

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 664 of 2013

- Latti Ram S/o Baduva Bargah Aged About 37 Years R/o Village Bansajhal Ps Batouli Distt. Surguja C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Ps Batouli Distt. Surguja C.G., Chhattisgarh

---- Respondent

For Appellant	: Shri B.N.Nande, Advocate
For Respondent/State	: Shri Arvind Dubey, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement on Board by Pritinker Diwaker, J.

27/01/2018

This appeal arises out of judgment and order dated 04.06.2013 passed by the Sessions Judge, Surguja (Ambikapur) in S.T. No. 391/2011 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 1,000/- with default stipulation.

2. In the present case name of the deceased is Nahiro Bai, wife of the accused/appellant. Their marriage was solemnized about 4-5 years prior to the date of incident i.e. on 17.07.11. It is alleged that the

accused/appellant used to beat the deceased and on or about the date of incident deceased had come to her parents house. In the afternoon deceased has gone to the field along with the appellant whereas her brother Anuk Prasad (PW-8) was at home. At about 4.30-5.00 in the evening, one Maniyaro Bai informed Anuk Prasad brother of the deceased that accused/appellant is dragging and beating the deceased. On hearing this, Anuk Prasad along with his mother went to the place of occurrence and found his sister lying in injured condition. He immediately brought her home but by that time she died. On the next day i.e. 18.07.11 at about 7.00 a.m. FIR Ex.P-9 was lodged by Anuk Prasad against the appellant under Section 302 IPC. Immediately thereafter at 7.15 a.m. merger intimation Ex.P-10 was recorded. Inquest (Ex.P-5) was prepared and body was sent for postmortem examination which was conducted by Dr. Sanjeev Kumar Tigga (PW-7) vide Ex.P-8A who opined that cause of death was shock due to head injury (hemorrhagic shock) and death was homicidal in nature. After filing of the charge sheet, trial Judge has framed charge against the accused persons under Section 302 IPC.

3. So as to hold the accused/appellant guilty, the prosecution has examined 9 witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

4. After conclusion of the trial, the trial Court vide its judgment impugned, found the accused/appellant guilty of the offence as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that even if the entire prosecution case is taken as it is, appellant cannot be convicted under Section 302 IPC. It has been argued that the appellant assaulted the deceased with hand and fists and therefore his case would fall under Exception 4 of Section 300 and he is liable to be convicted under Section 304-II IPC. Lastly he submits that the appellant is in jail since 18.07.2011 and thereby has already undergone the sentence of about 6 1/2 years and therefore after converting his conviction into Section 304 Part-II IPC, his sentence may be reduced to the period already undergone.

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

7. Heard counsel for the parties and perused the material available on record.

8. Maniyaro (PW-5) is the eyewitness to the incident. She has stated that at the time of incident when she was returning from her workplace, near the dam she saw the accused/appellant assaulting the deceased by hand and fist and as she was all alone she did not make any effort to save the deceased, she came to the village and informed about the incident to mother of the deceased. In cross-examination she remained firm. Anuk Prasad (PW-8) brother of the deceased at whose instance FIR was registered has stated that when he was at his home, Maniyaro (PW-5) informed him that accused/appellant is assaulting the deceased and immediately thereafter he and his mother went to the place of occurrence and saw his sister (deceased) lying injured and there were no clothes on her body. He has stated that the

deceased was unconscious and there were number of injuries on her body, he brought her home but was declared dead. Dr. S.K.Tigga (PW-7) is the doctor who conducted postmortem examination on the body of deceased vide Ex.P-8A and opined that cause of death was shock due to head injury (hemorrhagic shock) and death was homicidal in nature. It is relevant to note that no fracture was noticed by the autopsy surgeon. J.R. Saggu (PW-9) is the Investigating Officer who has duly supported the prosecution case. Kanchram Paikara (PW-1) is the patwari who prepared spot map. Lalita (PW-3) and Hariprasad (PW-6) are the witnesses to inquest. James Panna (PW-4) has not stated anything against the appellant and has been declared hostile.

9. Close scrutiny of the evidence makes it clear that on 17.07.2011 it is the accused/appellant who caused injuries by hand and fist resulting death of the deceased. Considering the nature of injuries sustained by the deceased and also considering the facts and circumstances of the case, we are of the view that the act of the accused/appellant would fall under Exception 4 of Section 300. Thus, we are of the view that instead of convicting the appellant under Section 302 IPC, he is liable to be convicted under Section 304(Part-II) IPC.

10. Accordingly, conviction and sentence awarded to the accused/appellant u/s. 302 IPC is set aside. Instead thereof, the appellant is convicted under Section 304 (Part-II) IPC. Appellant is reported to be in jail since 08.07.2011. Looking to the detention period of the accused/appellant, we are of the view that ends of justice would be served if his sentence is reduced to the period already undergone

by him. Order accordingly. It is stated that the appellant is in jail. He be released forthwith if not required in any other case.

11. In the result, the appeal is partly allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

suguna