

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 45 of 2016

- Bhagirathi S/o Shaukilal Aged About 22 Years Occupation Labour R/o Bhagoradih, P.S. Bhupdevpur, District Raigarh Chhattisgarh. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Bhupdevpur, Civil And Rev. Distt. Raigarh Chhattisgarh. , Chhattisgarh

---- Respondent

For Appellant : Shri Manboj Kumar Jaiswal, Advocate
For Respondent/State : Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board by Pritinker Diwaker,J.

19/01/2018

This appeal has been preferred against the judgment and order dated 11.09.09 passed by Third Additional Sessions Judge (FTC)}, Raigarh in Sessions Trial No. 45/2009 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- plus default stipulation.

2. In the present case, name of the deceased is Behartin Bai, grand mother of accused/appellant, aged about 65 years. It is alleged that on 21.01.09 when the deceased had not cooked the food properly for the appellant, he got annoyed beat her with hands, fists and by kicking and caused injuries. Matter was intervened by one

Kalicharan (PW-4) and Bihari Lal (PW- 1). Injured Behartin Bai was then taken to hospital where she was examined and it was found that there was one contusion on the right cheek and right eye; one contusion on the left side jaw and swelling on the left side of neck. On 30.01.09 she succumbed to the injuries. After the incident on 22.01.09, FIR Ex.P-1 was lodged by Bihari Lal (PW-1) against the appellant under Sections 294, 323 and 506 IPC. After the death of Behartin Bai information was lodged at police station Kotwali, Raigarh based on which unnumbered merg Ex.P-16 was recorded on 30.01.09. On 04.02.09 numbered merg Ex.P-11 was recorded at police station Bhupdevpur. Inquest Ex.P-7 on the body of the deceased was prepared and body was sent for postmortem examination which was conducted by Dr. B. R. Patel (PW-13) vide Ex.P-15 A and according to him cause of death was due to shock and head injury and the death was homicidal in nature. While framing the charge, trial judge has framed charge against the appellant under Section 302 IPC.

3. So as to prove the guilt of the accused/appellant, prosecution has examined 13 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which, he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, learned trial Court has convicted and sentenced the accused/appellant as mentioned in para-1. Hence the present appeal.

5. Contention of the counsel for the appellant is as under:

i) even if the entire prosecution case is taken as it is, at best the appellant would be convicted under Section 304 Part II IPC.

ii) It has been argued that the appellant in a heat of passion on a sudden quarrel beat the deceased with hands and fists and caused injuries resulting her death.

ii) that the appellant is in jail since 21.01.09 and thereby has already undergone the jail sentence of about 9 years and therefore after converting his 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. Bihari (PW-1) is the grandfather of the appellant, has stated that on the date of incident when he returned to his house, he saw the accused/appellant beating the deceased as she had not cooked the meals properly, and that he intervened in the matter. He has stated that on the next date injured Behartin Bai was taken to hospital who later on succumbed to the injuries in the hospital. Kalicharan (PW-4) is also the eyewitness to the incident. He has stated that after returning from his workplace, he saw the accused/appellant beating the deceased and he along with Bihari (PW-1) intervened in the matter. On the next day injured Behatarin Bai was shifted to hospital where on 31.01.09 she succumbed to her injuries. Dr. S.K.Rathia (PW-9) did the MLC and he found contusions on right cheek and eye

and left side jaw and there was swelling on left side of neck. Dr. B.R.Patel (PW-13) conducted postmortem examination on the body of deceased vide Ex. P-15A and according to him cause of death was due to shock and head injury and the death was homicidal in nature. B.D.Sidar (PW-10) is the Investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that on 21.01.09 when the appellant returned from his work place there was some quarrel between him and the deceased over cooking of food and out of anger the appellant caused several injuries with hand and fist, injured was taken to hospital and after being in hospital for ten days she succumbed to her injuries. The incident have been witnessed by PW-1 and PW-4 and both of them have supported the prosecution case. Thus the complicity of the accused/appellant in the commission of the offence has been duly proved by the prosecution.

10. The only question which arises for consideration before this Court is as to whether the accused/appellant has rightly been convicted under Section 302 IPC or whether the act of the accused/appellant would fall under Exception 4 of Section 300.

11. Undisputedly the incident occurred on account of trivial issue when the deceased did not cook proper meals for the appellant and after some altercation it appears that out of anger, in a heat of passion, appellant have caused some injuries to the deceased by hands an fists unfortunately resulting her death after about nine days. There is no evidence that the appellant acted in a cruel or unusual manner.

12. Considering all these facts and circumstances of the case, it can safely be held that the case of the accused/appellant would fall under Exception 4 of Section 300 and thus he is liable to be convicted under Section 304 Part-II IPC.

13. Accordingly, for the foregoing, we allow this appeal in part, convert the appellant's conviction under Section 302 to Section 304 Part II of IPC. Appellant is reported to be in jail since 9 years. Considering 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. Appellant is in jail, he be released forthwith if not required in any other case.

14. In the result, the appeal is allowed in part.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge