

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 119 of 2015**

- Sukku Ram, aged about 50 years, S/o Bhusku Ram, R/o village - Phunder, Daurapara, P.S. - Dhanora, Civil Bastar, Revenue District Kondagaon (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Police Station - Dhanora, District Kondagaon (C.G.)

---- Respondent

For Appellant	:	Shri F.S. Khare, Advocate
For Respondent.	:	Shri Adil Minhaj, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Gautam Chourdiya**

Judgment on Board**Per Pritinker Diwaker, J****26/07/2018**

1. This appeal arises out of the judgment of conviction and order of sentence dated 05.12.2014 passed by the Sessions Judge, Kondagaon, District Kondagaon (C.G.), in S.T. No.32/2014 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.500/- plus default stipulation.

2. As per the prosecution case, on 05.02.2014 while taking dinner there was some quarrel between the accused/appellant and his wife over quality of food as a result of which the accused/appellant decided not to have meal and went asleep. On 06.02.2014 at about 4.30 am, he started abusing his wife, demanded food and, taking the advantage of loneliness, picked up a half burnt piece of wood and gave solitary

blow on the head of the deceased resulting into her death. After committing murder of his wife, the accused/appellant made extra-judicial confession before his son Dhan Singh (PW//) and sarpanch Shambhu Ram Nag (PW/6). On 06.02.2014 FIR (Ex.P/1) was lodged by Dhan Singh (PW/1) under Section 302 IPC against the accused/appellant. On the same day, inquest on the body of deceased was conducted vide Ex.P/4 and body was sent for postmortem examination to Community Health Center, Dhanora vide Ex.P/21 where Dr. Sunil Bharti (PW/10) conducted postmortem examination on the body of deceased and gave his report (Ex.P/25) noticing following injuries:-

- (i) Fracture of occipital bone which extended to both side of temporal region. Brain matter came out of fracture wound. Massive hemorrhage from the wound and hair of skull mixed with blood.

The Autopsy Surgeon opined the cause of death to be head injury which lead to shock followed by death and death was homicidal in nature.

3. On 06.02.2014 memorandum of the accused/appellant was recorded vide Ex.P/6, based on which, one half burnt piece of wood was seized vide Ex.P/7. The seized article (burnt piece of wood) was subjected to chemical examination and as per unexhibited FSL report, blood was found thereon. After filing of the charge sheet, the trial Court has framed the charge against the accused/appellant under Section 302 IPC.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the

accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment. Hence, this appeal.

6. Learned counsel for the appellant submits :

(i) That even if the entire prosecution case is taken as it is, at best the accused/appellant is liable to be convicted under Section 304 Part-II IPC as his case would fall under Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder.

7. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

8. We have heard learned counsel for the parties and perused the material available on record.

9. Dhan Singh (PW/1) is son of the deceased. He has stated that on the date of incident at 3.00 AM he heard the cries of his father that he had killed the deceased. When he entered the house, he saw the body of deceased with pool of blood, thereafter, he lodged the FIR (Ex.P/1). He is also the witness to inquest made under Ex.P/4.

10. Tulsi Ram (PW/2) and Fulsingh Nag (PW/3) are the witness to memorandum (Ex.P/6) and seizure of half burnt piece of wood made under Ex.P/7. PW/2 has stated that the villagers informed him that the

accused/appellant has killed the deceased.

11. Ashok Kumar Markam (PW/4) - Police Constable, assisted in the investigation.

12. Ganesh Ram Dhruv (PW/5) is the Patwari who prepared spot map vide Ex.P/12.

13. Shambhu Ram Nag (PW/6) is the villager before whom the extra-judicial confession was made by the accused/appellant.

14. Mannu Ram (PW/7) has turned hostile.

15. Pushpa Raj Nagwanshi (PW/8) - Sub Inspector, did part of investigation.

16. M.S. Minj (PW/9) is the Investigating Officer who has duly supported the prosecution case.

17. Dr. Sunil Bharti (PW/10) conducted postmortem examination on the body of deceased and gave his report (Ex.P/25) opining the cause of death to be head injury and death was homicidal in nature.

18. Close scrutiny of the evidence makes it clear that on 05.02.2014 while taking dinner some quarrel took place between the accused/appellant and his wife over quality of food and the accused/appellant went asleep without having meal. On 06.02.2014 at about 4.30 am, he woke up, started abusing his wife, demanded food and taking the advantage of loneliness picked up a half burnt piece of wood and gave solitary blow on the head of the deceased resulting into her death. After the incident, the accused/appellant made extra-judicial confession before PW/1 and PW/6 that he has killed his wife by half burnt piece of wood. The version of these witnesses is well corroborated by the evidence of Dr. Sunil Bharti (PW/10) and postmortem report

(Ex.P/25) wherein only one injury on her head was noticed and Autopsy Surgeon opined the cause of death to be head injury and death was homicidal in nature. That apart, on the memorandum of accused/appellant (Ex.P/6) one half burnt piece of wood was seized vide Ex.P/7 and as per unexhibited FSL report, blood was found thereon. Considering the statements of PW/1 and PW/6, before whom the accused/appellant made extra-judicial confession, coupled with the medical evidence, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

19. The next question which arises for consideration before this Court is as to whether the act of the accused/appellant would fall under any of the Exceptions to Section 300 IPC.

20. From the evidence it appears that over the trivial issue some quarrel took place between the accused/appellant and deceased and on the next morning at 4.00 AM, he picked up a half burnt wooden piece lying there and gave single blow on the head of deceased resulting into her death, which shows that he was not having any premeditation. Thus, considering the facts and circumstances of the case, nature of injury and the fact that only single blow was given to the deceased, we are of the opinion that though the appellant had no intention of causing death of the deceased but taking into account the nature and extent of injury inflicted by him on the deceased, which led to her death, it can safely be inferred that the appellant had knowledge that the injury being inflicted by him on the deceased would result in her death. Being so, his act would be covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making him liable for conviction under

Section 304 Part-II IPC.

21. In the result, the appeal is partly allowed. Conviction of the appellant under Section 302 IPC is altered to Section 304 Part-II IPC and he is sentenced to undergo R.I. for seven years.

22. Appeal thus allowed in part.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Gautam Chourdiya)
JUDGE