

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1155 of 2013**

- Madan S/o Fagnu Raut, Aged about 35 years, Caste- Raut, Occupation- Agriculturist and labour, R/o Village Tetargudapara, Mangnar, P.S. - Karpawand, Civil & Revenue District Bastar (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through – P.S. Karpawand, District Bastar- (C.G.)

---- Respondent

For Appellant : Shri C.R. Sahu, Advocate

For Respondent/State : Shri Chitendra Singh, 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****27.11.2019**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20.09.2013 passed by learned Sessions Judge, Bastar at Jagdalpur (C.G.) in Sessions Trial No. 22 of 2013, whereby the appellant stands convicted under Section 302 of IPC for committing murder of his wife namely Meena Bai and sentenced to undergo life imprisonment and fine of Rs.2,000/-.
2. FIR (Ex.-P/1) was lodged by PW-1 Rukdhar at 14:30 hours on the date of incident i.e. on 19.01.2013. He informed the police that he was engaged in threshing paddy, at about 01:00 pm, hearing the shout raised by PW-2 Dashmi who was uttering "*mar jayegi*", when he reached the place of occurrence, he witnessed that his younger brother Madan committed murder of his wife due to family dispute and Madan also made extra-judicial confession that he has committed murder of his wife. Merg intimation (Ex.-P/2) was also registered at about 14:25 pm. The appellant's memorandum statement was recorded vide Ex.-P/11 consequent to which an Axe was recovered by the police vide Ex.-P/12. During postmortem examination

conducted by PW-9 Dr. D.K. Krishan, he found only one injury on the person of the deceased in form of incised wound on back side of neck in size of 5 x ½ x 5 cm and opined that cause of death was excessive haemorrhage and shock due to injury on back of neck. Death was homicidal in nature. The postmortem report has been proved as Ex.-P/21.

3. Prosecution examined as many as 10 witnesses to bring home the charge. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
4. PW-2 Dashmi was presented as an eyewitness but she has turned hostile yet the trial Court convicted the accused/appellant on the ground that his presence in the house has been proved and the appellant has offered no explanation. Moreover, on his memorandum statement recovery of Axe has been made from him.
5. Shri C.R. Sahu, learned counsel for the appellant, would submit that the appellant could not have been convicted on the basis of shaky and unreliable prosecution evidence. He would submit that in the absence of the motive, his conviction only on the basis of circumstantial evidence is not permissible.
6. Per contra, Shri Chitendra Singh, learned counsel for the State, would support the impugned judgment.
7. Heard learned counsel for the parties and perused the material available on record.
8. PW-1 Rukdhar has proved the merg intimation (Ex.-P/2) and the FIR (Ex.-P/1). PW-2 Dashmi is the aunt of the deceased. She resides in the same premises where the appellant's family resides. This witness was examined as an eyewitness but she did not support the prosecution case. This witness would also state that the appellant and the deceased had cordial relation and there was no dispute between them.

9. PW-3 Fagnu has also turned hostile. He is father of the appellant, therefore, but natural he is not making any statement against the appellant.
10. PW-4 Anant Ram reached the spot after the incident. At that time, the appellant was present in the house and confessed his guilt in the presence of the police. Similar is the statement of PW-5 Jalan.
11. PW-6 Mohan is brother of deceased Meena Bai. According to this witness, the appellant committed murder of deceased Meena Bai on account of dispute relating to consumption of liquor. It is not clear whether the appellant was accusing the deceased of consuming liquor or it was otherwise. This aspect of the matter is necessary for the reason that in Bastar area, tribal women are habituated to consume liquor. It is also not clear whether the appellant or the deceased was drunk at the time of incident.
12. PW-7 Jogendra Prasad Joshi is a Patwari who has prepared the map (Ex.-P/9). PW-8 Gopal Dhurwe is the Investigating Officer whereas PW-9 Dr. D.K. Krishan has conducted postmortem examination and gave his report Ex.-P/21. PW-10 Hemant Kumar has prepared seizure memo Ex.-P/16.
13. Evidence on record would suggest that the incident happened due to dispute between husband and wife. It appears to be a very trivial dispute because there is no clarity as to what exactly was the genesis of the dispute. Evidence on this aspect is very vague and sketchy. The presence of the appellant in the house at the time of incident has been duly proved by the statement of PW-4 Anant Ram. Axe has been recovered from the appellant pursuant to his memorandum statement. If the appellant and the deceased were alone in the house at the time of incident, the appellant is liable to explain the circumstances in which his wife was found murdered in his house. However, the appellant has not offered any explanation, therefore, the finding recorded by the trial Court holding the appellant guilty of causing assault over the person of the deceased appears to be based on the material on record.

14. We are now required to consider whether the act committed by the appellant would amount to commission of murder or it would amount to culpable homicide not amounting to murder.

15. The law as to when offence under Section 302 of IPC can be converted into one under Section 304 Part-I or Part-II of IPC is now well settled.

16. In the matter of ***Lavghanbhai Devjibhai Vasava Vs. State of Gujarat, (2018) 4 SCC 329***, the Hon'ble Supreme Court has referred to its earlier decision in the matter of ***Dhirendra Kumar Vs. State of Uttarakhand, 2015 SC OnLine SC 163***, to delineate the parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 or under Section 304 of IPC. The said parameters are reproduced hereunder:-

- “(a) The circumstances in which the incident took place;
- (b) The nature of weapon used;
- (c) Whether the weapon was carried or was taken from the spot;
- (d) Whether the assault was aimed on vital part of body;
- (e) The amount of the force used;
- (f) Whether the deceased participated in the sudden fight;
- (g) Whether there was any previous enmity;
- (h) Whether there was any sudden provocation;
- (i) Whether the attack was in the heat of passion; and
- (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.”

17. In an extremely recent judgment rendered by the Supreme Court in the matter of ***Ranbir Vs. State of NCT, Delhi (Criminal Appeal No. 839 of 2019 decided on 06.05.2019)***, the following has been held in para 14:

“14. Having regard to evidence on record, we are of the view that the case of the appellant falls within Exception 4 to Section 300 IPC. Further, the judgment in the case of ***Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC 217***, also supports the case of the appellant. In the aforesaid case, the knife blows were inflicted in the heat of the moment, one of

which caused death of the deceased, this Court has held that accused is entitled to the benefit of Exception 4. In the aforesaid judgment, this Court further held that in a sudden quarrel, if a person, in the heat of the moment, picks up a weapon which is handy and causes injures one of which proves fatal, accused would be entitled to the benefit of Exception 4. We are of the view that the said judgment supports the case of the appellant and further having regard to evidence on record we are of the view that all the four ingredients which are required to extend the benefit of Exception 4 to Section 300 IPC, apply to the facts of the case on hand. Since the occurrence in sudden quarrel and there was no premeditation, the act of the appellant-accused would fall under Exception 4 to Section 300 IPC. As such, the conviction recorded against the appellant under Section 302 IPC is liable to be set-aside and is accordingly set-aside and the conviction of the appellant-accused under Section 302 IPC is modified, as the one under Section 304 Part II, IPC and we impose a sentence of 10 years' simple imprisonment on the accused."

18. In the case at hand, a very trivial dispute appears to have occurred at the time of incident. There was no intense fight between the appellant and the deceased so as to infer the presence of strong mental state or preparation for committing the offence. The incident appears to have happened in a heat of passion or in a fit of anger. The appellant has caused only one blow over the back side of neck of the deceased. He did not repeat the assault, nor run away from the place of occurrence. The incident having occurred without premeditation and only one assault having been made, we are of the considered view that though the appellant had knowledge that the act may endanger the life of the deceased but he had no intention to commit murder. Therefore, his act would fall within Exception 4 to Section 300 IPC punishable under Section 304 Part-II IPC.

19. Accordingly, we allow the appeal in part. The Appellant's conviction under Section 302 IPC is set aside and instead he is convicted under Section 304

Part-II IPC. The appellant is in jail since 19.01.2013. Thus, he has already remained in jail more than six years & ten months. Considering the background of the offence, the jail sentence already suffered by the appellant appears to be adequate for the offence committed by him. Therefore, the appellant is sentenced to the period already undergone by him. However, the sentence of fine amount shall remain intact.

20. The appellant shall be released forthwith if not required to be detained in connection with any other offence, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court in view of the provisions of Section 437-A of Cr.P.C., for his appearance before the higher Court as and when required. The said bail bond shall remain in operation for a period of six months from today.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge