

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 591 of 2012**

[Arising out of the order dated 21.6.2012 passed by the First
Additional Sessions Judge, Surajpur, Revenue District Surajpur (CG) in
ST No.117/11]

- Sudarshan Manikpuri S/o Shri Swamvar ram, aged about 39 years, R/o Village Navapara, Surajpur, PS Surajpur, District Surajpur (CG)

---- Petitioner

Versus

- State Of Chhattisgarh, Through PS Surajpur, District Surajpur (CG)

---- Respondent

For Appellant
For Respondent /State

Mr. Shakti Raj Sinha, Advocate
Mr. Arvind Dubey, Panel Lawyer

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mrs. Justice Vimla Singh Kapoor****Order On Board By****Prashant Kumar Mishra, J.****4/7/2018**

1. Heard.
2. The appellant would challenge his conviction under Section 302 of IPC for committing murder of his wife Nano@ Sumitra in an incident, which happened at 8:00 p.m. on 10.9.2010, for

which, she eventually died at about 3 p.m. on 11.9.2010.

3. The FIR -Ex.P/6 was lodged by PW-1 Vishwanath, uncle of the deceased, to the effect that his nephew Sanjay (PW-3) had gone to visit the deceased's house on 10.9.2010 but he came back at 10:00 am on 11.9.2010 to inform that at about 8:00 pm, on 10.9.2010, the appellant has assaulted the deceased by hands and fists and also burnt the sari of the deceased. Sanjay also informed that the deceased had sustained injury over her cheek. On receiving the above information, PW-2 Tiharo Bai, grandmother of the deceased, reached the place of occurrence along with Ms. Bigni and found that the deceased has died. In view of the named FIR, the appellant was taken into custody on 13.9.2010 and for the reason that no weapon has been used, the investigating officer did not record any memorandum statement or effected any seizure. The IO has registered the case on the statements of the witnesses and filed the charge sheet.
4. The trial Judge has convicted the appellant on the basis of eye witness account rendered by PW-3 Sanjay and the medical evidence. In the postmortem report -Ex.P/4, proved by PW-5 Dr. RS Singh, the deceased was opined to have died homicidal death on account of asphyxia due to throttling.
5. Since the case of the prosecution is based on the statements of PW-2 Tiharo Bai, PW-3 Sanjay and the medical evidence, we would straightway advert to this evidence.

6. PW-3 Sanjay was present in the house when the appellant assaulted the deceased by hands and fists. He has supported the prosecution and the defence could not elicit any such answer from him which would dilute his statement. PW-2 Tiharo Bai has set-up a case of oral dying declaration. However, in the FIR itself, it is mentioned that when Tiharo Bai and Ms. Bigni reached the house of the deceased, she was already dead. Therefore, if the contents of the FIR is believed, Tiharo Bai does not appear to have met the deceased before her death. Even if we assume that Tiharo Bai had reached the house of the deceased before her death and had conversed with her, then also, the deceased had only informed her that she has been assaulted by the appellant with hands and fists. Thus, in the statements of both the witnesses, there is no allegation of committing throttling by the appellant.
7. In the postmortem report proved by PW-5 Dr. RS Singh, he has found 8 injuries on the person of the deceased and except injury No.4, which was bruises with haematoma on either side of the neck, other injuries were simple in nature. On internal examination, the blood around the bruised part of the neck had clotting and the neck bone on either side was broken or fractured. This injury has been stated to be grievous and was sufficient to cause death and further, the said injury was due to throttling. There is no evidence neither it is the case of the defence that the throttling was self-inflicted. Even though there is no ocular evidence of causing throttling by the appellant, there being evidence of assault by the appellant on

the person of the deceased, the appellant might have throttled the deceased at the same time of assault, which has resulted in injury No.4 and caused death of the deceased due to asphyxia on account of throttling. Since the appellant and the deceased were alone in the house as Sanjay had gone asleep immediately after the incident, as he was suffering from fever, it was possible that Sanjay might not have seen each and every act of assault.

8. In view of the clear medical evidence coupled with evidence of assault by the appellant on the deceased, the only inference which can be drawn is that it is the appellant, who has committed throttling. We are, therefore, of the opinion that it is the appellant who has committed the crime
9. Despite the above finding about the guilt of the appellant, we are required to consider whether the appellant would be guilty of committing culpable homicide amounting to murder or he would be guilty of committing culpable homicide not amounting to murder.
10. It is argued by learned counsel for the appellant that there was no motive for committing the offence by the appellant as there is no evidence that his relation with the wife was strained, therefore, the appellant has not committed the murder of the deceased punishable under Section 302 of IPC.
11. On the other hand, learned counsel for the State would oppose the submission and would read out the entire evidence

in support of his contention.

12. There is no evidence put-forth by the prosecution that relation between the appellant and the deceased were soured or that the appellant was continuously and regularly harassing the deceased. There appears no immediate cause to commit the murder of the deceased. In the charge sheet, the motive has been attributed on account of deceased's failure to cook food, whereas, in the Court statement, PW-3 Sanjay has stated that the appellant was drunk and was demanding some cash from the deceased. Thus, the genesis of the occurrence was also trivial and the appellant under the effect of alcohol may not be in his senses. Moreover, the assault was not brutal or cruel causing instant death. The death has taken place after 19-20 hours and during this period, the deceased was not provided any medical assistance.

13. In our considered opinion, the appellant had intention and knowledge to cause death of the deceased but there was no premeditation for the said act and further, he has not taken undue advantage or acted in a cruel or unusual manner, therefore, the act committed by the appellant would fall under Fourth Exception to Section 300 of IPC and the offence would be covered under Section 304 Part-I of IPC, which carries sentence of imprisonment for life or imprisonment of either description for a term which may extend to 10 years.

14. Accordingly, the appeal is partly allowed and the conviction of the appellant under Section 302 of IPC is set-aside and instead,

he is convicted under Section 304 Part I of IPC.

15. In the facts and circumstances of the case and considering the nature of evidence on record, we feel that the appellant, who has undergone 7 years and 9 months of jail sentence as he is in jail since 13.9.2010 till date, has suffered adequate jail sentence. Therefore, the appellant is convicted for the period already undergone by him.

16. The appellant is to be set at liberty forthwith unless to be required in connection with any other case.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Vimla Singh Kapoor)

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