

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 428 of 2013**

- Sukhni Bai, W/o Bihanu Majhwar, Aged about 37 years, Caste Majhwar, Occupation – Agriculture, R/o Village Dhodakesra (Mahuatikra), P.S. Kamleshwarpur, District Sarguja (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through- District Magistrate, Sarguja, District Sarguja (C.G.)

---- Respondent

For Appellant : Dr. Kumaresh Tiwari, Advocate
For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board**25/05/2017****P. Diwaker. J.**

This appeal arises out of the impugned judgment and order dated 19.01.2010 passed by Sessions Judge, Sarguja (Ambikapur) in S.T. No. 27/2009 convicting the accused/appellant under Section 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life and pay fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

(2) As per prosecution case, accused/appellant Sukhni Bai used to suspect that deceased Ratai Bai, wife of Peelaram Maghwar (PW-1) was having illicit relation with her husband. It is said that on 16.04.2008 when deceased Ratai Bai was going to attend a marriage

in the house of one of her relatives along with her two minor daughters, at about 5 P.M. accused/appellant reached there and after having some hot talk with the deceased, started beating her by hand and fist. It is further alleged that accused/appellant picked up the stone lying there and caused injuries on the deceased, resulting in her death. During this quarrel, Chamrin Bai, sister of the appellant intervened in the matter and thereafter said Chamrin Bai informed about the incident to Peelaram Majhwar (PW-1), husband of deceased, who in turn reached the place of occurrence, saw the deceased and thereafter lodged the F.I.R. (Ex.P-1) on 17.4.2008 at 8.30 A.M. against the accused/appellant under Section 302 of the Indian Penal Code. Immediately thereafter merg intimation (Ex.P-2) was recorded by the police at 8.45 A.M. Inquest on the body of the deceased was conducted on 17.04.2008 (Ex.P-4) and thereafter the body was sent for postmortem vide (Ex. P-6), which was conducted by Dr. S.N. Bhoi (PW-3), who gave his report Ex.P-6 and according to him cause of death was coma due to compression of brain resulting into fracture of skull, which could have been caused by hand and fist. After investigation, charge sheet was filed against the accused/appellant under Section 302 of the Indian Penal Code and accordingly charges were also framed by the court below.

(3) In order to establish the guilt of the accused/appellant, prosecution has examined six witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C., in which she denied the charges levelled against her and pleaded her innocence and false implication in the case. Apart from

this, one witness namely Santra Bai (DW-1) has also been examined by the appellant/accused in support of her case.

(4) After hearing learned counsel appearing for the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in opening paragraph of the judgment. Hence, the present appeal.

(4) Learned counsel appearing for the appellant would submit that appellant has been convicted solely on the testimony of child witness Peeriya (PW-2), aged about 11 years and it appears that the said child witness is tutored one. It has further been argued that the incident occurred all of a sudden without premeditation on the part of the appellant/accused in a sudden quarrel, and therefore, case of the appellant would fall under Exception 4 of Section 300 of the IPC. He submits that even if the entire case of the prosecution is taken as it is, at best appellant can be convicted under Section 304 part I or part II of the I.P.C. He submits the appellant is in custody since 26.12. 2008 and, therefore, after converting her conviction into Section 304 Part I or Part II of the IPC she may be sentenced to the period already undergone by her.

(5) On the other hand, counsel for the respondent/State supporting the impugned judgment submits that the testimony of sole eye witness namely Peeriya (PW-2) - daughter of the deceased is fully reliable and there is no reason for this court to disbelieve her statement. He further submits that the manner in which the head injury has been caused by the accused/appellant to the deceased, the trial Court is justified in

convicting and sentencing the accused/appellant under Section 302 of the Indian Penal Code.

(6) We have heard counsel for the parties and perused the material available on record with utmost circumspection.

(7) Peeriya (PW-2) is the daughter of the deceased, aged about 11 years. Before recording her statement, the court had put certain questions to this witness to ascertain her mental ability and after being satisfied, the court proceeded to record her statement. She has stated in her statement that accused/appellant is her aunt in relation and name of her mother was Ratai Bai. According to her, on the date of incident, when she along with her mother & sister was going to attend marriage in her relatives' house, in the evening when they were crossing the well, accused/appellant reached there and asked her mother as to why she is going ahead of her to attend the marriage and threatened to kill her. She has further stated that thereafter the accused/appellant started beating the deceased by hand and fist, resultantly, her mother fell down on the ground and then the accused/appellant assaulted on her face and chest by stone, which she was keeping in her one hand, at that time she and her sister tried to intervene in the matter and ultimately Chamrin Bai, sister of the appellant reached there and separated accused/appellant and the deceased. She has further stated that Chamrin Bai gave information to this effect to her father Peelaram Majhwar (PW-1) and immediately thereafter her father Peelaram Majhwar (PW-1) reached the place of occurrence and offered water to the deceased, however, by that time, the deceased had expired. In her cross-examination, there appears

to be some contradictions in the statement of this witness but she remained firm in respect of assault made by the accused/appellant on the deceased. Peelaram Majhwar (PW-1) is the husband of the deceased, who reached the place of occurrence after the incident had taken place. He is also the lodger of FIR (Ex. P-1). He has admitted that fact that his wife used to consume liquor and on the date of incident also she was under influence of liquor. He has stated that he also had consumed the liquor on the date of incident but has denied the fact that he too had beaten the deceased. Dr. S.N. Bhoi (PW-3) is the doctor, who conducted postmortem examination on the body of deceased vide Ex.P-6 and noticed lacerated wound of 15 cm. X 4 cm. X 3 cm over right side of head.

According to him, cause of death was coma due to compression of brain resulting into fracture of skull, which could have been caused by hand and fist. Brahmjyoti Jahire (PW-04) is the Investigating Officer who has duly supported the case of the prosecution. Shri Pitambar Pradhan (PW-5) is the Patwari, who had prepared the spot map (Ex.P-5). Chandan Das (PW-6) is the witness of inquest. Santara Bai (DW-1), is the daughter of accused/appellant, has stated that on the next day of incident, Peeriya (PW-2) had informed her that it is her father who has killed the deceased.

(10) Close scrutiny of the evidence makes it clear that when the deceased was going to attend the marriage in the house of one of her relative along with her two minor daughters, accused/appellant reached there and after having some hot talk with the deceased, the

appellant/accused initially gave hand and fist blow to the deceased and thereafter picked-up the small stone lying there (the said stone has not been seized by the prosecution) and caused injuries on the head of the deceased. Peeriya (PW-2) has duly supported the prosecution case stating that accused/appellant assaulted on the face and chest of the deceased with the stone, which can be easily held in one hand and, therefore, we have no reason to disbelieve the statement of Peeriya (PW-2), who is eye witness to the incident. Thus, the complicity of the accused/appellant is fully established by the evidence adduced by the prosecution.

(11) Now, the question that arises for consideration before us is as to whether the act of the accused/appellant would fall within any of the Exception of Section 300 of the India Penal Code.

(12) From the facts and circumstances of the case and the evidence of the witnesses, it appears that the offence has been committed by the accused/appellant without any premeditation and in the heat of passion upon a sudden quarrel between the appellant/accused and the deceased, which is evident from the statement of Peeriya (PW-2). Moreover, the appellant also does not appear to have taken any undue advantage of the situation because the barbarity on her part is not reflected. Thus in our considered view, the act committed by the appellant would fall under Exception 4 to Section 300 of the IPC. Further, from the overall act of the accused/appellant, it does not appear that she had any intention to cause the grievous injuries to the deceased which were sufficient in the ordinary course of nature to cause death. However, her act speaks in volumes that while causing

the injuries she was having the knowledge that the injuries so caused may in long run prove fatal to the deceased. Being this, she cannot escape her conviction under Section 304 Part-II of the IPC.

(14) Accordingly, her conviction under Section 302 IPC is set aside and instead she is convicted under Section 304 (Part-II) IPC.

(15) As far as sentence part of the judgment is concerned, according to the counsel for the appellant, as the appellant has already remained in jail for about eight years and five months, she may be sentenced to the period already undergone.

(16) Accordingly, the appeal is partly allowed. Conviction of the appellant under Section 302 IPC is set aside and instead she is convicted under Section 304 Part-II of the IPC. However, considering the facts and circumstances of the case and that she has already remained in jail for about eight years & five months, this Court thinks it proper to sentence her to the period already undergone. Order accordingly, Since the appellant is in jail, she be released forthwith, if not required in any other case.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K. Agrawal)
Vacation Judge

Dubey/-