

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 720 of 2007

- Smt. Meghai Bai, aged 41 years, widow of late Panchram Gond, R/o Village Imalibhata, Police Station - Balouda, Distt. Janjgir-Champa (CG)

---- Appellant

Versus

- State of Chhattisgarh, through Police Station - Chouki, Hardi Bazar, P.S. Kusmunda, District Korba (CG)

---- Respondent

For Appellant	: Shri Yogeshwar Sharma, Advocate.
For Respondent/State	: Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board by Justice Pritinker Diwaker

21/12/2016

This appeal arises out of the judgment of conviction and order of sentence dated 18.8.2006 passed by Additional Sessions Judge, Korba, in ST No.03/2006 convicting the appellant under Section 302 of IPC and sentencing her to undergo imprisonment for life and pay a fine of Rs.1000/- with default stipulation.

02. In the present case, name of the deceased is Pannalal, with whom the appellant Smt. Meghai Bai was having illicit relation about three years prior to the date of incident i.e. 19.9.2005. As per prosecution case on 19.9.2005 at about 7 pm the deceased had gone to the house

of the appellant and started quarrelling with her minor daughter Ku. Sushila and thereafter, the accused/appellant reached there and she too had a quarrel with the deceased. Further case of the prosecution is that during the said quarrel, the accused/appellant caused injury to the deceased by axe whereas Sushila caused him injury by a club, as a result of which the deceased died. Unnumbered merg intimation Ex.P/6 was recorded on 20.9.2005 at 7.35 pm. Thereafter, unnumbered FIR (Ex.P/7) was registered at 7.40 pm and then numbered FIR (Ex.P/7A) was registered on 21.9.2005 at the instance of PW-3 Makhan Lal under Section 302 of IPC against the appellant. Numbered merg (Ex.P/22) was also recorded on 21.9.2005. Inquest (Ex.P/4) was conducted on the body of the deceased on 21.9.2005 and thereafter, the dead body was sent for postmortem, which was conducted on the same day by PW-8 Dr. P.S. Kanwar vide Ex.P/13. The autopsy surgeon noticed two abrasions and two contusions on the body of the deceased and also noticed hair line fracture on left parietal region of the skull. In his opinion, the cause of death was shock due to head injury. After investigation, charge sheet was filed against the appellant under Section 302 of IPC whereas Ku. Sushila being minor was tried by Juvenile Justice Board. The trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 12 witnesses in all. 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 above.

05. Counsel for the appellant submits as under:

(i) that the accused/appellant has been falsely implicated in this case.

(ii) that the appellant was having illicit relations with deceased Pannalal and Pannalal wanted to have sexual favour from her daughter, which was objected by Sushila and the appellant, resulting in some quarrel between them and if during that quarrel, the deceased on account of some injury caused by the appellant died, the appellant cannot be held guilty under Section 302 of IPC. In her memorandum the appellant has categorically stated so but unfortunately, the prosecution has put forth a different story where it is alleged that the accused/appellant and her daughter caused injuries to the deceased with intention to commit his murder.

(iii) that as per prosecution case the deceased was done to death by causing axe injury on his head whereas according to the postmortem report though injury has been found on the head of the deceased but the said injury could not be caused by axe.

(iv) that PW-4 Nar Singh and PW-5 Chait Ram are not reliable witnesses as there is two days' delay in recording their statements under Section 161 of Cr.P.C.

(v) even if the entire prosecution case is taken as it is, considering the fact that the incident occurred all of a sudden without any premeditation on the part of the appellant in the spur of moment, that the appellant caused only one blow, that too in order to save her

daughter, at best she can be convicted under Section 304 Part-I or II of IPC.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it calling for any interference by this Court.

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

08. PW-1 Raghunath Prasad is a witness of memorandum of the appellant (Ex.P/1) and seizure (Ex.P/2) by which an axe was seized. PW-2 Jairam is a witness of inquest Ex.P/4 and seizure Ex.P/5 of bloodstained soil from the spot. PW-3 Makhanlal, father of the deceased, at whose instance FIR was registered, has shown suspicion that his son has been killed by the appellant. However, this witness has been subsequently declared hostile. PW-4 Narsingh an eyewitness to the incident has stated that he saw the accused/appellant and her daughter assaulting the deceased by an axe and club. According to him at the time of beating the deceased the accused/appellant was saying that after killing the deceased, they would go to police station. The case diary statement of this witness was recorded on the second day. In cross-examination this witness remained firm, reiterated as to the manner in which the incident occurred and denied the suggestion that when the incident took place it was dark and he could not see the assailants. He has stated that there was some light in which he saw the incident. He admits that though he saw the incident but did not

inform about the same to the members of the deceased family. He further states that the incident was witnessed by PW-5 Chaitram also.

09. PW-5 Chaitram, another eyewitness to the incident, has stated that after hearing cries when he came out of his house he saw the accused/appellant carrying axe in her hand and her daughter was having a club and beating the deceased. He states that the incident was also witnessed by PW-4 Narsingh. He also states that the accused/appellant was saying that after killing the deceased they would go to police station. PW-6 Ramabai saw the altercation between the appellant and the deceased and that she heard the appellant saying "beat that bastard" and thereafter she (this witness) went inside her house. PW-7 Kotwar reached the place of incident after it had taken place. PW-8 Dr.P.S. Kanwar conducted postmortem on the body of the deceased on 21.9.2005 vide Ex.P/13 and noticed following injuries:

- (i) contusion, 7" x 3" over the abdomen, umbilicus
- (ii) abrasion, 2" x 1" lateral aspect of left upper arm
- (iii) abrasion, 2" x 1" posterior aspect of left elbow
- (iv) contusion, 2" x 1 ½" over left parietal region of scalp.

He also noticed hair line fracture on left parietal region of skull. In his opinion, the cause of death was shock due to head injury.

10. PW-9 Karampal Miri, Sarpanch of the village, is a witness of memorandum and seizure of the appellant. PW-10 Lallan Singh, A.S.I., did initial part of investigation. PW-11 D.S. Thakur, Patwari, prepared the spot map Ex.P/17. PW-12 G.R. Diwan, investigating officer, has

duly supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that on 19.9.2005 at about 7 pm the deceased went to the house of the appellant and had a quarrel with her daughter Ku. Sushila. During that quarrel, the appellant reached there and then both the appellant and her daughter Ku. Sushila beat the deceased. As per unrebutted evidence of the eyewitnesses (PW-4 Narsingh and PW-5 Chaitram), the appellant was carrying axe and her daughter club and they assaulted the deceased by these weapons as a result of which the deceased died. On the memorandum of the accused/appellant, recovery of axe was made and witnesses to the memorandum and seizure have also duly supported the prosecution case. Thus, on the basis of evidence adduced by the prosecution, complicity of the accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

12. Now the next question for consideration of this Court is whether the act of the accused/appellant makes her liable for conviction under Section 302 of IPC or it is covered by any of the exceptions of Section 300 of IPC i.e. culpable homicide not amounting to murder?

13. In her memorandum the appellant has stated that there had been illicit relation between the deceased and herself for the last three years; the deceased used to exert pressure on her as well as her minor daughter to let him have physical relation with her daughter also, which was strongly objected by them. She has stated that for this reason she and her daughter killed the deceased by assaulting him with axe and club. Though this specific defence has not been taken by the appellant

either in the cross-examination of the witnesses or in her statement under Section 313 of Cr.P.C. However, the fact remains that on the date of incident there was some quarrel between the appellant, her daughter and the deceased, in which the deceased suffered injuries and succumbed to the same. Though it is not clear from the postmortem report as to whether there was any injury of axe from its sharp side on the body of the deceased but the postmortem report reflects that there was hair line fracture on the skull and the cause of death was shock due to head injury.

14. Thus, considering the overall facts and circumstances of the case, it appears that the incident occurred without any premeditation in a sudden fight when the deceased quarreled with the daughter of the appellant and the appellant reached there. However, keeping in view the ocular and medical evidence on record, in particular the fact that according to the eyewitness while assaulting the deceased the appellant was saying that after killing the deceased, they would go to police station, it appears that though the appellant had no knowledge that by assaulting the deceased in such a manner, it would result in his death, but had the intention of killing the deceased. Being so, her act is covered by Exception 4 of Section 300 of IPC i.e. culpable homicide not amounting to murder, making her liable for conviction under Section 304 Part-I of IPC.

15. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302 of IPC is hereby set aside and instead she is held guilty under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years. She is reported to be on bail, therefore, her

bail bonds stand cancelled and she is directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge

Khan