

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1022 of 2013

- Makhalu Ram S/o Shri Gosai Ram, aged about 44 Years, Occupation Agriculture, R/o Village Kopa, Ps Sanna, District Jashpur C.G.

----Appellant

Versus

- State of Chhattisgarh, Through Police Station- Sanna, District Jashpur C.G.

---- Respondent

For Appellant	Shri Arvind Sinha, Advocate.
For Respondent/State	Shri Neeraj Mehta, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Shri Prashant Kumar Mishra J.

20/11/2019

1. The appellant would call in question the legality and validity of the judgment dated 07.11.2012 passed by the learned Sessions Judge, Jashpur, C.G. in ST No. 66/2011 whereby the appellant stands convicted under Section 302 of IPC and sentenced to undergo rigorous imprisonment for life and fine of Rs.1,000/-, in default thereof to suffer additional R.I. for one month.
2. The trial Court has convicted the appellant Makhalu Ram for committing murder of his wife Mangro Bai at about 23:30 hours on 29.04.2008. Merg intimation Ex.P-2 was lodged by

(PW-1) Mahesh Ram at about 16:00 hours on 30.04.2008, informing the police that the appellant has two wives, his first wife has left the village and has gone to Delhi with her children, therefore, the appellant used to raise quarrel with the deceased saying that his first wife Surajmani has left the house because of her. On this dispute, the appellant assaulted the deceased by club and made extra judicial confession before the informant. Similar facts are mentioned in the Naksha Panchayatnama Ex.P-5. The postmortem was conducted by (PW-6) Dr. Anuranjan Kujur, who submitted his report finding the following external injuries on the person of the deceased:-

1. Blood stained both nostril and mouth and left cheek.
 2. Contusion right side of face between ear and eye-ball length 2 inch x width 1 inch.
 3. Contusion around left eyeball length 2 inch x 2 inch.
 4. Contusion above neck left side near ear length 2 inch x width 1 inch.
 5. Abrasion behind left Pina $\frac{1}{2}$ x $\frac{1}{2}$ inch.
 6. Contusion left side of chest length 6 inch x width $\frac{1}{2}$ inch.
 7. Contusion down to left scapula region length 1 inch x width $\frac{1}{2}$ inch.
3. On internal examination Dr. Kujur also found fracture of ribs of right side 1 to 4 of front and 6, 7 & 9 at the back. He also found fracture of left side ribs No. 1, 2, 4 & 9. He also found rupture of right lung lower side as well as rupture of left lung at the middle. The cause of death was respiratory failure as

a result of rupture of lungs and nature of death was homicidal.

4. Upon completion of investigation, charge sheet was filed and at the end of trial, the appellant has been convicted for committing offence under Section 302 of IPC.
5. Shri Arvind Sinha, learned counsel for the appellant would submit that there being no eyewitness to the crime, the appellant deserves to be acquitted because the chain of circumstantial evidence is not complete. In the alternative, he would submit that the act committed by the appellant would fall under Section 304 Part-II of IPC.
6. Shri Neeraj Mehta, learned State counsel would refer to the statements of witnesses particularly (PW-1) Mahesh Ram to argue that the appellant has made extra judicial confession before this witness, therefore, the trial Court's judgment does not call for any interference. He would also submit that the appellant has brutally assaulted the deceased, therefore, the present case would amount to culpable homicide amounting to murder.
7. Heard learned counsel for the parties and perused the material available on record.
8. (PW-1) Mahesh Ram lodged the mereg intimation immediately on the next day when the appellant informed him about the incident. He would depose before the Court that the appellant has made extra judicial confession

informing that he had a quarrel with his wife in the night, therefore, he has committed her murder. He would also state that dispute used to occur in the house of the appellant every now and then because of the quarrel between the two wives. He would also state that the appellant did not inform him as to the weapon with which he assaulted the deceased.

9. The appellant's memorandum statement has not been recorded nor the weapon used for committing assault has been recovered from him. Father of the deceased Somara (PW-2) has also stated that appellant has committed murder but he was not present on the spot nor the appellant has made extra judicial confession before him. PW-2 Somara is, therefore, a hearsay witness. Similar is the case with (PW-3) Bandi Bai (mother of the deceased). Since there are no eyewitnesses to the crime, the other witnesses are also not so important.

10. Considering the spontaneous and prompt mere intimation and an FIR on the information of (PW-1) Mahesh Ram and his deposition before the Court, the prosecution has successfully established that the appellant made extra judicial confession of his guilt before this witness. However, there is no evidence as to the number of assaults or the manner of assaults committed by the appellant. Therefore, in order to

ascertain whether the act would fall under any of the exceptions to Section 300 IPC, the medical evidence and other mitigating factors need to be considered.

11. The postmortem report has found the cause of death to be respiratory failure as a result of rupture of lungs. The rupture has occasioned on account of fracture of ribs. Thus, the appellant has caused death of the deceased due to the assault possibly by means of club. The external injuries found on the person of the deceased were in the nature of contusion and abrasion. Since no incised wound was found, it can be safely concluded that the deceased was not armed with any sharp edged deadly weapon. The genesis of the offence is said to be dispute between the two wives due to which his first wife left the village and went to Delhi with her children. The genesis is thus a very trivial one which may not provide such intention to commit murder. It might have happened pursuant to a quarrel with the deceased. Even if there is no evidence as to what actually happened at the time of incident, it is to be seen that the appellant and the deceased being alone in the house, it was very easy for the appellant to have remained silent without disclosing the same to any villagers but he chose to make extra judicial confession before (PW-1) Mahesh Ram. Therefore, this is another piece of evidence in support of the plea that the appellant did not actually intend to commit murder. However, considering the

facts and circumstances of the case, the manner in which the incident occurred, several ribs have been found fractured, the appellant having not taken undue advantage of there being no eyewitness to the crime and having confessed his guilt coupled with the fact of death being indirect result of fracture of ribs, we are of the view that though while making assault on the deceased, the appellant was not having knowledge that the injuries being caused by him to the deceased would result in her death but was having intention of causing such bodily injuries to the deceased as would result in her death. Being so, the act committed by the appellant would fall under Section 304 Part-I of IPC and not under Section 302 of IPC.

12. Accordingly, the appeal is allowed in part. The appellant is held guilty of committing offence under Section 304 Part-I IPC and is sentenced to undergo R.I. for ten years. The fine amount of Rs.1,000/- as imposed by the trial Court with default stipulation shall remain intact.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge