

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 400 of 2014**

Lakhamu Ram Poyam @ Kola S/o Laikhan Ram Aged About 45 Years R/o Village Nayapara, Sambalpur, PS & Distt. Kondagaon Civil And Rev. Distt. Kondagaon C.G.

---- Appellant**Versus**

State Of Chhattisgarh Through PS Kondagaon, Distt. Kondagaon C.G.

---- Respondent

Shri Manoj Kumar Sinha, counsel for the appellant/s.
Shri Majid Ali, Dy. Govt. Advocate for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board by Manindra Mohan Shrivastava, J.**13/01/2018**

This appeal is directed against impugned judgment of conviction and order of sentence dated 11/03/2014 passed by the Additional Sessions Judge, Kondagaon, District – Kondagaon (CG) in Sessions Trial No.292/2012 whereby the appellant has been held guilty of commission of offence under Section 302 of IPC and sentenced to undergo R.I. for life imprisonment and fine of Rs.1000/- and in default of payment of fine, further R.I. of six months.

2. Prosecution story as revealed from the records of the case is that on 10/02/2010, at about 6 PM, the appellant gave an assault to his wife, the deceased, by a sharp edged carpentry tools called ' Basula' on the neck which proved to be fatal.

According to the prosecution, the incident was witnessed by Ridhibai (PW1) and Anil Kumar Poyam (PW2). Merg intimation (Ex. P/1) was lodged by Anil Kumar Poyam (PW2). It followed registration of FIR in Ex.P/2 at the instance of Anil Kumar Poyam (PW2). Vide Ex.P/5, the weapon used in commission of offence was seized. Inquest over dead body was proved vide Ex.P/3. The dead body was sent for post mortem. After completion of usual investigation, charge sheet was filed before the Magistrate which was in turn committed for trial and the appellant was tried for commission of alleged offence under Section 302 of IPC. The appellant abjured guilt and subjected to trial.

3. In order to prove its case, the prosecution examined as many as five witnesses. It is relevant to note that in the present case, neither the doctor nor the investigating officer had entered the witness box. The appellant was examined under Section 313 CrPC in respect of the incriminating circumstances against him. The appellant denied the incriminating circumstances appearing against him and stated that he has been falsely implicated and he has not committed any offence. No defence witness was examined. Relying upon the evidence of the prosecution and after examining the documents and evidence, learned Trial Court held the appellant guilty of commission of offence under Section 302 IPC and sentenced as described above.

4. Assailing the impugned judgment of conviction and order of sentence, learned counsel for the appellant submits that the prosecution evidence with regard to appellant having inflicted injury, is highly shaky and liable to be disbelieved. According to him, the so called eye witness of the incident, Ridhibai (PW1) and Anil Kumar Poyam (PW2) were not present at the spot and merely because they happened to be relatives of the deceased, the evidence cannot be relied upon. Moreover, Ridhibai (PW1) is the mother of the deceased. Therefore,

her evidence ought not be relied upon unless it was fully corroborated from other circumstantial evidence or the testimony of any other witness. In the present case, it is argued that the doctor has not been examined and therefore, post mortem report has not been proved to establish that the deceased died due to injury alleged to have caused by the appellant. It is also submitted that the seizure of weapon has also not been proved because the investigating officer has not been examined in the case. Last but not the least, learned counsel for the appellant would argue that in the circumstances of the case, even if it is found proved that the injury was inflicted by the appellant, evidence has come on record that the appellant was drunk and all of a sudden, in the heat of moment, because of quarrel with the wife, the appellant gave single blow on the deceased. It is also submitted that the weapon alleged to be used by the appellant was a tool used in carpentry. Therefore, these incidents only indicate that there was no intention to cause death though there may be knowledge that the act is likely to cause death. Therefore, at the most, the appellant can be convicted under Section 304 Part II of IPC. It is further submitted that the appellant having already undergone more than 7 years and 10 months of R.I., his sentence may be reduced to the period already undergone.

5. On the other hand, learned State counsel supports the judgment of conviction and order of sentence by submitting that the eye witness account which is uncontroverted, proves beyond all doubt that the appellant is the person who assaulted his wife by a dangerous and sharp edged object. The manner in which and the part of the body which was chosen to assault, is an indication to appellant's intention to cause death. He further submits that even if the doctor is not examined to prove post mortem report or the investigating officer is not examined, from the statement of the eye witness and proof of seizure by independent witness of seizure, the charge against the appellant has been proved

to sustain conviction.

6. True it is that in the present case, the post mortem report could not be proved because the doctor who had conducted post mortem was not alive. The appellant has not disputed this fact that the doctor who had conducted the post mortem is not alive. The dead body of the victim was lying in her house which is proved from the inquest report. The witness of inquest have clearly stated regarding the dead body lying on the spot and bleeding also and having seen the injury on her neck. Anil Kumar Poyam (PW2), who is the eye witness of the incident and none other than the son of the appellant and the deceased, has clearly stated that the appellant gave an assault on the deceased. He has deposed that the appellant picked up 'Basula' and assaulted on the neck of his mother who fell down and died at the spot.

Though the investigating officer has not been examined to prove assault by 'Basula', the eye witness Anil Kumar Poyam (PW2) has clearly stated that the weapon used for commission of offence was seized from the appellant in his presence and has proved his signature in the seizure memo. Both Anil Kumar Poyam (PW2) and Sunil (PW4), who are the sons of the appellant and the deceased, have categorically stated in their evidence that after the incident, the appellant was running away from the spot holding weapon used in assault in his hand and he was chased, caught red handed and tied down. This uncontroverted testimony of the prosecution, in our considered opinion, is sufficient to record finding that the appellant assaulted his wife by giving a blow on her head whereafter, she fell down and died at home. Therefore, non-examination of the doctor or the investigating officer does not entitle the appellant to benefit of doubt.

7. In view of above, we are of the considered opinion that the appellant was aware that he is causing serious injury which might result in death of the

deceased, but he had no intention to kill the deceased. We, therefore, of the view that the appellant is liable to be punished under Section 304 Part II of I.P.C and not under Section 302 IPC as the incident happened in the sudden heat of anger.

8. Accordingly, we allow this appeal in part and convert appellant's conviction under Section 302 IPC to Section 304 Part II of IPC. The appellant has already undergone 7 years and 10 months of sentence. Therefore, the sentence already undergone by the appellant is sufficient for commission of offence under Section 304 Part II of IPC. Hence, the sentence awarded to the appellant is reduced to the period already undergone by the appellant. The appellant shall be released from jail forthwith unless required in connection with some other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajendra Chandra Singh Samant)
Judge