

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 66 of 2013

- Amla Bai Manjhar W/o Liladhar Manjhar Aged About 35 Years R/o Village Charkhapara (Manjhapara), Ps Dharamjaigarh, Distt. Raigarh C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Dharamjaigarh, Distt. Raigarh (CG)

---- Respondent

For Appellant	:	Shri Rakesh Pandey, Advocate.
For Respondent	:	Shri Arvind Dubey, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

23/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 9.11.2012 passed by the 1st Additional Sessions Judge, Raigarh in S.T. No.25/12 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.2,000/-, in default to undergo additional R.I. for 03 months.
2. In the present case name of deceased is Tengani Bai, mother-in-law of accused/appellant.
3. The prosecution story, in brief, is that on 27.10.2011 the deceased and the accused/appellant, after consuming liquor, were quarrelling over construction of the house and in that process the accused/appellant

assaulted on the head of deceased by wooden plank (bedpost) as a result of which she died on the spot. Unnumbered FIR (Ex.P-1) under Section 302 of IPC was lodged by Leeladhar (PW-3) against the appellant on 27.10.2011 at 10.45 p.m. Merg Intimation (Ex.P-12) was recorded on 27.10.2011 at 10.55 p.m. Numbered FIR was registered vide Ex.P-17. Inquest was made over the body of the deceased vide Ex.P-2. Body of the deceased was sent for post-mortem examination which was conducted by Dr. B.L. Bhagat (PW-5) vide Ex.P-10 and he noticed following injuries on the body of deceased:-

- lacerated wound in the left mastoid region (scalp) of 3x1.5cm in size, underlying bone fractured.
- contusion in lower part of left face of 7x4cm in size.

The doctor has opined that cause of death was asphyxia due to head injury and the death was homicidal in nature. Statements of witnesses were recorded under Section 161 CrPC.

4. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the 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 06 witnesses in all. Statement of accused/ appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case 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. Counsel for accused/appellant submits that the appellant had caused head injury by a wooden plank (bedpost) during quarrel, which is indicative of the fact that the appellant had no intention to kill the deceased for which she had more than sufficient opportunity. Therefore,

even if the case of the prosecution is taken on its entirety, the act of appellant does not travelled beyond the scope of Exception 4 to Section 300 IPC. He further submits that the appellant is already in jail for the last about six years and therefore by altering her conviction, she may be sentenced to the period already undergone by her.

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. Chandan Singh Rathiya (PW-1) is the witness of inquest (Ex.P-2) and seizure memo of Ex.P-3 by which bloodstained soil and plain soil was seized from the spot.
10. Chandrabhan Rathiya (PW-2) is the witness of seizure memo Ex.P-4 by which a sealed packet was seized.
11. Leeladhar Manjhar (PW-3) is the lodger of FIR (Ex.P-5). According to this witness, as the accused did not offer any help in the construction of new house, there was a dispute on the said issue in between the deceased and his wife i.e. accused/appellant and there used to frequent quarrels between them over the said issue. He has further stated that on the date of incident he was not in the village. Since this witness did not support the prosecution in its entirety, he was declared hostile by the prosecution.
12. Lata Kumari Manjhar (PW-4) is the daughter of accused/appellant and grand-daughter of deceased. She has stated that on the fateful day at about 4 in the evening she was in the house. Accused and deceased were also present in the newly constructed house. A quarrel took place

between her mother and grandmother in connection with new house and in that process her mother (appellant) assaulted on the head of her grandmother by a bedpost as a result of which she died. This witness remained firm in her cross-examination and nothing could be elicited by the defence so as to discredit her testimony.

13. Dr. B.L. Bhagat (PW-5) is the doctor who performed autopsy on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was asphyxia as a result of head injury and the death was homicidal in nature. The query- whether the injuries present on the body of deceased could be caused by the wooden plank produced before him for examination, has been answered by this witness in the affirmative vide Ex.P-11.

14. Jwakin Lakda (PW-6) is the investigating officer who has duly supported the prosecution case.

15. Close scrutiny of the evidence available on record makes it clear that there was some dispute regarding construction of new house in between accused/appellant and deceased and on 27.10.2011 at 4.00 p.m. also a quarrel over the said issue took place between them and in the course of the quarrel, the accused/appellant inflicted injuries on the head of deceased by wooden plank (bedpost) as a result of which she died on the spot. Incident was witnessed by Lata Kumari Manjhar (PW-4), daughter of accused & grand-daughter of deceased, who categorically deposed in her evidence that accused and deceased suddenly started quarrelling and in the course of quarrel, her mother (accused) had assaulted on the head of her grandmother (deceased) with wooden plank (bedpost) which resulted in her instantaneous death. Dr. B.L. Bhagat (PW-5), who conducted the post-mortem, has described the lacerated wounds of the deceased as ante mortem injuries on the head and has opined that the

cause of her death was asphyxia as a result of head injury sustained by her. The query- whether the injuries present on the body of deceased could be caused by the wooden plank (bedpost) produced before him, has been answered by this witness in affirmative. Thus, the medical evidence also supports the eyewitness account of PW-4. In absence of any satisfactory material to indicate as to why PW-4 would depose falsely against her own mother (accused), we find no reason to disbelieve her testimony regarding the incident, more so when the defence failed to elicit anything in cross-examination to discredit her. In these circumstances, we are of the view of that the trial Judge committed no error in relying on the evidence of Latakumari (PW-4) and in holding that it was accused/appellant who assaulted deceased with wooden plank (bedpost) as a result of which she died.

16. Now the question arises for consideration before this Court is whether act of accused/appellant amounts to murder or it falls within any of the Exceptions to Section 300 of the IPC?
17. It has come in the prosecution evidence that there used to frequent quarrels between accused and deceased as the accused did not offer any assistance in the construction of new house by her husband namely Leeladhar (PW-3). Evidence further goes to show that on the date of incident accused and deceased both were present in the house and all of a sudden the quarrel started between them and in the course of quarrel the accused/appellant gave wooden plank (bedpost) blow on the head of deceased which proved to be fatal. It is thus apparent that the incident occurred all of a sudden and during the course of which, without any pre-meditation and in the heat of passion, the appellant caused injury to the deceased which ultimately resulted in her death. Under these circumstances, 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 she could be definitely imputed with the knowledge that she was likely to cause an 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 she is liable to be convicted under Section 304 Part-II of IPC and not under Section 302 of IPC as has been held by the trial Court.

18. Accordingly, the appeal is partly allowed. Conviction and sentence of accused/appellant under Section 302 IPC are hereby set aside. However, looking to her act and evidence on record, she stands convicted under Section 304 Part-II IPC and sentenced to the period already undergone by her i.e. 5 years 10 months & 17 days. Accused/appellant is reported to be in jail. She be set at liberty forthwith if not required to be detained in connection with any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-