

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**

(Arising out of judgment of conviction and order of sentence dated 14-2-2014 passed by the Third Additional Sessions Judge, Ambikapur (Surguja) in ST No.309 of 2012)

CRA No. 1264 of 2014

- Raj Prakash S/o Balrup Majhwar Aged About 40 Years R/o Village Kota Baigapara, Police Station Seetapur, Civil And Revenue Distt. Surguja C.G.

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through The Station House Officer Police Station Seetapur, Civil And Revenue District Surguja C.G.

---- Respondent

For Appellant	:-	Ms. Laxmin Tondey, Advocate
For Respondent	:-	Ms. Madhunisha Singh, PL

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Gautam Chourdiya, JJ.**

Judgment On Board**By****Prashant Kumar Mishra, J.****02/09/2019**

1. The appeal is posted for hearing on application for suspension of sentence, however, the appellant being in jail since

22.05.2012, we have heard the appeal itself finally with the consent of the learned counsel for the parties.

2. Appellant would assail the legality and validity of the impugned judgment of conviction and sentence whereby he has been convicted for committing offence under Section 302 of the I.P.C and has been sentenced to undergo R.I. of life and a fine of Rs. 500/-, in default of payment of fine to undergo additional R.I. for 3 years. The conviction is for committing murder of his wife Tilago Bai at about 9-10 A.M. on 22.05.2012.
3. The prosecution case, briefly stated, is that the appellant was suspecting the character of his wife, therefore, when no another family member was available at the time of incident, he inflicted one Axe blow over the Occipital region of the deceased causing her death. After the assault, the appellant was sitting over the platform in front of his house and made extra judicial confession before the witnesses.
4. Dehati Nalsi (Ex-P-5) was registered at about 11 am at the instance of PW-1 Loyaram, brother of deceased. He informed the above mentioned facts to the Police including the fact of extra judicial confession made by the appellant. The FIR (Ex-P-5-A) having the same contents as mentioned in the Dehati Nalsi was also registered at the instance of Loyaram (PW-1). Appellant's memorandum statement was recorded vide Ex-P-9 pursuant to which axe was recovered from his possession

vide Ex-P-10 but the FSL report is not available. Postmortem was conducted by Dr. Smt. R. Tigga (PW-9) who submitted her report vide Ex-P-16 finding one crushed wound measuring 5.5 cm x 3 cm, brain matter and blood oozing from the skull over the right occipito-parietal area. The cause of death was reported due to hemorrhagic shock caused due to injury to the vital organ (brain) which is homicidal in nature. After recording diary statement of the witnesses, charge-sheet was filed and after the regular trial, the trial Court has convicted the appellant as afore-stated.

5. Learned counsel for the appellant would submit that there is no evidence against the appellant inasmuch as all the witnesses have turned hostile, therefore, the appellant deserves to be acquitted.
6. Learned State counsel would support the impugned conviction and sentence.
7. Loyaram (PW-1), brother of deceased, is the informant, according to him when he was returning from the forest area, the appellant was going towards his house for feeding the goats. At this time, he saw the dead body of his Sister-in-law (*Bhabhi*) lying at a little distance from the door of appellant's house and the appellant was sitting over the platform in front of his house. He denies that the appellant has made any extra judicial confession or that he committed murder as he was

suspecting her character.

8. Tiket Ram (PW-2) is another brother of the appellant. He was informed about the death of the deceased by Loyaram (PW-1), however, he denies that appellant has made any extra judicial confession or that he has seen the incident. Shivshankar (PW-3) is the son of the appellant. He had gone to fetch fuelwood from the nearby forest and at this time, the appellant and the deceased were alone in the house. He says that his mother had no dispute with any other person, although, he also says that there were no disputes between his parents. He denies to have given diary statement (Ex-P-7) to the Police. Sukhmaniya (PW-4) is the sister-in-law (*Bhabhi*) of the appellant, she has neither seen the incident nor witness to the extra judicial confession.
9. Chertu Ram (PW-5) is a witness to the memorandum statement (Ex-P-9) and seizure (Ex-P-10) as also to the dead body inquest report (Ex-P-4) and map (Ex-P-8), however, he denies that appellant has made extra judicial confession to the Police or any seizure was made in his presence. Ramdayal (PW-6) is the witness to the seizure memo (Ex-P-6).
10. Kartik Ram (PW-7) is the Sarpanch of the village. He was informed about the incident by Loyaram (PW-1). This witness immediately reached to the place of occurrence and saw appellant sitting beneath a Jackfruit tree. In later part of his

statement after being declared hostile, he admits that appellant has made extra judicial confession that he committed murder suspecting his wife's character. Diary statement of this witness is not exhibited but we have seen the same from the original record. He gave this statement about appellant's extra judicial confession to the Police in his diary statement recorded on the date of incident itself. Thus, this witness is fully trustworthy having informed the Police about the extra judicial confession on the same day as also being an independent witness.

11. Dr. Smt. R. Tigga has proved the postmortem report mentioning the injury as referred in the preceding paragraph.

12. The evidence available in the case would prove that the appellant and the deceased were alone in the house at the time of incident and he has made extra judicial confession about commission of murder of his wife to Kartik Ram (PW-7). There is no explanation offered by the appellant as to where was he at the time of incident, if he is not responsible for committing murder.

13. In a case of house murder, if the prosecution has proved accused's presence in the house at the time of incident, the burden is heavier on the accused to prove as to how homicidal death of his wife has taken place when he alone was available in the house. The appellant having failed to explain the facts

within his exclusive knowledge, the presumption of his guilt becomes stronger and more so when he would immediately confess before the villagers that he has committed the offence. The appellant is, therefore, rightly been held guilty of assaulting his wife causing her death.

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 **Rambir Vs. State of NCT, Delhi (Criminal Appeal No.839 of 2019 decided on 6.5.2019)**, 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. Considering the evidence available on record in the case at hand, it appears that appellant got provoked or enraged because of his wife infidelity and gave one Axe blow over her head. He has not acted in cruel or unusual manner for the reason that he did not repeat the blows to cause more than one injury over the person of the deceased. The incident appears to have happened in a heat of passion without premeditation, therefore, considering all relevant aspect of the matter, we are of the opinion that the appellant had knowledge that assault made on the person of the deceased would cause death of the deceased but he had no intention to commit her murder. The act committed would thus fall within exception 4 to Section 300 of I.P.C punishable under Section 304 Part-II of I.P.C. Accordingly, the appellant deserves to be punished for the said offence.

19.The appellant had remained in jail since 22.05.2012 i.e., for more than 7 years and 3 months. For the offence under Section 304 Part-II of I.P.C., the jail sentence already suffered by the appellant appears to be adequate, therefore, while allowing the appeal in part to set-aside the appellant's conviction under Section 302 of I.P.C., he is convicted for committing offence under Section 304 Part-II and he is sentenced for the period already undergone. Sentence of fine shall remain intact.

20.The appellant is in jail, he be released forthwith unless required to be detained in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with two sureties in the like sum to the satisfaction of the trial Court. The bail bound shall remain in force for a period of three months in terms of 437A of Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge