in his hand. The police statement of the injured before he was deceased was also recorded on 23.6.1998 after he was in a position to talk stating that the assault was motivated by the land dispute as the Appellant wanted the lands back.

8. The Appellant in his defence under Section 313 Cr.P.C. gave a stock answer to each question that he did not know. Despite having stated that he would lead evidence in support of his defence no evidence was led by him. The Appellant claims that the door was closed and he had to force it open but there is no evidence with regard to the same which falsifies his defence. PW-11, Dr. R.N. Rajauria, who conducted M.L.C. of the deceased first, at about 7:40 p.m. the same day, found an incised wound 2½"x2" over the back of the neck at middle and mid-line vertical in direction deep upto the vertebra. Another incised wound 2"x½" present over the back at medial to right scapula deep upto skin with tenderness and another incised wound 1½"x½" over left forehead at 1" bone deep upto left eyebrow deep upto bone. It was opined that the injuries were caused by a hard sharp cutting object. Injury No.1 was opined as clearly dangerous to life even advising of recording of a dying declaration. The defence that the injured died due to lack of proper treatment and not because of the injury merits no consideration. The conviction under Section 302 IPC therefore calls for no interference.

9. PW-1, Ghasiram, has spoken of the presence of the Appellant at

home. Similarly, PW-2, Ramkaran, an independent witness has also stated of the presence of the Appellant at home. PW-3, Kusumbai, wife of the deceased has stated likewise.

10. We have considered the submissions on behalf of the parties and perused the evidence on record.

11. The parties were neighbours with their houses barely 10 steps away from each other. Ramesh Kumari, DW-1 has stated that if there was any commotion in either house it could be heard in the other because of the proximity. PW-1, Ghasiram and PW-2, Ramkaran have both stated that there existed no previous enmity with the Appellant. The deceased was on visiting terms to the house of the Appellant. PW-2, Ramkaran stated that the Appellant was not at home. DW-1, Ramesh Kumari also said that she was alone at home. The FIR states that the deceased was inside the house of the Appellant for the last half an hour. He suddenly came out running and shouting that he had been assaulted and the Appellant was standing behind with a Tangi in his hand. At this stage it becomes relevant to notice the evidence of the Appellant that the door was closed and he had to force it open clearly suggesting that the deceased and DW-1, Ramesh Kumari were ensconced inside the house sanguine that no one else was home till the Appellant suddenly turned up to the surprise of both.

12. It was not the case of DW-1, Ramesh Kumari that the deceased had forced his way into her house carrying a Tangi against her wishes and bolted the door from inside despite her protests. The sequence of events raise serious doubts if the present was a case of the deceased violating DW-1, Ramesh Kumari or it was a case of consensual physical relationship and when caught by her husband she cried foul. No woman, much less a married woman, would conduct herself in such a manner if there was a threat to her modesty. There would be a minimum of resistance if not violent

resistance. That she was not speaking the truth is also evident from the fact that though the assault on the deceased took place in front of her she says that she did not see any injury on the deceased. In the nature of evidence available, the possibility that the Appellant acted under grave and sudden provocation when he saw his own wife in a compromising position with the deceased also cannot be ruled out and is considered a distinct possibility.

13. In 1962 Supp(1) SCR 567 (K.M. Nanavati v. State of Maharashtra) on grave and sudden provocation it was observed as follows :-

“82.....The same learned Judge in a later decision in *Boya Munigadu v. Queen* upheld the plea of grave and sudden provocation in the following circumstances: The accused saw the deceased when she had cohabitation with his bitter enemy; that night he had no meals; next morning he went to the ryots to get his wages from them, and at that time he saw his wife eating food along with her paramour; he killed the paramour with a bill-hook. The learned Judges held that the accused had sufficient provocation to bring the case within the First Exception to Section 300 of the Indian Penal Code. The learned Judges observed:

“...If having witnessed the act of adultery, he connected this subsequent conduct, as he could not fail to connect it, with that act, it would be conduct of a character highly exasperating to him, implying as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self-control, and reduced the offence from murder to culpable homicide not amounting to murder.”

The case illustrates that the state of mind of the accused, having regard to the earlier conduct of the deceased, may be taken into consideration in considering whether the subsequent act would be a sufficient provocation to bring the case within the exception.....”

14. PW-11, Dr. R.N. Rajauria, who carried out the M.L.C. of the injured , Ex.P-16A, found an incised wound 2½”x2” over the back of the neck at middle and mid-line vertical in direction deep upto the vertebra. Another incised wound 2”x½” present over the back at medial to right scapula deep upto skin with tenderness and another incised wound 1½”x½” over left forehead at 1” bone deep upto left eyebrow deep upto bone. It was opined

that the first injury caused by a hard sharp cutting object was dangerous to life even suggesting of recording of a dying declaration. PW-10, Dr. D.K. Chiknjuri, who held the post mortem, also opined that the death was due to the injury on the neck.

15. It is significant to notice that the assault took place on 10.6.1998 at noon. The injured was taken to the hospital at Baikunthpur. After initial treatment, he was advised to proceed to Manendragarh or Ambikapur, but he did not do so because of paucity of funds. The post mortem report reveals that the death was due to a combination of septic, meningitis, bed sores etc. on 30.9.1998, i.e., 3 months 20 days later all occasioned and having its genesis in the assault by the Appellant. The fact that the injured may have survived if he had taken proper medical treatment will not take the offence outside culpable homicide in view of Section 299 Explanation 2 IPC which reads as follows:

“299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

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xxxxx

xxxxx

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.”

The clause *thirdly* of Section 300 IPC would apply in the facts of the case which reads as follows :-

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

16. In the facts and circumstances of the case the offence would clearly fall under Section 304 Part-II IPC as the Appellant can well be stated to

have acted under grave and sudden provocation in the facts and circumstances of the case, when he saw his wife in a physical relationship with the deceased inside his own house. The assault by the Appellant cannot be held to be excessive or made in a cruel manner using force more than necessary.

17. The defence of a forcible sexual assault upon the Appellant's wife by the deceased does not inspire confidence. No plausible explanation has been furnished why the FIR was lodged by the Appellant's wife with regard to the assault on her nearly over 30 hours later. The proximity of the police station is evident from the promptness with which the FIR was lodged by PW-1, Ghasiram. The fact that the police may have investigated the FIR by the Appellant's wife and found it true is not of much relevance in view of the fact that the matter never went to trial as the deceased who was the only accused died in the meantime.

18. In the facts and circumstances of the case we consider it proper to modify the conviction of the Appellant from Section 302 IPC to Section 304 Part-II IPC. Considering the circumstances under which he made the assault and that essentially a single lethal assault was made, nothing prevented him from making a more heinous assault to ensure death instantaneously, he acted under grave and sudden provocation without using more force than necessary and that the assault was not made in an unduly cruel or excessive manner, we consider it appropriate to sentence him for a period of five years. The period of custody undergone shall be set off against the same.

19. With the aforesaid modification of the conviction and the sentence, the appeal is allowed in part.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE