

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 957 of 2012

- Rohini Pankaj W/o Late Trilochan Rankaj Aged About 31 Years
R/o Sonpur , P.S. Kapu, Distt. Raigarh C.G.

---- Appellant

Versus

- State Of C.G. S/o Through - P.S. Kapu ,distt. Raigarh C.G.

---- Respondent

For Appellant	: Shri L.C.Dash, Advocate
For Respondent/State	: Smt. Madhu Nisha Singh, P.L.

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

Judgment On Board

22/06/2017

PER PRITINKER DIWAKER , J.

This appeal arises out of the judgment and order dated 31.07.2012 passed by the Second Additional Sessions Judge, Raigarh in Sessions Trial No. 33/2011 convicting the accused/appellant under Section 302 IPC for committing the murder of her husband Trilochan Pankaj and sentencing her to undergo imprisonment for life and to pay fine of Rs. 2,000/- with default stipulation.

2. Brief facts of the case are that on 9.12.2010 in between 8.00-9.00 p.m. when deceased Trilochan Pankaj was taking his dinner along with children, there was some hot talk between the accused/appellant and deceased. Further case of the prosecution is that out of anger, accused/appellant assaulted the deceased on his head with a wooden

plank and thereafter she gave another blow on his left leg and the injuries sustained by the deceased on his head unfortunately proved to be fatal resulting his instantaneous death. FIR EX.P-13 was registered against the accused/appellant and immediately thereafter merger intimation Ex.P-14 was recorded at the instance of Sahdeo (PW-8) brother of the deceased. Inquest on the body of deceased was prepared vide Ex.P-3 and body was sent for postmortem examination which was conducted by Dr. B.L.Bhagat (PW-5) vide Ex.P-8 on 10.12.2010 who opined that the cause of death was coma due to head injury and death was homicidal in nature. On 10.12.2010, memorandum of the accused/appellant was recorded vide Ex.P-1 based on which seizure was effected and one wooden plank Ex.P-2 was recovered. As per FSL report, blood was found on the said wooden plank. After filing of the charge sheet, trial judge framed charge against the accused/appellant under Section 302 IPC.

3. In support of its case, the prosecution has examined 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C. in which she denied the charge levelled against her and pleaded innocence and false implication in the case.

4. By the judgment impugned the Court below has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence this appeal.

5. Contention of the counsel for the appellant is that :

i) the case of the appellant would fall under exception 4 of Section 300 IPC.

ii) even if the entire prosecution case is taken as it is, the appellant

cannot be convicted under Section 302 IPC and at best she is liable to be convicted under Section 304 (Part-I) or (Part II) IPC.

iii) the appellant is in jail since 11.12.2010 and therefore after converting her conviction under Section 304 Part-II IPC, the sentence be reduced to the period already undergone by her.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

8. Shiva @ Bhola (PW-2) son of the deceased aged about 7 years has stated that on the date of incident at the time of dinner when the deceased asked for chilli from his sister Neelam, his mother denied the same and picked up a wooden plank lying over there and assaulted on the head of the deceased. Ku. Neelam Pankaj (PW-7) is also a daughter of the deceased aged about 11 years, who too has stated that at the time of dinner, chilli was demanded by her father (deceased), the same was refused by her mother (appellant) and then she picked up the wooden plank lying over there and gave a blow on the head of the deceased. In cross-examination she has clarified that some dispute cropped up between her father and mother as a result of which the incident took place. Dr. B.L.Bhagat (PW-5) is the autopsy surgeon and according to him following injuries were noticed on the body of the deceased :

i) lacerated wound in the upper part of left side of parietal region

of scalp 6 x 2 cm. in size clotted blood in and around wound underlying bone fracture

ii) swelling of left leg.

He opined that the cause of death was coma due to head injury and death was homicidal in nature. Devendra Verma (PW-1) is a witness before whom extra-judicial confession was made by accused/appellant. He has stated that when he reached the house of accused/appellant and saw the dead body of the deceased, she informed him that it is she who had killed the deceased. H. R. Chandra (PW-10) Head Constable is the Investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that on 09.12.2010 at the time of dinner, there was some dispute between the accused/appellant and deceased and out of anger she picked up a wooden plank lying there and caused injury on the head and left leg of the deceased unfortunately resulting his instantaneous death. Thus, the evidence of Shiva @ Bhola (PW-2) and Neelam Pankaj (PW-7) who are the children of accused/appellant and deceased, complicity of the accused/appellant in the commission of the offence has been duly proved by the prosecution. Apart from the two eyewitnesses, PW-1 is the witness before whom extra-judicial confession was made by the accused/appellant and his statement can be taken as additional evidence against the accused/appellant.

10. The next question arises for consideration before this Court is as to whether the act of the accused/appellant would fall within the definition of murder or some lesser offence.

11. Undisputedly, the incident occurred when both the deceased and accused/appellant were taking meals along with their children and on account of trivial issue when the deceased demanded chilli from the daughter, accused/appellant out of anger took out the wooden plank lying over there and caused injuries on the head of the deceased leading to his 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, she 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 11.12.2010. Considering the detention period of the accused/appellant, the fact that she is a lady and has two children, we are of the view that ends of justice would be served if her sentence is reduced to the period already undergone by her. Order accordingly.

13. Being in jail, she be set free forthwith if not required in any other case.

In the result, the appeal is partly allowed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S.Samant
Judge