

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 798 of 2014**

- Bharat S/o Babulal Barekar, aged about 52 yearsv village Godiyari, Police Station Simga, Civil and Revenue District Raipur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through District Magistrate, District Baloda Bazar (C.G.). Police Station Simga Crime No. 218/2012.

---- Respondent

For Appellant	:	Shri Shri Sanjeev Sahu, Advocate.
For Respondent/State	:	Shri K.K. Singh, G.A.

**D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt Justice Rajani Dubey**

Judgment On Board**11.01.2019****Per Manindra Mohan Shrivastava, J**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 04.07.2014 passed by learned Additional Session Judge, Bhatapara, District Baloda Bazar (C.G.), in S.T.No.33/2012 whereby and whereunder, the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo rigorous life imprisonment along with fine of Rs.2,000/- and in default of payment of fine, additional R.I. for one year.

02. According to the prosecution story, appellant is the husband of deceased Sheela Bai. A dehati merg intimation was recorded at the

spot, at the instance of Vishwanath Singh (PW/1) on 17.07.2012, at about 11.30 AM that deceased Sheela Bai had left her husband Bharat (the appellant) and was residing with Lala Vaishnav (the other co-accused) in the house of one Rajkumari Sharma at Sankra. On the date of incident at about 8.30 AM, Lala, Bharat and Sheela (co-accused, appellant and deceased respectively) were fighting near the main road and from there they advanced in one direction, and about 10.00 AM, he came to know that they all were continuing with their fight near Bandakhar and, later on, when villagers went to the spot, Sheela was found lying dead with multiple injuries in her neck and Bharat, the appellant, was also found there, his neck was also cut and it was bleeding. According to him (Vishwanath Singh-PW/1), the appellant was indicating by signs that he assaulted his wife by using scissor which was found lying at the spot and the same scissor was used by Lala to assault himself and thereafter, Lala ran away. This followed registration of dehati FIR at the spot and numbered FIR in Ex.P/13 in the police station containing the same story as told to the police by Vishwanath Singh (PW/1). The body of the deceased was sent for postmortem. The postmortem was conducted by Dr. G.S. Som (PW/9) who prepared postmortem report in Ex.P/11 finding four incised and stab wounds on the neck, chest and forearm & opined that the cause of death was excessive bleeding and it was homicidal in nature. The appellant was also examined by Dr. A.V. Daharwal (PW/8) who found three incised wounds in the neck of the appellant and neck muscle and further that windpipe were also cut. The appellant remained admitted in the hospital till 07.08.2012. The police conducted usual investigation

and filed charge sheet not only against the present appellant but also against Lala Vaishnav alleging that the appellant had assaulted his wife and thereafter, Lala assaulted the appellant by using the same scissor allegedly used by the appellant to assault his wife. Charges were framed, appellant abjured guilt and was put to trial. The Prosecution led evidence regarding there being existence of illicit relationship between deceased Sheela and co-accused Lala, quarrel amongst Lala, deceased and the appellant, and further that the appellant was found lying at the place where the dead body of his wife was lying. The prosecution also led evidence that Sheela died homicidal death because of number of cut injuries found on her neck and chest and the prosecution further proved that the appellant also sustained 3-4 injuries in the neck. The prosecution led evidence to establish a case of extra-judicial confession by the appellant that while he had sustained injuries, though he was not able to speak, by signs he indicated to the witnesses that he had assaulted his wife and he was assaulted by Lala. When the appellant was examined under Section 313 Cr.P.C., he said that he has not committed any offence and has been falsely implicated in the crime. The learned trial Court, in the background of the aforesaid evidence, particularly taking into consideration that the appellant had not explained anything as to how his wife sustained injuries, with the aid of Section 106 of the Evidence Act, drawn an inference that in all probability the appellant must have killed his wife and convicted him under Section 302 IPC.

03. Learned counsel for the appellant would argue that the evidence of so-called extra-judicial confession said to be given by the appellant

to the prosecution witnesses is liable to be disbelieved because firstly, the appellant himself was badly injured and was not even in a position to speak and, therefore, the evidence that he gave extra-judicial confession of having murdered of his wife by signs, which evidence is also contradictory, is liable to be disbelieved. The other submission of learned counsel for the appellant is that prosecution witnesses have admitted that when they reached, the police had also reached at the spot, and by indications and signs, extra-judicial confession was made in the presence of the police people, therefore, for that reason also the same would not be admissible. The other submission of learned counsel for the appellant is that in the evidence which has been led by the prosecution, it is proved that the deceased and Lala had illicit relations, and on the date of incident, a quarrel took place between the appellant, Lala and the deceased followed by injuries sustained by both, the deceased and the appellant. The prosecution has failed to explain injuries of the appellant because Lala, co-accused, has been acquitted. Therefore, in these circumstances and from the evidence of the prosecution, even if it is inferred that the appellant assaulted his wife, the assault was in a circumstance of quarrel taking place amongst three persons i.e. the appellant, his wife and Lala, which shows that the appellant, in quarrel, may have given assault to his wife and in that process he also sustained injuries which could be caused to him by other persons who were present at the spot, therefore, all these circumstances taken together, make out a plausible case of it being a case of assault in heat of passion and sudden fight but without premeditation, bringing into application the 4th Exception to Section 300

IPC and, therefore, the conviction of the appellant would not be sustainable under Section 302 IPC but, in any case, is liable to be altered under Section 304 Part-II IPC.

04. On the other hand, learned counsel for the State supports the impugned judgment and submits that the appellant has failed to come out with any explanation whatsoever, though, he had an opportunity to say so while being examined under Section 313 Cr.P.C. as to how his wife sustained injuries. He has not even spoken as to how he sustained injuries. Therefore, the learned trial Court, with the aid of Section 106 of the Evidence Act, has rightly drawn an inference against the appellant that the appellant, in all probability, must have killed his own wife.

05. We have heard the rival submissions made by learned counsel for the parties and perused the records of the Court below.

06. There is evidence on record to prove that the appellant's wife Sheela, the deceased, was having illicit relation and was residing with co-accused Lala.

07. Anand Barekar (PW/7), son of the appellant and the deceased, has deposed that Lala Das had taken his mother to his village Sankra where he kept her for about 4-5 months and when he came to know that his mother is residing with him in village Sankra, he went there and requested his mother to come back and started residing with him. He has further deposed that Lala Das had given him threat, and his father had also come to village Sankra and quarrel took place between his father (the appellant), and Lala Das & at that stage, Lala Das ran away

and his parents proceeded to lodge the report. As he did not fully support the case of the prosecution, he was declared hostile and upon leading questions put to him by the prosecution, with the permission of the Court, he has stated that on 17.07.2012 his father, mother and Lala Das were about to go to meet the Sarpanch and that appellant and Lala Das entered into a quarrel and then his father and mother left the place of fight and when he reached the spot, he found that his mother was lying dead and his father had also sustained injuries in his neck and co-accused had already left the place.

08. Vishwanath (PW/1), at whose instance dehati merg intimation and FIR was recorded, has stated that the appellant used to make complaint that Lala had taken his wife away and he heard about the quarrel amongst the appellant, his wife and Lala.

09. The prosecution evidence further proves that when witnesses Vishwanath (PW/1), Birbal (PW/2), Rajkumar (PW/5) and Prem Das (PW/6) as also the Anand (PW/7), the son, reached the spot, Sheela was lying dead and the appellant was also found there. Prem Das (PW/6) has stated that when he reached the spot along with others, he saw that Sheela was lying dead and the appellant was also lying over Sheela and injury on his neck was also noticed.

10. All these evidence taken together, lead to an inference that Sheela was maintaining illicit relation with Lala Vaishnav and there used to be quarrel between the appellant and Lala, and on the date of incident, there was quarrel in which all of them were seen at one spot and, soon thereafter, Sheela was found dead and the appellant found

having sustained injuries.

11. Though, the prosecution has come out with the story of extra-judicial confession on the basis of evidence of Vishwanath (PW/1), Birbal (PW/2), Rajkumar (PW/5) and Prem Das (PW/6), we find the said evidence extremely doubtful. Firstly, all these witnesses have clearly stated that the appellant himself was badly injured and he was not in a position to speak. They claimed to have understood the signs exhibited by the appellant as appellant's admission of having murdered his wife. This by itself is extremely doubtful. Vishwanath (PW/1), in his cross-examination, has admitted that he could not properly follow as to what was being indicated by Bharat. Birbal (PW/2) admits in his cross-examination that when he reached near the dead body, police had already arrived at and was interrogating Bharat and Bharat was not able to speak and only giving signs, that means whatever was being indicated through signs by Bharat in presence of this witness, was also in the presence of police which had already arrived at the spot. Rajkumar (PW/5) has admitted in his examination that Bharat was semiconscious and was not able to speak. There is further admission in his cross-examination that even before he reached, the police people had already reached there and started making inquiry from Bharat. Prem Das (PW/6) says that he could not understand as to what kind of signs were given by the appellant. In his examination by the prosecution, after having been declared hostile, though he states that the appellant was indicating through signs that he assaulted his wife, in his cross-examination, he admits that what kind of signs were being displayed he could not understand. Finally, in his cross-examination,

he admits that he was told by the police people as to what was being indicated by Bharat, the appellant. Therefore, the evidence of extra-judicial confession apparently was said to be given in the presence of police people and that too is sought to be sustained on the basis of doubtful signs. In our considered opinion, this kind of shaky evidence, cannot lead to proof of extra-judicial confession beyond reasonable doubt.

12. We find that the appellant has not explained anything in his examination under Section 313 Cr.P.C. and this has been made basis by the learned trial Court to draw an inference against the appellant. The appellant having failed to explain as to how his wife sustained injuries, the circumstances indicating that in all probability he must have assaulted his wife, even then, as the prosecution has also failed to prove as to how appellant sustained multiple injuries on the vital parts, an inference will have to be drawn that at the spot, there was a fight in which not only the deceased but also the appellant sustained injuries, and even if it is to be held that the appellant assaulted his wife, in the background of the situation that there was a quarrel between the appellant and Lala Vaishnav, obviously, because the appellant's wife was residing with Lala and some dispute was going on amongst them, the assault by the appellant on his own wife appears to be in the course of sudden fight and in a heat of passion without any premeditation. Therefore, in these circumstances, the conviction of the appellant under Section 302 IPC could not be sustained under the law, and at the most, the appellant could be held guilty of commission of offence of culpable homicide punishable under Section 304 Part-II IPC.

13. In view of above consideration, we are inclined to partly allow the appeal in the manner that the conviction of the appellant is altered to that under Section 304 Part-II IPC and looking to the overall material on record, and that the appellant has undergone more than six years and four months imprisonment, is awarded sentence for the period already undergone by him. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge