

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 99 of 2013**

- Deena Ram S/o Bodraram Aged About 55 Years R/o Village Balajhar, Kokhadia , P.S. Patthalgaon , Distt. Jashpur C.G. , Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through - P.S. Patthalgaon , Distt. Jashpur C.G. , Chhattisgarh

---- Respondent

 For the Appellant : Shri A.N. Pandey, Advocate.

For the State : Shri Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant &**Hon'ble Shri Justice Gautam Chourdiya****Judgment on board****14/07/2018**

1. This appeal has been preferred against the judgment of conviction and sentence passed by the Additional Sessions Judge, Kunkuri, District-Jashpur, in Sessions Trial No.6/2012 on 29.11.2012 whereby the appellant was convicted under Section 302 of IPC and sentenced to undergo life imprisonment and fine of Rs.5,000/-.
2. A prosecution case in brief is this that on 19.11.2011 the appellant had a quarrel with deceased Sukhmani Bai, who is his wife, for the reason that she had not cooked food and getting enraged he picked up a wooden stick, assaulted on her head and back and thereby caused injuries which resulted in her death. FIR Ex.P/2 was lodged and after completion of investigation, charge-sheet has been filed.

- 3.** The appellant was charged under Section 302 of IPC, to which, he denied. After examining of the prosecution witnesses, the appellant was examined under Section 313 of Cr.P.C. in which he denied all the incriminating evidence against him and pleaded innocence. No witness was examined in defence. After completion of trial, the impugned judgment has been passed in which appellant has been convicted and sentenced as aforesaid.
- 4.** It is submitted by counsel for appellant that an erroneous judgment of conviction has been passed by the trial Court. There is no eyewitness to this incident and the conviction of the appellant is solely based upon the extra judicial confession which is a very weak type of evidence. Apart from that there is no other evidence to implicate the appellant. In the alternative, it is argued that even if this Court is not inclined to acquit the accused in that case, it may be considered that the incident took place all of a sudden because of a petty quarrel between the husband and wife during which getting enraged the appellant has assaulted his wife with a wooden stick which means he did not intend to cause death of his wife. Hence, the case comes within scope of Section 302 Part-II of IPC.
- 5.** Learned State counsel opposes the ground raised in the appeal and submission made in this respect. It is submitted that evidence of extra judicial confession given by Somaru Ram PW-2 & Ranti Bai PW-3 remained unrebutted. Further, the incident occurred inside the house where the appellant and the deceased were only the habitants and thus the appellant was under an obligation under Section 106 of IPC to explain as to how deceased received injuries and died, but he failed to do so in his statement recorded under Section 313 CrPC. Thus, there is no infirmity in the judgment passed by the trial Court. Hence, the appeal is liable to be dismissed.

6. We have heard learned counsel for the parties and perused the record.
7. It is not disputed that deceased Sukwari Bai is the wife of this appellant and she died on 19.11.2011. Postmortem report has been proved by Dr. J. Minj PW-11 Ex.P/6 in which the cause of death of the deceased has been shown as excessive bleeding from the injury on her head and the death was homicidal.
8. It is clearly a case of no eyewitness and the entire prosecution case is based on the evidence of extra judicial confession and other circumstances. Somaru Ram PW-2 has stated that next morning the appellant came to him and admitted that he has killed his wife. On receiving this information, he has lodged unnumbered FIR Ex.P/14 and subsequent to that, unnumbered morgue intimation was also recorded Ex.P/15 on the basis of information given by him.
9. In cross examination, his statement has not been rebutted to this effect that the appellant had informed him that he has killed his wife. Ranti Bai PW-3 has similarly stated that the appellant made extra judicial confession in her presence. In cross examination she admitted that she did not hear the appellant making statement himself. On the contrary, she was told by her husband, this makes her a hearsay witness but she is the wife of Somaru Ram PW-2, hence, in this case, her statement gives corroboration to the statement of Somaru Ram PW-2.
10. Statement of other witnesses need not be examined in this appeal as the statement of extra judicial confession has been proved by the prosecution beyond reasonable doubt. Apart from that, according to the facts present in the case, the incident has happened inside the house of appellant at about 10:30 p.m. in the night of 18.11.2011 and it is not disputed that in the said house the appellant was residing along with his wife (deceased). Hence, the provision of

Section 106 of Evidence Act comes into play in this case and the burden was shifted on the appellant to plead and prove, that if he had not caused death of his wife in that case in what manner and by whom his wife was done to death. No such pleading has been taken by him and no witness was examined by him regarding his defence. Hence, having failed to discharge this burden the appellant cannot get any benefit in this case that no eyewitness was present at the time of incident.

- 11.** After due consideration on all the material present on record of the trial Court, we are of this opinion that the prosecution has been able to prove the complicity of the appellant in the crime in question.
- 12.** Considered on arguments submitted on behalf of the appellant that it is not a case of culpable homicide amounting to murder rather the act attributed to the appellant comes within the ambit of Exception IV to Section 300 of IPC, which provides that culpable homicide is not a murder if it is committed without premeditation in a sudden fight in a heat of passion upon a sudden quarrel and without the offender having taken advantage or acted in a cruel or unusual manner. On going through the evidence on record, it appears that this case is clearly covered under the Exception IV of Section 300 IPC. Hence, under these circumstances, the conviction held by the Trial Court under Section 302 of IPC does not appear to be proper and on the contrary, it is under Section 304 Part-I of IPC in which the appellant should have been held guilty by the trial Court.
- 13.** After due consideration on material present in the record of the trial Court, we are of this opinion that the appellant has committed offence under Section 304 part-I of IPC.
- 14.** Accordingly, the appeal is partly allowed. The conviction and sentence of appellant under Section 302 of IPC is set aside and instead thereof he is

convicted under Section 304 part-I of IPC and sentenced to undergo R.I. for 10 years.

Sd/-

(R.C.S. Samant)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Nisha