

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.138 of 2013**

Tijan Bai, W/o. Firat Ram Gandharva, aged about 33 years, R/o. Ruvabandha, Gandhi Chowk, Near Ram Kirana Store, Bhilai PS Bhilai Nagar, District Durg (Chhattisgarh)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Bhilai Nagar, District Durg (Chhattisgarh)

---- Respondent

For Appellants	: Shri Kalyan Kalamkar, Advocate
For respondent/State	: Shri Wasim Miyan, Panel Lawyer

DB: Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board****10.3.2018****Per Ram Prasanna Sharma, J**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 04.12.2012 passed by the Sessions Judge, Durg, Distt. Durg (Chhattisgarh) in Session Trial No.265/2011 wherein the said Court convicted the appellant under Section 302 of the Indian Penal Code and sentenced her to undergo imprisonment for life and to pay fine of Rs.200/-, in default of payment of fine, to further undergo simple imprisonment for two years.

2. In the present case, name of deceased is Firat Ram Gandharva. It is alleged that the deceased came to the house in an intoxicated state and assaulted his daughter Gouri Gandharva (PW-8). The appellant who was the wife of the deceased

intervened in the matter and it is alleged that due to provocation, the appellant assaulted the deceased by a grinding stone on his head due to which the deceased fell down and succumbed to the injuries. The matter was reported to Police Station Bhilai Nagar. After completion of investigation, charge sheet was filed against the appellant. After examination of all the witnesses, statement of the accused/appellant was recorded under Section 313 of the CrPC. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

(i) There was quarrel between the deceased and the appellant and also there is evidence to the effect that the deceased fell over the stone, but the trial Court overlooked the evidence adduced by the prosecution.

(ii) Statements of Vikas Gandharva (PW-7) and Gouri Gandharva (PW-8) were not appreciated by the trial Court in its right perspective and came to a wrong conclusion.

(iii) The trial Court overlooked the factum of sudden provocation and recorded its finding on the basis of extra judicial confession which is not permissible under the law.

4. On the other hand, learned counsel for the State submits that the findings of the trial Court is based on proper marshalling of evidence and the same is not liable to be disturbed.

5. We have heard learned counsel for the parties and perused the record of the trial court with utmost circumspection.

6. To substantiate the charge, the prosecution has examined as many as 12 witnesses. Dr. Arvind Kumar Mishra (PW-10) conducted autopsy on the deceased on 21.6.2011 at District Hospital, Durg, who noticed following injuries on the body of the deceased:

- (1) Lacerated wound behind the left ear of 3 x 2 cm- bone deep
- (2) lacerated wound on the eyebrow lateral of 2 x 1 cm – bone deep
- (3) contusion on left eyelid
- (4) contusion with abrasion on left cheek of 2 x 2cm
- (5) abrasion on left ear pinna of 0.5 cm
- (6) hematoma on fronto parietal and temporal region
- (7) fracture at fronto parietal bone
- (8) hematoma at cerebrum

He opined that cause of death is due to head injury and shock; injuries were ante mortem and time of death is within 24 hours since examination.

7. Jayram Gandharv (PW-1) deposed that the appellant came to his house in wee hours and informed him that the deceased is abusing in a state of intoxication and he should be advised by this

witness for maintaining cool and calm. As per the version of this witness, when he reached to the house of the deceased, there the appellant admitted that she has killed her husband i.e. the deceased. He found injuries on the head of the deceased and found oozing of blood from the nose of the deceased. Version of this witness is unrebutted on the point of confession by the appellant.

8. Kumari Gouri Gandharv (PW-8) deposed that her father entered into the house after consuming alcohol and tried to strangulate her brother Vikas and when her mother intervened, her father fell down on the grinding stone and sustained injuries.

9. From the evidence adduced by the prosecution and looking to the medical evidence and the injuries found on the body of the deceased, we are of the view that it is not a case of sustaining injury due to fall on a stone, but the injuries were caused by the appellant who confessed her guilt before Jayram Gandharv (PW-1).

10. Now considering the arguments of both the sides, next point for consideration is whether the case falls under any of the exception to Section 300 of the IPC.

Exception 1 of Section 300 IPC reads as under:

“Exception 1. - **When culpable homicide is not murder.**- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First.- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.”

11. Looking to the evidence of Gouri Gandharva (PW-8), who is none other than the daughter of the deceased as well as the appellant, the deceased entered into the house in an intoxicated state and abused the family members and then tried to strangle his son Vikas. The appellant being the mother of Vikas, was deprived of the power of self-control by grave and sudden provocation of the deceased, caused injuries on his body and the same was not provoked by any other family members. Therefore, the case falls under Exception 1 of Section 300 of IPC and the offence committed by the appellant is punishable under Section 304 Part-II of the IPC.

12. Accordingly, conviction of the appellant is altered to Section 304 Part-II IPC instead of Section 302 of IPC. The appellant is in jail since 21.6.2011 and has thus completed the jail sentence of

six years and eight months which is sufficient for offence under Section 304 Part-II IPC. The appellant is, therefore, sentenced to the period already undergone by her.

13. Consequently, the appeal is allowed in part. Conviction and sentence of the appellant under Section 302 IPC is altered to Section 304 Part-II of the IPC and she is sentenced to the period already undergone by her. Fine amount imposed on the appellant shall remain intact. The appellant be released forthwith, if not required in any other case. Her bail bonds are not discharged at this stage and the same shall remain operative for a further period of six months from today in terms of Section 437-A CrPC.

SD/-

Judge

(Prashant Kumar Mishra)

SD/-

Judge

(Ram Prasanna Sharma)