

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1011 of 2012**

Shankar Ram Korwa S/o Lalsai Ram, aged about 22 years, occupation, Labour, R/o Vilage Cheraghoghra, Police Station Kansable, District Jashpur (CG).

---- Appellant

Versus

State of Chhattisgarh, through District Magistrate, Jashpur (CG).

---- Respondent

For Appellant	:	Ms. Shipra Biswas, Advocate.
For respondent/State	:	Shri Mazid Ali, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy &

Hon'ble Smt. Justice Vimla Singh Kapoor, JJ

Judgment on Board

Per, P.Sam Koshy, J

21.07.2018

1. The appellant stands convicted for the offence punishable under Sections 302 and 201 IPC and have been sentenced to life imprisonment and RI for 3 years respectively and also imposed fine of Rs.1000/- for each offence with default stipulation, vide judgment dated 03.09.2012 passed by the Sessions Judge, Jashpur, in Sessions Trial No.89 of 2011.
2. The case of prosecution is that, the appellant is said to have assaulted the deceased Santari Bai (wife of the appellant) on 14.08.2011 by fist, kicks and bricks. He is also said to have assaulted her by lifting her up and throwing her on the floor. As a result of the assault made by the appellant, Santari Bai is said to have received injuries and later on it is said that the present appellant himself had taken her to Holy Cross

Hospital, Kunkuri, Distt. Jashpur where she was admitted and undergoing treatment. In the course of treatment on 19.08.2011 Santari Bai is said to have succumbed to the injuries. Later on the appellant and the family members is said to have taken the dead body of the deceased from the Hospital and buried her nearby the house of the appellant.

3. PW-3, Maudh Masih Ekka, Sarpanch of the village made the Dehati Nalisi to the concerned police Station vide Ex. P/6 on 20.08.2011 on the basis of which, Merg intimation was lodged and FIR was registered on the same day vide Ex. P/17. Based upon the complaint lodged by PW-3, the police authorities is said to have gone to the house of the appellant and dead body was exhumed on 20.08.2011 at about 4:35 pm. Panchnama in this regard was prepared which is exhibited as Ex. P/11. The body thereafter was sent for postmortem. PW-2, Dr. YK Toppo, conducted postmortem on 21.08.2011 and in the course of postmortem of the body, the doctor found the following injuries:

- “1. There is multiple contusions on around the umbilical area of abdomen each about 2-3 cms.
2. Blunts black contusions on back side of the chest each is 2-3 cms and which is 5 in number
3. Blunts contusions on left side of the forehead up to left eyebrows and left inner eyelid.”

4. The doctor opined that cause of death was due to shock and peritonitis resulted by external injury on the abdomen and chest. The duration of injuries appeared to be about 45-55 hours old. The cause of death was homicidal in nature.
5. After completion of investigation, the appellant was arrested on 21.08.2011. In due course of time charge sheet was filed and the matter

was put to trial before the Sessions court vide Sessions Trial No.89 of 2011.

6. In all 12 witnesses were examined on behalf of the prosecution side whereas, no witness was examined on behalf of defence. The learned Sessions Judge, after completion of trial vide the impugned judgment, finding the appellant to be guilty of having committed the offence under Sections 302 and 201 IPC, convicted and sentenced him for the period as reflected in paragraph 1 of this judgment.
7. The present appeal has been filed on behalf of the High Court Legal Services Authority.
8. Learned counsel for the appellant assailing the impugned judgment of conviction submits that even if the entire version of the prosecution is accepted in its toto even then the offence under Section 302 cannot be attracted upon the appellant. The evidence which has been recorded of all the witnesses show that the appellant so also the deceased and the persons who were in company of the appellant at that time were all fully drunk and were in an inebriated condition and were not even able to walk straight under the influence of Alcohol. On the basis of this, counsel for the appellant submits that this by itself would show that there was no premeditation on the part of the appellant for causing murder of his wife. Neither was there any intention to cause death of the deceased by the appellant and for the said reason the conviction of the appellant under Section 302 IPC was not justified.
9. The appellant further submits that it is also not a case of the prosecution that deceased had died instantaneously on account of assault made.

Rather, the deceased is said to have died after 4-5 days from the date of incident i.e. during the course of treatment at Hospital which would further establish that the death occurred not because of the assault made by the appellant, but was on account of subsequent complications which arose on account of the alleged injuries caused by the appellant and for this reason also the offence under Section 302 IPC would not be attracted.

10. It was further contended by the appellant that during the course of treatment when the deceased had died in the Hospital, the management without any objection handed over dead body of the deceased to the family members which they have received and took the body to their house and buried. There was no disappearance of evidence made by the appellant so far as the death of the deceased is concerned. For this reason, the offence under Section 201 IPC would not be attracted and the same deserves to be set aside.
11. Per contra, the State counsel opposing the appeal submits that there are ample evidence which has been recorded during the course of investigation as also evidence which has been adduced before the trial court which would establish that the deceased was subjected to repeated assault by the appellant on 14.08.2011 and there are eyewitness to the incident. Further, the deceased having suffered grievous injuries from the said assault made by the appellant to which she later succumbed, establishes the fact that it was the appellant alone who had caused murder of the deceased. After death, he immediately took the body from the hospital and buried it in the compound of his

house which goes to show that the appellant tried to disappear the evidence so far the incident is concerned. Therefore, the offence under Section 201 IPC also has been rightly applied by the prosecution and for which he has rightly been convicted. Thus, prayed for rejection of the appeal.

12. Having heard the rival contentions put forth on either side and on perusal of records, the admitted facts as reflected is that the incident is said to be taken place on 14.08.2011 wherein the appellant is said to have assaulted the deceased (his wife) repeatedly which was witnessed by PW-3, Sarpanch of the village, as also PW-7, Anmol Tirky. It is also not in dispute that both these persons is said to have intervened the appellant during the course of assault. Subsequently they again found the assault being made at different location on the same day. What is also established is the fact that PW-3 in the capacity of Sarpanch, after the incident is said to have on the next day gone to the house of the appellant and found the condition of the deceased to be quite serious and that the family members were giving some home remedies to the deceased for recovery from the injuries that was caused. That, it was at the instance of the PW-3 that the appellant had taken the deceased to the Holy cross Hospital at Kunkuri.
13. PW-1, Dr. Vinod Lakra, doctor of Holy Cross Hospital accepts the fact that the appellant had brought his wife for treatment on 17.08.2011 and from 17.08.2011 his wife was admitted in the Hospital, but she later succumbed. PW-3 was the person who had made Dehati Nalisi to the police authorities which was recorded as Ex. P/6 and FIR, Ex. P/17 was

later on lodged at the instance of PW-3 and later on, on the basis of the investigation the police authorities reached the spot and exhumed the body on 28.08.2011 at about 4:35 PM. PW-4 and PW-5 are the independent witness. So far as exhumation of body from the place of burial is concerned, the same stands further supported from the statement of PW-6, Dinesh Chincholkar, Executive Magistrate for Tehsil Kansabel. Thereafter, the body was sent for postmortem which was conducted by PW-2, Dr. YK Toppo. The doctor has given clear opinion so far as cause of death is concerned and had also given the details of injuries which the deceased had sustained. The prosecution has been able to examine PW-7, Anmol Tirkey, another eyewitness who is said to have fully corroborated with the statement of PW-3, Maudh Masi Ekka, another eyewitness to the incident.

- 14.** From the aforesaid facts, it is evidently clear that the prosecution infact has been able to establish the fact that the deceased was subjected to cruelty and assault by the present appellant on 14.08.2011 and on account of said assault the deceased received multiple injuries in her abdomen and also in her chest on account of which she later succumbed. Thus, the fact that the appellant as instrumental in the death of the deceased cannot be doubted and has been fully established by the prosecution.
- 15.** Now the issue which requires to be considered is whether the act on the part of the appellant can be brought under the ambit of Section 302 IPC or not ?
- 16.** The predominant evidence which has come up both in the statement of

PW-3 as also in the statement of PW-7 is that the appellant as also the deceased and persons accompanying them were all heavily drunk and were in an inebriated condition and were not in a position to stand and walk straight. Another aspect which cannot be lost sight of is the fact that the deceased died after five days from the date of incident i.e. the incident was on 14.08.2011 and she died on 19.08.2011. She died in the hospital. That, it was the appellant who took the deceased to the Hospital for providing her necessary treatment. All these facts clearly reflect that there was no element of premeditation on the part of the appellant for either killing the deceased or had any intention of causing such injuries with which she could die. It appears that it was a case where all the persons were in heavily drunken condition and due to some altercation the appellant is said to have started assaulting the deceased under the influence of Alcohol which resulted in grievous injuries. What also reflect is that the cause of death of the deceased was not on account of the injuries which was caused by the appellant, nor was the death instantaneous but the cause of death was because of the complications which arose on account of injuries which the appellant had caused to the deceased.

- 17.** All the aforesaid circumstances forces us to reach to the conclusion that the act on the part of the appellant is one which would safely fall within the ambit of culpable homicide not amounting to murder rather than the offence under Section 302 IPC.
- 18.** It is also necessary to take note is the fact that even the offence under Section 201 IPC is not made out for the simple reason that there is no

evidence whatsoever produced by the prosecution to establish any attempt on the part of the appellant in disappearance of evidence so far as commission of the offence or in disappearance of the body which is the necessary ingredients for the offence under Section 201 IPC. Rather, from the evidence which has come, it clearly reflects that the appellant took the deceased to the Hospital for treatment where after about two days she died and the hospital authorities released the dead body to the family members and they brought the body to their residence and buried the same as per their custom. Thus, this court has no hesitation in reaching to the conclusion that the element of offence under Section 201 IPC has not been established by the prosecution by leading cogent and concrete evidence in this regard and the conviction of the appellant for the offence under Section 201 IPC is also not made out and the same therefore stands set aside/quashed.

- 19.** So far as offence under Section 302 IPC is concerned, we are of the opinion that necessary ingredients to make out offence under Section 302 IPC also is missing. Rather, from the evidence which has been collected in the course of trial, it appears to be an offence under Section 304 IPC instead of offence under Section 302 IPC.
- 20.** Thus, we are of the opinion that the findings of the guilt of the offence under Section 302 IPC is not proper. The same deserves to be and is accordingly set aside. At the same time, we find the appellant to be guilty of the offence under Section 304 IPC instead of 302 IPC and considering the gravity of the offence and the nature of injuries caused to the deceased, this court imposes imprisonment of 7 years to the

appellant.

- 21.** The appeal thus stands partly allowed. The appeal so far as conviction of the appellant for the offences under Sections 302 and 201 IPC stands set aside. The appellant stands convicted for the offence under Section 304 IPC and he is sentenced to undergo RI for 7 years. The appellant is reported to be in jail. He should be released on completion of 7 years of jail sentence.

Sd/-

(P. Sam Koshy)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

inder