

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 525 of 2011**

- Amrika Bai, aged 34 years, W/o Shri Kashiram Sahu, R/o village Maou, P.S. Nandghat, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through – The Police Station, P.S. Nandghat, District Durg (C.G.)

---- Respondent

For Appellant	:	Shri Prateek Sinha, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. Govt. Advocate.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant**

Judgment On Board

By Pritinker Diwaker, J**19/06/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 19.05.2011 passed by the Additional Sessions Judge, Bemetara District Durg in S.T. No.58/2010 convicting the accused/appellant under Sections 302 of IPC and sentencing her to undergo imprisonment for life with fine of Rs.500/-, in default of payment of fine amount to further undergo R.I. for two months.

02. In the present case name of the deceased is Bahatara Sahu - father-in-law of the accused/appellant Amrika Bai. It is said that the deceased and the accused/appellant used to quarrel quite often and on the date of incident i.e. on 27.09.2010 also a quarrel took place between them and in that process the accused/appellant is said to have given two blows on the head of the deceased - aged about 80 years, by a wooden plank (used for plastering/plaining the wall) resulting in his instantaneous death. Merg intimation Ex.P/1 was lodged on 28.09.2010 at 10.30 am by Kashi Ram (PW/1) - husband of the accused/appellant, who at the relevant time was working in his field. Inquest on the body of deceased was prepared vide Ex.P/3 on 28.09.2010 and dead body was sent for postmortem examination to Govt. Hospital, Nandghat vide Ex.P/16 where Dr. Krishna Kumar Dehariya (PW/15) conducted the postmortem on the body of deceased and gave his report Ex.P/24 opining the cause of death to be hemorrhage due to head injury caused by hard and blunt object and the death was homicidal in nature. Dehati nalisi Ex.P/17 was recorded on 29.09.2010, and on the same day FIR Ex.P/18 was registered against the accused/appellant under Section 302 IPC. On 29.09.2010 itself memorandum of the accused/appellant Ex.P/8 was recorded, based on which, one wooden plank (used for plastering the wall) and one club was seized under Ex.P/9 and as per FSL report Ex.P/21 blood was found on both seized articles, however, there is no serological report. After investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly charge was framed against her by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statements of the accused/appellant 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 has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been convicted solely on the basis of statement of Ku. Meena Sahu (PW/2), a child witness aged about 13 years. It has been argued that the said witness is not reliable and, therefore, the Court below ought not to have convicted the accused/appellant on the basis of her statement.

(ii) that even if the entire prosecution case is taken as it is, the appellant cannot be convicted under Section 302 IPC;

(iii) that as per the prosecution case, the incident occurred all of a sudden in a heat of passion and the accused/appellant is alleged to have given two blows on the head of the deceased by a wooden plank which unfortunately resulted in his death. Learned counsel for the appellant argued that the deceased was a weak person aged about 80 years and it appears that he died because of his poor health condition. Learned counsel for the appellant also submits that case of the appellant would fall under Exception 4 to Section 300 IPC and she can be

convicted under Section 304 Part-II IPC; she has already remained in jail for about seven years; she is middle aged lady and, therefore, after converting her conviction into Section 304 Part-II, she may be sentenced to the period already undergone by her.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Ku. Meena Sahu (PW/2) aged about 13 year, the sole eyewitness to the incident, has stated that when she returned from boring, she saw the accused/appellant and the deceased quarreling, the deceased caught hold of hair of the accused/appellant and was beating her. When deceased was not ready to leave her hairs, the accused/appellant assaulted the deceased by a wooden plank on his head and threw the said wooden plank in the courtyard. She has also stated that an information was given to her father, who at the relevant time was working in the field. She has denied the fact that the deceased died after falling from roof.

09. Dr. Krishna Kumar Dehariya (PW/15) is the autopsy surgeon who conducted postmortem on the body of deceased vide Ex.P/24 and found following injuries:-

- (i) Lacerated injury of 5 cm x 1/2 cm over parietal region.
- (ii) Lacerated injury of 4 x 1 1/2 cm over chin caused by hard

and blunt object.

The Doctor has admitted the fact that deceased was a weak person aged about 80 year. The autopsy surgeon has opined the cause of death to be hemorrhage due to head injury and death was homicidal in nature. The doctor has further opined that the injuries sustained by the deceased could not come due to fall.

10. Kashiram (PW/1) - husband of the deceased is lodger of merg intimation who came to know about the incident immediately it had taken place and at the relevant time he was working in his field. Gangaram (PW/3) is witness to inquest Ex.P/3. Dukhram (PW/4), Tijeram (PW/5), Smt. Dashmat (PW/6) and Benoram (PW/9) are the hearsay witnesses. Ayodhya Sahu (PW/7) is witness to memorandum of the accused/appellant made under Ex.P/8. Ramesh Kumar (PW/8) is also witness to inquest Ex.P/3. Nareshram Khure (PW/10) is Patwari who prepared spot map vide Ex.P/13. Onkar Prasad (PW/11) is witness to seizure of wooden plank and club made under Ex.P/9. K.D. Kurre (PW/12) and Ajay Ram Bhagat (PW/14) helped in the investigation. A.K. Bajpayee (PW/13) is Investigating Officer who has duly supported the prosecution case. As per the FSL report Ex.P/21, blood was found on the seized articles i.e. wooden plank and club, however, there is no serological report on record.

11. Close scrutiny of the evidence available on record, makes it clear that on 27.09.2010 when the deceased was beating the accused/appellant after holding her hairs, the accused/appellant gave two blows by wooden plank on his head which resulted in his death.

According to postmortem report (Ex.P/24), injuries present on the body of deceased were antemortem in nature and cause of death was hemorrhage due to head injury and the Doctor has categorically stated that the deceased was aged about 80 years and was physically weak. In this situation, there was a corresponding burden on the accused/appellant to give a cogent explanation as to how the crime was committed, but she failed to do so. This apart, a bloodstained wooden plank was seized by the prosecution at the instance of accused/appellant and as per opinion given by the doctor, the injuries found on the body of the deceased could have been inflicted by the said wooden plank and the same were sufficient to cause death of deceased in ordinary course of nature, but there is no explanation on the part of accused/appellant as to how the said wooden plank contained blood. The question in this regard was put to the accused during her statement under Section 313 Cr.P.C., but except vague denial, she said nothing more. In these circumstances, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

12. We shall now venture to apply the parameters laid down by the Supreme Court to determine whether the appellant can be stated to have intentionally caused such bodily injury to the deceased, as she knew was so imminently dangerous, that it would in all probability cause his death.

13. From the evidence it appears that initially a quarrel took place between the accused/appellant and the deceased in which the deceased caught hold of hairs of the accused/appellant and was not

ready to leave it, thereafter, the accused/appellant gave two blows on his head by wooden plank to get herself freed from the clutches of deceased but in the incident deceased died. Thus, considering the facts and circumstances of the case giving rise to the incident leading to the death of the deceased, it is apparent that while inflicting the injuries on the deceased the appellant had no intention to cause death but considering the manner in which the assault was made on the vital part of the deceased i.e. head with such a force which resulted in his instantaneous death, it can safely be inferred that she had the knowledge that injuries being inflicted by her on the deceased would result in his death. Being so, the act of the accused/appellant is squarely covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making her liable to be convicted under Section 304 Part-II IPC and not under Section 302 IPC as has been held by the trial Court.

14. In the result, the appeal is partly allowed. Conviction of the accused/appellant under Section 302 IPC is altered to Section 304 Part-II IPC. The accused/appellant is reported to be in jail since 29.09.2010. Considering the detention period of the accused/appellant and the fact that she is middle age lady, we are of the view that ends of justice would serve if her sentence is reduced to the period already undergone by her. Ordered accordingly. The accused/appellant is in jail, she be set at liberty forthwith, if not required in any other case.

15. A copy of this order be sent to the concerned Judge as also to the concerned District Judge who shall ensure the compliance of this order. After release of the accused/appellant, the jail authorities are

also directed to inform this Court that the accused/appellant has been set free and the order of this Court has been complied with.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge

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