

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 542 of 2016**

- Smt. Sukhantin Bai Gond, W/o Shri Suraj Gond, Aged About 25 Years, R/o Village Amali (Kamarpara), Thana Nagri, Civil and Revenue District Dhamtari, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh, through the District Magistrate, Dhamtari, District Dhamtari, Chhattisgarh

---- Respondent

For Appellant Shri Sunil Sahu, Advocate

For Respondent Shri Avinash Choubey, PL

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Goutam Chourdiya****Order On Board by Shri Prashant Kumar Mishra J.****16/12/2019**

1. The appeal is posted for consideration on prayer for urgent hearing. However, considering the facts and circumstances of the case and with the consent of learned counsel for the parties, we have proceeded to decide the matter finally.
2. Appellant would call in question her conviction under Section 302 of IPC and sentence of life imprisonment rendered by the learned Additional Sessions Judge, Dhamtari vide the impugned judgment dated 29.02.2016 in Sessions Trial No.02/2016.

3. The prosecution case, as emerging from the FIR (Ex-P-2) lodged by PW-2 Santoshi at about 14:00 hours on 07.11.2015, is that the appellant has left her husband and married one Suraj Netam, a tribal. The appellant has three daughters out of her first marriage. Those three daughters are the sisters-in-laws (Nanad) of the informant Santoshi. Ku. Rambai, the eldest of the three sisters-in-laws of the informant, was engaged and the ceremony on that count was performed in the night of 06.11.2015. On being aware that her eldest daughter has been engaged without her knowledge and consent, the appellant reached the house of the deceased and started raising quarrel, on which the deceased stated to her that since she has married a tribal and no longer belongs to their caste, he thought it proper to get her eldest daughter married, because the daughter belongs to their family. Hearing this, the appellant started assaulting the deceased by means of a wooden stick. The deceased became unconscious and later on succumbed to injuries.
4. The postmortem was carried by PW-11 Dr. Hemant Kumar Nag, who submitted his report (Ex-P-12A) finding the following injuries:-
 - a. Abrasion on right side of shoulder – 4 cm x 6 cm
 - b. Abrasion on right side above iliac crest region – 4 cm x 3 cm

The autopsy surgeon also found the abdominal cavity filled with blood and laceration present on right lobe of liver. The death was found to have occurred due to hypovolemic shock caused by

rupture of vital organ.

5. On the basis of the injuries sustained by the deceased and the statement of the eye witnesses recorded by the Police, charge sheet for the offence under Section 302 of IPC was filed against the appellant. In course of trial, the prosecution examined 11 witnesses to bring home the charges, whereas the appellant abjured the guilt, pleaded innocence and false implication. The appellant did not examine any defence witness. On the basis of evidence, the Trial Judge has convicted the appellant for committing offence under Section 302 of IPC.
6. We have heard learned counsel for the parties and perused the record.
7. PW-2 Santoshi, wife of deceased Ramdayal, and PW-3 Sunti Bai are the two eye witnesses, who were present at the place of occurrence and have seen the incident. They would reiterate the facts contained in the FIR, as stated supra. According to them, the appellant was annoyed because after she performed marriage with a tribal man, her eldest daughter was engaged and the ring ceremony was performed on the previous night without her knowledge and consent. The appellant had reached to the house of the deceased to raise quarrel and demonstrated her annoyance, on which she was told that her daughter still belongs to their community, whereas the appellant now belongs to tribal community, therefore, the deceased was free to marry the daughter of their family as per their choice.

8. There being clear evidence of two eye witnesses, we are not discussing the other evidence except the statement of the autopsy surgeon.
9. The autopsy surgeon (PW-11) Dr. Hemant Kumar has clearly proved that the deceased had sustained only two external injuries, both in the nature of abrasion over non vital part. He says that the deceased has died due to internal injuries and he had suffered laceration on right lobe of the liver.
10. It is thus apparent that the deceased died due to internal injuries and not on account of any serious external injuries. The injuries were caused by the appellant, therefore, the finding that she is responsible for causing the injuries is perfectly borne out from the evidence on record.
11. We are now required to consider as to the offence which the appellant has committed in the facts and circumstances of the case. The story and the background facts, which led to the assault by the appellant over the person of the deceased, would clearly prove that she was not having any dangerous weapon in her hands. The appellant being a close relative or rather being the mother of Ku. Rambai, who was engaged in the previous night, was obviously annoyed, as she was not informed about the engagement ceremony of her daughter. Without getting into the dispute as to whether the deceased was justified in not informing or inviting the appellant to the ceremony as she has married to a tribal person, the fact remains that she, being the mother, was

expecting that atleast she would be informed about the engagement ceremony of her daughter. In that state of mind, she assaulted over the person of the deceased by means of a wooden stick. The deceased sustained only two abrasions over his person. There was no visible grievous external injuries. The death has taken place on account of laceration on right lobe of the liver. Thus, the appellant wanted to cause grievous hurt only and not to commit murder of the deceased.

12. The Supreme Court in the matter of **Parusuraman alias Velladurai and others vs State of Tamil Nadu**¹ has held thus in paras 2 & 3:-

“2. We have heard learned counsel for the parties. We agree with the High Court that the participation of the appellants in the occurrence which result in the death of Jawahar has been proved beyond doubt. We are, however, of the view that keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the offence committed by the appellants comes within the mischief of S. 325 read with S. 34, IPC. Thirteen external injuries were found on the dead body of Jawahar. Out of those 11 were on lower legs and arms.....”

3. Agreeing with the above observations of the High Court we are of the opinion that the intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of S. 325, IPC. We, therefore, set aside the conviction and sentence of the appellants under S.304, Part I, IPC read with S.34, IPC and instead convict them under S.325, IPC read with S. 34, IPC. We impose the sentence of imprisonment already undergone by the appellants.....”

1 AIR 1993 SC 141

13. Again, the Supreme Court in the matter of **Khuman Singh and others vs State of M.P.**² has held thus in para 10:-

“10.It is, no doubt, true that they assaulted the deceased in such a manner that the deceased suffered several fractures, but the injury which caused the death of the deceased was the one suffered by him on account of the rib bone puncturing the liver. We are convinced that this injury was not intended by the appellants, and the injury suffered by the deceased on his liver was at best accidental.....”

14. Considering the background of the incident and the nature of injuries sustained by the deceased and having regard to the judgments rendered by the Supreme Court in the matters of **Parusuraman alias Velladurai** (supra) and **Khuman Singh** (supra), we are of the view that the offence committed by the appellant would fall under Section 325 of IPC and the appellant has wrongly been convicted for committing offence under Section 302 of IPC.
15. Resultantly, the appeal is allowed in part. The appellant's conviction under Section 302 of IPC is set aside and instead she is convicted for committing offence under Section 325 of IPC. The appellant is in jail since 07.11.2015. Thus, she has already remained in jail for more than 4 years. The jail sentence already suffered by the appellant is considered adequate enough for the offence under Section 325 of IPC. The appellant is therefore sentenced for the period already undergone by her. She be released forthwith, if she is not required for any other offence, on

² (2005) 9 SCC 714

her 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. The bail bond shall remain in operation for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the Higher Court as and when required.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Choudiya
Judge

Nirala