

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 588 of 2014

- Shiv Prasad Maravi S/o Shyam Lal Maravi Aged About 26 Years
R/o. Awas Para, Ghuru, P.S. Chakarbhata, Distt. Bilaspur C.G.,
Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. Chakarbhata, Distt. Bilaspur
C.G., Chhattisgarh.

---- Respondent

For Appellant	:	Shri Ashok Patil, Advocate.
For Respondent/State	:	Shri Adil Minhaj, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board by Pritinker Diwaker, J

27/01/2018

This appeal has been filed against the judgment of conviction and order of sentence dated 22.3.2014 passed by the Sessions Judge, Bilaspur in Sessions Trial No.138/2013 convicting the accused/appellant under Sections 302 & 307 IPC and sentencing him to undergo imprisonment for life with fine of Rs.2000/- and RI for 7 years with fine of Rs.2000/- with default stipulations respectively.

2. In the present case, name of the deceased is Kunwarmati Bai, step mother of the appellant. It is alleged that though the appellant was living separately but was interested in getting the land in question partitioned and on account of that there used to be frequent quarrel between the appellant and the deceased. It is alleged that in the night

intervening 29/30th April, 2013 the appellant after consuming liquor first caused injuries to his step brother PW-2 Bholaprasad Marvai and thereafter started assaulting his step mother Kunwarmati Bai by brick. Both the injured PW-2 and Kunwarmati Bai were taken to hospital where Kunwarmati succumbed to his injuries. As per MLC of PW-2 (Ex.P/27) conducted by PW-16 Dr. Dharmendra Kumar, he was in semi-conscious condition due to assault, there was a lacerated wound on the skull over occipital region and he advised for CT scan of the patient. In reply to the query whether the injury suffered by PW-2 is dangerous to life, the doctor (PW-15 Dr. KN Choudhary) gave his opinion vide Ex.P/20 that it is dangerous to life. On 1.5.2013 FIR (Ex.P/1) was registered against the appellant under Sections 294, 506 and 323 of IPC. After death of Kunwarmati Bai on 2nd April, 2013, merg intimation was initially registered as zero number at Police Chowki-CIMS, Bilaspur and thereafter, numbered merg (Ex.P/17) was registered on 3.5.2013. Inquest over the dead body was conducted on 3.5.2013 vide Ex.P/3. The dead body was sent for postmortem which was conducted on the same day by PW-16 Dr. Dharmendra Kumar vide Ex.P/28 who noticed five stitched wounds over right side of cheek, abrasions over right side of cheek, lacerated wound over right zygomatic region just below right eye, stitched wound from left ear to tempoparietal and occipital region, linear fracture over left tempoparietal and occipital region and subdural hematoma all over brain. In his opinion, the cause of death was coma due to head injury. On the memorandum of the appellant recorded on 2.5.2013 (Ex.P/5), the brick used in commission of the crime having stains like blood was seized vide Ex.P/6 and likewise, the clothes worn by the appellant at the time

of incident were also seized vide Ex.P/8. While framing charge, the trial Judge framed charges under Sections 302, 307 and 506 Part-II of IPC against the appellant.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 16 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that the appellant had no intention of committing murder of the deceased. In fact, the incident occurred all of a sudden in the heat of passion where the appellant assaulted the deceased only by a brick lying nearby which unfortunately proved fatal to her life and resulted in her death. Therefore, in the totality of facts and circumstances of the case, the appellant can at best be held guilty under Section 304 Part-I or II of IPC and not 302 of IPC as has been held by the trial Court.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 of IPC for committing murder of Kunwarmati Bai and under Section 307 of IPC for attempting to commit murder of PW-2 Bholaprasad are strictly in accordance with law and there is no infirmity in the same.

7. Heard learned counsel for the parties and perused the material

available on record.

8. PW-2 Bholaprasad, son of the deceased and step brother of the appellant, while supporting the prosecution case has stated that on the fateful night when he along with his mother Kunwarmati Bai was in the house, the appellant came there and started quarreling and abusing her mother in connection with partition of land, on which both of them went to another room and there the appellant also entered and again started quarelling with them. Thereafter, they went to the house of their neighbour Goverdhan, however, the said house was locked and the appellant also reached there following them. When they asked the accused to move away from there, the appellant first assaulted him (PW-2) on his head, near eye and other parts of the body and thereafter started assaulting his mother Kunwarmati by brick. He (PW-2) out of fear ran away from there to the house of one Vicky and informed him about the incident and when he (this witness) was returning to his mother, he fell on the way unconscious and then regained consciousness in CIMS Hospital, Bilaspur. In cross-examination, but for minor contradictions, this witness remained firm on material particulars and reiterated as to the manner in which he and his mother Kunwarmati Bai were assaulted by the appellant.

9. PW-15 Dr. KN Choudhary has stated that he received query (Ex.P/19 & P/20) from the police as to the nature of injuries suffered by Kunwarmati and Bholaprasad, to which he opined that the injuries suffered by both the victims were grievous in nature and are dangerous to their life.

10. PW-3 Vicky has stated that on the date of incident PW-2 came to

his house, he was drenched with blood and on being asked informed that his brother-appellant Shivprasad has caused him injury and also assaulted his mother Kunwarmati by brick as a result of which she is lying in the pool of blood unconscious. Thereafter, he with the help of others admitted both the injured persons in hospital. However, in respect of seizure from the appellant he has not supported the prosecution case and has been declared hostile. PW-4 Rahul Singh has stated that in the night he was awakened by PW-3 Vicky and when he came out of his house, he saw PW-2 Bholaprasad with injury on backside of his head, his mother Kunwarmati was lying near the road. On being asked, PW-2 informed that it is the appellant who assaulted both of them. Though this witness has been declared hostile, but he has partially supported the prosecution case.

11. PW-16 Dr. Dharmendra Kumar medically examined PW-2 Bholaprasad vide Ex.P/27 and noticed that he was in semi -conscious condition due to assault, there was a lacerated wound on the skull over occipital region and he advised for CT scan of the patient. He also conducted postmortem on the body of the deceased on 3.5.2013 vide Ex.P/28 and noticed five stitched wounds over right side of cheek, abrasions over right side of cheek, lacerated wound over right zygomatic region just below right eye, stitched wound from left ear to tempoparietal and occipital region, linear fracture over left tempoparietal and occipital region and subdural hematoma all over brain. In his opinion, the cause of death was coma due to head injury.

12. PW-1 Ramlal is the lodger of FIR and has proved the same. PW-7 Amar Chandra, PW-8 Mamta Dubey, PW-9 Arvind Tigga, PW-10

Mithlesh Sonwani and PW-12 JA Khan, police personnel assisted in the investigation. PW-11 RK Sharma, Investigating Officer, has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that the accused/appellant used to pick up quarrel with his step mother Kunwarmati Bai in connection with his share in the land in question. It is for this reason that the appellant in the intervening night of 29/30th April, 2013 came to her house where PW-2 Bholaprasad, son of Kunwarmati was also present, and started quarelling with them. From the evidence it is seen that though PW-2 and the deceased tried to avoid any untoward incident a lot by moving here and there but the appellant continued to follow them wherever they went and finally, when they scolded the appellant for following them, he first assaulted PW-2 and thereafter, Kunwarmati Bai by brick resulting in her death. PW-2 Bholaprasad, injured eyewitness has duly supported the prosecution case and remained firm in lengthy cross-examination on material particulars but for minor contradictions, which are not so significant so as to discard his whole testimony. Even otherwise, the ocular evidence of PW-2 finds due corroboration from the medical evidence of PW-15 Dr. KN Choudhary and PW-16 Dr. Dharmendra Kumar who noticed corresponding injuries on the person of PW-2 and the deceased and opined that these injuries were dangerous to their life and caused by hard and sharp object and that the cause of death of the deceased was coma due to head injury. This apart, the evidence of PW-2 also gets support from the evidence of PW-3 Vicky and PW-4 Rahul.

Thus, considering the ocular evidence of PW-2 Bholaprasad consistent with the medical evidence, we have no hesitation in holding that it is the accused/accused who killed Kunwarmati Bai and caused grievous injuries to PW-2 Bholaprasad which was dangerous to his life. As such, complicity of the appellant in the crime in question stands proved beyond all reasonable doubt.

14. Now we are to see whether in the facts of the present case the appellant is liable to be convicted under Section 302 of IPC or for any lesser offence. Considering the overall facts and circumstances of the case, the manner in which the appellant committed the crime and assaulted the deceased with brick on her vital part head which proved fatal to her life and ultimately led to her death, there can be no denying the fact that the appellant while making such assault on the deceased had intention to kill her. However, as regards the knowledge with the appellant that such injury would result in her death, the overall circumstances suggest that he may not be having knowledge that the assault being made by him on the deceased with brick would be sufficient to put an end to her life. Being so, his conviction under Section 302 of IPC appears to be harsh but he can safely be held guilty under Section 304 Part-I of IPC. Ordered accordingly.

So far as quantum of sentence under Section 304 Part-I is concerned, regard being had to the overall facts and circumstances of the case, we are of the opinion that ends of justice would meet if the appellant is awarded RI for 10 years under this Section.

15. In the result, the appeal is allowed in part. While maintaining conviction and sentence of the appellant under Section 307 of IPC and

acquitting him of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years. He is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(A.S. Chandel)
Judge