

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 319 of 2012

- Narbada Pando S/o Bandhan Pando, Aged about 35 years, R/o Village Aanandpur, P.S. Sonhat, Distt. Koriya C.G.

---- Appellant

Versus

- State Of Chhattisgarh, Through Police Station Sonhat, District Koriya, Chhattisgarh

---- Respondent

For Appellant	: Shri Roop Naik, Advocate
For Respondent/State	: Sgru Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Pritinker Diwaker, J.

14/07/2017

This appeal has been preferred against the judgment and order dated 26.11.11 passed by the Sessions Judge, Koriya (Baikunthpur) in Sessions Trial No. 01/2011 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- with default stipulation for committing the murder of his wife Sonmat.

2. As per prosecution case, accused/appellant used to work as agriculture labour and on 06.10.2010 he and his wife consumed liquor and started quarreling over certain expenses. It is said that out of anger, the appellant picked up a small wooden stool lying over there

and hit her two-three times on the head, caused injury as a result of which she died. On the next morning he went to the house of his son Rajkumar (PW-2) who was residing at a distance of about half a kilometer away from his house and informed him that he has killed his wife. At the instance of Rajkumar, mereg intimation Ex.P-2 was recorded at 9.30 a.m. and immediately thereafter FIR (Ex.P-1) was registered against the accused/appellant under Section 302 IPC. Inquest Ex.P-5 was prepared and body was sent for postmortem examination on 07.10.2010 vide Ex.P-19 which was conducted by Dr. O.P.Kashyap (PW-8) who opined that cause of death was shock due to skull fracture and intracranial hemorrhage and death was homicidal in nature. After investigation, charge sheet was filed on 08.12.2010 against the accused/appellant under Section 302 IPC and thereafter charge was framed accordingly.

3. In support of its case, prosecution has examined 8 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned in paragraph No.1 of the judgment. Hence the present appeal.

5. Contention of Shri Naik, counsel for the appellant is that

- i) even if the entire prosecution case is taken as it is, at best the appellant can be convicted under Section 304 Part-I or Part-II IPC.
- ii) there was no premeditation on the part of the accused/appellant

to commit the offence. It appears that in the intoxicating condition as there was some hot talk between them and out of anger, appellant picked up a small wooden stool lying over there and caused injury to the deceased.

iii) the simplicity and innocence of the appellant can be seen by his act where immediately after committing the offence he had gone to the house of his son and informed that he had killed the deceased.

iv) in his statement under Section 313 Cr.P.C. accused/appellant has categorically stated that they had consumed liquor together and while taking the meals some dispute cropped up and out of anger accused/appellant picked up a wooden stool lying over there and hit two-three times on her head resulting to death.

v) the appellant is in jail since 8.10.2010 and thereby has remained in jail for about 6 years and nine months, therefore his sentence may be reduced to the period already undergone by him.

6. On the other hand supporting the judgment impugned, it has been argued by the State counsel that

i) the conviction of the appellant is in accordance with law and there is no infirmity in the same.

ii) on the memorandum (Ex.P-7) of the appellant, seizure Ex.P-8 was effected and one small wooden stool and one shirt was made

iii) As per FSL report blood was found on these two articles.

7. Heard counsel for the parties and perused the material available on record.

8. Rajkumar (PW-2) son of the deceased has stated that on the next morning, at about 6.00 a.m., accused/appellant came to his house and

started weeping and informed him that his mother has died. He has stated that he hit her with a small wooden stool on the backside of her head as a result of which she sustained injury and died. He has further stated that there was some dispute between them over the expenses. He has stated that he lodged the merged intimation and FIR. Banshilal (PW-3) is a witness to inquest Ex.P-5 and memorandum Ex.P-7 by which seizure of wooden stool EX.P-8 was made. Hemsagar Sidar (PW-4) is the Head Constable who has done part of the investigation. Suresh Tigga (PW-6) is the Constable who helped in the investigation. Kripashankar Singh (PW-7) is the patwari who prepared spot map Ex.P-18. Dr.O.P.Kashyap (PW-8) is the autopsy surgeon who conducted postmortem examination on the body of deceased vide Ex.P-19 and opined that the cause of death was shock due to skull fracture and intra cranial hemorrhage and death was homicidal in nature.

9. Close scrutiny of the evidence makes it clear that on 06.10.2010 both the accused/appellant and deceased consumed liquor, had a quarrel and out of anger, accused/appellant picked up the wooden stool lying over there and caused injury on the head of the deceased resulting her death. Immediately on the next morning appellant had gone to the house of his son Rajkumar (PW-2) and made extra judicial confession before him. On his memorandum, seizure of one wooden stool and shirt vide Ex.P-8 was made. The complicity of the accused/appellant in the commission of the offence has been duly proved by the prosecution.

10. The only question arises for consideration before this Court is as to whether the accused/appellant has rightly been convicted under

Section 302 IPC or whether the act of the accused/appellant would fall under Exception 4 of Section 300.

11. Undisputedly, the incident occurred when both the deceased and accused/appellant consumed liquor and were taking meals and on account of some hot talk, accused/appellant out of anger picked the wooden stool lying over there and caused injuries on the head of the deceased leading to her unfortunate death. Considering all these facts and circumstances of the case, we are of the view that the act of the accused/appellant would fall under Exception 4 of Section 300. Thus, we are of the view that instead of convicting the appellant under Section 302 IPC, he is liable to be convicted under Section 304(Part-II) IPC.

12. Accordingly, conviction and sentence awarded to the accused/appellant u/s. 302 IPC is set aside. Instead thereof, the appellant is convicted under Section 304 (Part-II) IPC. Appellant is reported to be in jail since 08.10.2010. Considering the detention period of the accused/appellant, we are of the view that ends of justice would be served if his sentence is reduced to the period already undergone by him. Order accordingly. It is stated that the appellant is in jail. He be released forthwith if not required in any other case.

13. In the result, the appeal is partly allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge