

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1002 of 2013**

- Dinesh Cherwa son of Sunder Sai Cherwa, aged about 32 years, Resident of Village Badkapara Salka, Police Station- Baikunthpur, Revenue and Civil District Korea (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through Police Station Baikunthpur, District Korea(C.G.)

---- Respondent

For Appellant : Smt. Ranjana Jaiswal, Advocate

For Respondent/State : Shri Avinash Choubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Judgment on Board by Justice Prashant Kumar Mishra****04.12.2019**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 18.07.2013 passed by learned Sessions Judge, Korea (Baikunthpur), C.G. in Sessions Trial No. 35 of 2013, whereby the appellant stands convicted under Section 302 of IPC for committing murder of his wife namely Ramkali during the midnight of 19th–20th of January, 2013 and sentenced to undergo life imprisonment and fine of Rs.1,000/-, in default of payment of fine to undergo further rigorous imprisonment for six months.
2. As per prosecution case as reflected from the F.I.R. (EX.-P/1) lodged by PW-1 Rampal at 10:15 hours on 20.01.2013, the appellant was suspecting her wife's character as she was frequently moving around with one Ballu Cherwa (PW-11). A quarrel took place during the midnight on the date of incident whereafter the appellant assaulted the deceased by hands and fists as a result of which she sustained injury due to fall over the bucket. This story was narrated to PW-1 Rampal by the appellant himself.
3. During investigation, the appellant's memorandum statement was recorded vide Ex.-P/15 consequent to which a wooden raft (*Pata*) was recovered from

his possession vide Ex.-P/16. The *Pata* was not sent for FSL examination. During postmortem examination, the deceased was found to have sustained three contusions over her head alongwith abrasions over other parts of the body. After recording case diary statements of the witnesses, the charge-sheet was filed for offence under Section 302 of IPC.

4. In course of trial, prosecution examined as many as 12 witnesses to bring home the charge and eventually the trial Court has convicted and sentenced the appellant under Section 302 of IPC.
5. We have heard learned counsel for the parties at length and have also perused the record.
6. PW-1 Rampal has proved the F.I.R. (Ex.-P/1), merg intimation (Ex.-P/2) and the map (Ex.-P/3). PW-2 Kailasho Bai is the wife of PW-1 Rampal. She went to the place of occurrence alongwith her husband PW-1 Rampal soon after they received information about the incident. PW-3 Dilsai is also a witness to whom the appellant informed about the incident, but this witness has turned hostile. PW-7 Sandhari Cherwa has proved the memorandum statement (Ex.-P/15) and the seizure (Ex.-P/16).
7. The most crucial witness of the prosecution is PW-4 Ku. Durga who is none other than the daughter of the appellant. She has supported the prosecution case by deposing that her father has killed her mother. She has remained firm in her statement during cross-examination.
8. PW-5 Dr. A.K. Singh has conducted the postmortem examination and has submitted his report Ex.-P/12. He has found three contusions over forehead, left and right side of the temporal area and above the nose alongwith abrasions over other parts of the body. According to PW-5, cause of death of the deceased was coma due to head injuries and it was homicidal in nature.
9. The evidence brought on record by the prosecution, particularly the evidence of eyewitness Ku. Durga (PW-4) clearly proved the complicity of the appellant in commission of crime. However, the question is whether the act

committed by the appellant would amount to culpable homicide or he would be guilty of commission of any lesser offence.

10. The Supreme Court in the matter of ***Baijnath v. State of Uttar Pradesh*** reported in **(2008) 11 SCC 738** has affirmed the High Court's judgment wherein the High Court has convicted and sentenced the accused under Section 304 Part-I of IPC when he had caused two head injuries and the death was due to coma as a result of said injuries.

11. In the case at hand also, the incident happened between the husband and wife as he was suspecting that his wife is having illicit relationship with some other boy. It appears to have happened in a heat of passion. The appellant having assaulted the deceased by means of a wooden raft and not by any lethal weapon had caused such injury endangering the life of the deceased, but from the facts and circumstances of the case, the manner in which the incident took place resulting in injuries to the deceased which unfortunately led to her death, it appears that the appellant had no intention to commit her murder. Being so, his act would fall under Section 304 Part-I of IPC i.e. culpable homicide not amounting to murder.

12. In the result, we allow the appeal in part. The appellant's conviction under Section 302 IPC is set aside and instead he is convicted for commission of offence under Section 304 Part-I of IPC. The appellant is awarded sentence of rigorous imprisonment for ten years. The fine amount with default sentence awarded by the trial Court shall remain intact.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge