

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 546 of 2011

(Arising out of judgment dated 5-4-2011 in ST No. 70/2010 of the
learned Sessions Judge, Dhamtari (CG))

Sagar Kamar son of Roop Singh Kamar, aged about 40 years,
R/o. Village Korremuda, Thana- Nagri, Distt. Dhamtari, CG

---- Appellant

Versus

State of Chhattisgarh through Police Station Nagri, Distt.
Dhamtari (CG)

---- Respondent

For appellant : Mr. S.P. Sahu, Adv.
For Respondent/State : Mr. Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

JUDGMENT ON BOARD

Per Pritinker Diwaker, J

23/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 5-4-2011 passed by the Sessions Judge, Dhamtari (CG) in S.T. No. 70/2010 convicting the accused/ appellant under Section 302 of the Indian Penal Code, 1860 (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.1,000/-, in default to undergo additional R.I. for 6 months.
2. In the present case name of deceased is Kalendri Bai, wife of the appellant.
3. The prosecution story, in brief, is that on 22-8-2010 the appellant and the deceased had gone to jungle and on the way they purchased oil worth Rs. 5/-. While returning, the said oil dropped

from the hands of Kalendri Bai and out of anger, the appellant gave a blow of axe on the head of the deceased, as a result of which she died. Merg intimation Ex. P-8 was recorded on 23-8-2010 at the instance of Dhanraj Sori. Thereafter Dehati Nalisi Ex. P-12 was recorded and FIR Ex. P-13 was registered against the accused/appellant under Section 302 of the IPC. Inquest on the dead body was prepared on 23-8-2010 vide Ex. P-7. Body of the deceased was sent for post-mortem examination which was conducted by Dr. D.R. Thakur (P.W. 5) and he noticed one lacerated wound at the centre of the head size 6 cm x 4 cm, between scalp and skull, and all over head clotted blood present. Except head injury there was no other injury on the body. The doctor has opined that cause of death was coma due to head injury and death was homicidal in nature. The post mortem report is Ex. P-16. On the memorandum of appellant Ex. P-1, one blood stained axe vide Ex. P-2, blood stained and plain soil vide Ex. P-3, blood stained cloths of the appellant vide Ex. P-4 were seized. Articles so seized were sent for examination to FSL and report in respect of these articles was found positive vide Ex. P-18. Statements of witnesses were recorded under Section 161 of the Cr.P.C.

4. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against accused/appellant and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/ appellant examined 6 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded

innocence & false implication.

5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Learned counsel for accused/appellant submits that even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Sections 302 of the IPC. It has been argued that at best accused/appellant is liable to be convicted under Section 304-II. He submits that the accused/appellant is in jail since 23-8-2010 and has already remained in jail for more than 7 years, therefore in the interest of justice, after converting the offence into Section 304 Part II, IPC he may be sentenced to the period already undergone by him.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have heard counsel for the parties and perused the evidence available on record.
9. P.W. 1 Sohanlal is a witness of memorandum of accused Ex. P-1, seizure of blood stained axe vide Ex. P-2, seizure of blood stained soil and plain soil vide Ex. P-3 and seizure of clothes of the accused vide Ex. P-4, spot map Ex. P-5 and has duly supported the prosecution case.
10. P.W. 2 Brajlal is the witness of extra-judicial confession made by the accused before him. He has stated that accused/appellant had told him that he killed his wife Kalendri

Bai by an axe and that the accused confessed his guilt before village Kotwar and other villagers.

11. P.W. 3 S.R. Sori is the investigating officer who has supported the prosecution case.

12. P.W. 4 Dhanraj Sori is the witness of extra-judicial confession and lodger of merg Ex.P-8, FIR Ex. P-13 and Dehati Nalisi Ex.P-12. He has duly supported the prosecution case. He has stated that he met the accused in the bund of pond where the appellant confessed that for Rs. 5/- he has killed his wife by axe.

13. P.W. 5 Dr. D.R. Thakur is the doctor who performed autopsy on the body of deceased and noticed one lacerated wound at the centre of the head size 6 cm x 4 cm. This witness opined that cause of death was coma due to head injury and the death was homicidal in nature.

14. P.W. 6 Narendra Pujari is in-charge of the police station and has conducted part of investigation.

15. Close scrutiny of the evidence available on record makes it clear that on 22-8-2010 the appellant and the deceased had gone to jungle and on the way they purchased oil worth Rs. 5/-. While returning, the said oil dropped from the hands of Kalendri Bai and out of anger, appellant gave a blow of axe on the head of the deceased as a result of which she died. The deceased after committing murder of his wife made extra-judicial confession before P.W. 2 Brajlal and P.W. 4 Dhanraj Sori. Both these witnesses have duly supported the prosecution case and stated that the accused confessed before them that he has killed his

wife.

16. P.W. 2 Brajlal and P.W. 4 Dhanraj Sori appear to be fully trustworthy and reliable and we have no reason to disbelieve the statements of P.W. 2 Brajlal and P.W. 4 Dhanraj Sori who in a very specific term have supported the prosecution case. FSL report Ex. P-18 is also positive and blood stains have been found on the axe. P.W. 5 Dr. D.R. Thakur has opined that the mode of death is coma due to head injury and it was homicidal in nature. Once the death is proved to be homicidal, there was a corresponding burden on the accused/appellant to explain properly and convincingly as to how his wife received injury, but the appellant has failed to do so in his statement under Section 313 of the Cr.P.C.

Thus, on the basis of evidence adduced by the prosecution, complicity of accused/appellant in commission of offence stands proved beyond all reasonable doubt.

17. Now the question for consideration before this Court is whether the act of accused/appellant would fall within any of the Exceptions to Section 300 of IPC i.e. culpable homicide not amounting to murder?

18. From the evidence on record it is clear that on 22-8-2010 when appellant and the deceased were returning, oil of Rs. 5/- dropped from the hands of Kalendri Bai, wife of the appellant and out of anger, appellant gave a blow of axe on the head of the deceased, as a result of which she died. The incident admittedly had taken place in a sudden quarrel upon heat of passion without any pre-meditation on the part of the appellant. The appellant

caused a solitary injury to the deceased which unfortunately resulted in her death. Taking the prosecution evidence and medical evidence cumulatively we are of the view that the accused/appellant could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury, but he could be definitely imputed with the knowledge of causing such bodily injury which was likely to cause death of the deceased. This being the position, act of accused/appellant is covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder, and he is liable to be convicted under Section 304 Part-II of IPC and not under Section 302 IPC as has been held by the trial Court. As the appellant has already remained in jail for more than 7 years it would be proper to sentence him to that much period under Section 304-II, IPC.

19. In the result, the appeal is allowed in part. Conviction and sentence of accused/appellant under Section 302 IPC are hereby set aside. However, looking to his act and evidence on record, he stands convicted under Section 304 Part-II IPC and sentenced to the period already undergone by him.

20. Appellant is reported to be in jail, therefore, he be set at liberty forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge