

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 598 of 2010

- Chhabiram, S/o Bhukhan Lal Nirmalkar (Dhobi), aged about 35 years, R/o Rabeli, Police Station Abhanpur, District Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Nandini, District Durg.

---- Respondent

For Appellant	:	Shri Aditya Khare, Advocate
For Respondent	:	Shri Lav Sharma, Panel Lawyer.

Judgement on Board by Hon'ble Shri Justice P. Diwaker

08/09/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 29.1.2010 passed by the 9th Additional Sessions Judge (FTC), Durg in S.T. No.35/09 convicting the accused/appellant under Sections 304 Part II of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 5 years & fine of Rs.1,000/-, in default of payment of fine to further undergo RI for 6 months.
2. Case of the prosecution, in brief, is that on 8.10.2008 on account of some dispute the accused/ appellant caused several injuries to his wife Sahodara by hands, fists & stone as a result of which she became unconscious and when she was taken to the hospital, she was declared brought dead by the doctor. Merg Intimation (Ex.P-12) was recorded on 8.10.2008 on the basis of intimation received from the hospital. On 9.10.2008 FIR (Ex.P-17) was registered against the accused/appellant under Section 302 of IPC. Inquest (Ex.P-2) was prepared on the body of deceased. Post-mortem on the body of deceased was conducted by Dr.

P. Akhtar (PW-13) vide Ex.P-14 and he noticed following injuries:-

- Friction abrasion on right shoulder of 3"x2" in size and at right scapular region of 4"x3" in size, both skin deep.
- Friction abrasion on left elbow of 1"x 0.5" with blood clot.
- lacerated wound on scalp at occipital region, semilunar in shape of 5cm x2cm in size, bone deep.
- Scalp haematoma at occipital region of 6"x6" and there is fracture of occipital bone obliquely placed of 3cm length.
- Scalp haematoma over left parietal region of 8"x6" in size.
- Subdural haematoma extending from occipital region to left parietal region and left frontal region of 12"x8" in size.

He opined that cause of death is coma due to head injury and the death was homicidal in nature. On the basis of memorandum statement (Ex.P-4), one stone stained with blood like substance was seized from the spot. Seized articles were sent for chemical examination to the FSL and as per report of FSL (Ex.P-22), the stone seized at the instance of accused/appellant was found stained with blood.

3. After completion of investigation, charge sheet was filed against the accused/appellant for the offence punishable under Section 302 IPC and accordingly the charge was framed by the trial Court against him. The prosecution in order to bring home the charges levelled against the accused/appellant examined 16 witnesses in all. Statement of accused/appellant was also recorded under Section 313 Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner described above.
5. Learned counsel for accused/appellant submits that the appellant has already undergone incarceration for a period of more than two years, the occurrence relates to the year 2008 and even according to the finding of the trial Court the occurrence has taken place on a sudden provocation, in

a heat of passion and without pre-meditation. He further submits that in these circumstances the Court should take a lenient view in the case and reduce the sentence of the appellant to the period already undergone.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He further submits that the sentence awarded by the trial Court is just and proper and no interference therewith is warranted.
7. I have heard counsel for the parties at length. I have gone through the impugned judgment as also trial court record.
8. Ankbahu Ram (PW-1), brother of deceased, is the witness of inquest (Ex.P-2).
9. Bunty (PW-2) is a child eye-witness to the incident. The trial Court before recording his statement had put certain questions to him to ascertain whether he can depose in the court and give rational answers to the said questions. After being satisfied by the answers given by the child, his statement was recorded without administering oath to him. He has deposed that on the date of incident when they were going on the motorcycle to his uncle's house, his father (appellant) had beaten his mother (deceased) by stones as a result of which she died.
10. Tukaram (PW-3) is the hear-say witness who came to know about the death of deceased from the villagers. Gokaran Prasad Patel (PW-4) has stated that accused/appellant and one Bisahu Nishad had brought the deceased on motorcycle in injured condition and they informed him that she received injuries due to fall from the motorcycle. He has further deposed that at that time the deceased was unconscious and even on sprinkling water on her face, she did not regain consciousness. Rambhau (PW-5) is the hear-say witness.

11. Pilu Yadav (PW-6), another child eye-witness of the incident. He has stated that on the fateful day he had taken his cattle towards brook for grazing and there he saw the accused/appellant assaulting his wife (deceased) with hands, fists & legs by catching hold of her hairs.
12. Pooran (PW-7), a child witness, has stated that on the date of incident when he was grazing his goats near the brook, he saw the accused/appellant had caught hold of hairs of a lady. He has further stated that at that time Pilu (PW-6) was also grazing the cattle there.
13. Bihari Lal (PW-9) did not support the prosecution case and turned hostile. Dr. Manoj Khudwani (PW-10) is the person who gave intimation to the police regarding death of the deceased. Arvind Sharma (PW-11) is the Patwari who prepared the spot map (Ex.P-13). Santosh Kumar Chouhan (PW-12) is the investigating officer who has duly supported the prosecution case.
14. Close scrutiny of the evidence makes it clear that on the date of incident when the deceased refused to accompany accused/appellant to his house, he got enraged and beat her by hands, fists & stones and unfortunately the injuries so caused resulted in her death. Incident was witnessed by PW-2 Bunty, son of accused & deceased, who has stated that it is the accused/appellant who had assaulted his mother (deceased) by hands, fists and stones. According to PW-2, when he along with his father & mother was going on the motorcycle to his uncle's house, his father (accused) had assaulted his mother (deceased) by stone. In the cross-examination this witness remained firm and nothing could be elicited from him. Statement of child witness PW-2 gets corroboration from the statement of Pilu Yadav (PW-6) & Pooran (PW-7). Pilu Yadav (PW-6) has categorically stated that at the relevant point of time he saw the accused/appellant assaulting the deceased by hands & fists. Pooran

(PW-7) has also stated that he saw that accused/appellant had caught hold of hairs of one lady. Statement of PW-2 further gets corroboration from the medical evidence. The medical evidence on record shows that cause of death of deceased was coma due to head injury and the death was homicidal in nature. The stone seized at the instance of accused/appellant was also examined by Dr. P. Akhtar (PW-24) and he opined that the injuries caused to the deceased could be caused by said stone. Therefore, in my considered opinion, the accused/appellant has been rightly convicted by the trial Court for the offence under Section 304 Part II of the IPC as the assault on the deceased by the accused/appellant was during and because of sudden altercation & quarrel and without any premeditation.

15. As regards the sentence, the punishment prescribed for the offence punishable under Section 304 Part II of IPC is imprisonment of either description for a term which may extend to ten years, or with fine, or with both. In the case in hand, the trial Court has already taken the lenient view and in place of 10 years RI, sentence of 5 years RI was imposed on the accused/appellant and the said sentence does not call for any interference and as such the findings recorded by the trial Court are liable to be affirmed and are accordingly upheld.

16. In the result, the appeal has no merit, the same is liable to be and is hereby dismissed. Appellant is reported to be on bail. His bail bonds stand cancelled. He is directed to surrender immediately to serve out the remaining jail sentence imposed upon him.

Sd/-
(Pritinker Diwaker)
J U D G E