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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 476 of 2012

- Mahendra Singh Gond, S/o Mohan Singh Gond, aged about 34 years, R/o Nawapara Sirmina, Katghora District Korba, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through Police Station Pasan, Katghora, District Korba, C.G.

---- Respondent

For Appellant
For Respondent/State

Shri B.N. Nande, Advocate.
Smt. Fouzia Mirza, Additional A.G.

Hon'ble Shri Prashant Kumar Mishra &

Hon'ble Shri Gautam Chourdiya, JJ

Judgment on Board by Justice Prashant Kumar Mishra

25/08/2020

1. The appeal is heard through video conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 16.03.2012 passed by Additional Sessions Judge, Katghora, District Korba, C.G. in Sessions Trial No.96/2010, whereby the appellant stands convicted for the offence under Section 302 of Indian Penal Code (for short, 'IPC') and sentenced to undergo rigorous imprisonment for life and fine of Rs.500/-, in default of payment of fine to undergo further simple imprisonment for three months.
3. The appellant committed murder of his wife Shyam Bai during the

intervening night of 29th and 30th May, 2010. As per the prosecution case, the deceased Shyam Bai was married with the appellant about 8 years back and they had one son, aged about 7 years, out of the wedlock. Being Gond Tribals, they used to consume liquor in their house. In the afternoon of 29.05.2010, deceased went to the house of PW-1 Shivnath in a drunken state and had her lunch in the house of PW-1 Shivnath and she slept in the *verandah*. At about 3:00 PM, the appellant went to the house of PW-1 Shivnath and dragged the deceased to her house. After reaching his house, the appellant requested his wife for dinner which led to quarrel in which the appellant picked up wooden cot leg (*Khura*) and gave four blows to the deceased, one of which over her head which resulted in her death in the next morning. In the postmortem report Ex.P-23, the deceased was found to have sustained four injuries and the cause of death was reported due to hemorrhagic shock, as a result of blunt injury over head on temporal region.

4. The incident was witnessed by PW-1 Shivnath, PW-2 Rajendra and PW-3 Devkumari. In addition, the appellant made extra judicial confession in the presence of PW-4 Balakram Maravi and PW-5 Kriparam. The merg intimation Ex.P-13 was lodged by PW-4 Balakram Maravi and the FIR Ex.P-14 was lodged by PW-12 Ashraf Khan, Sub-Inspector after the merg report. The appellant's memorandum statement was recorded vide Ex.P-7 consequent to which the wooden cot leg (*Khura*) and shirt were recovered from him vide seizure memo Ex.P-8.

5. After completing necessary investigation, the charge sheet was filed against the appellant for the offence under Section 302 of IPC.
6. In course of trial, the prosecution examined as many as 13 witnesses. The appellant abjured the guilt and pleaded innocence. However, he did not examine any defence witness.
7. Based on the evidence of extra judicial confession and other evidence, the trial Court has convicted and sentenced the appellant for the offence under Section 302 of IPC.
8. Assailing the conviction, Shri B.N. Nande, learned counsel engaged by the High Court Legal Services Committee, would submit that the evidence of extra judicial confession is a weak evidence, therefore, the eye-witnesses having not supported the prosecution case and there being no FSL report, the appellant deserves to be acquitted. In the alternative, he would submit that the appellant having given only one blow over vital part of the body, the offence would at best will fall under Section 304 Part-II of IPC.
9. Learned State counsel would support the impugned conviction. She would submit that although eye-witnesses have turned hostile but they have supported the prosecution case during their cross-examination and moreover, the witnesses to the extra judicial confession have remained firm in their court statement.
10. We have heard learned counsel for the parties and perused the material available on record.
11. PW-1 Shivnath is the maternal uncle (*Mama*) of the appellant

Mahendra Singh Gond. He has turned hostile without stating at any stage of his examination that he has seen the occurrence but he admits that he had heard in the village that the appellant has committed the murder of his wife.

12. PW-2 Rajendra has also turned hostile but he supports the prosecution in his cross-examination by stating that when the appellant was assaulting his wife, he had separated them. In further cross-examination, he denies to have seen the occurrence, but again admits that he had seen the appellant taking the deceased to his house.

13. PW-3 Devkumari has also turned hostile, but she also admits that the appellant was seen taking his wife to his house.

14. PW-4 Balakram Maravi and PW-5 Kriparam are the two important witnesses before whom the appellant has made extra judicial confession. Both of them had fully supported the prosecution by deposing that when they enquired from the appellant as to the reason for the deceased having sustained injuries, he admitted that he had assaulted the deceased by means of wooden cot leg. In their entire statement, there is no indication that the appellant was either pressurized or threatened for making confessional statement. Neither there was presence of huge number of villagers or the police men or the other village officer when the extra judicial confession was made. Thus, the extra judicial confession made before these two witnesses was out of accused/appellant's free will and it can be acted upon for sustaining conviction.

15. PW-6 Vidya Vivek Mahant is the Patwari, who has prepared the

spot map whereas PW-7 Beer Prasad is the witness to the Panchnama.

16. PW-8 Balakdas and PW-9 Santram are the witnesses to the memorandum statement Ex.P-7 and seizure memo Exs. P-8 to P-10.

17. PW-10 Bhupendra Lahre, PW-11 H.L. Chaturvedi and PW-12 Ashraf Khan are the Police Officers, who conducted investigation whereas PW-13 Dr. Ghanshyam Diwan conducted the postmortem and submitted his report Ex.P-23.

18. From the above discussed evidence available on record, it clearly appears that the appellant dragged the deceased from the house of PW-1 Shivnath and brought her to his house and started beating her by means of wooden cot leg from which she sustained injuries over different parts of body including over her temporal region which caused her death. Even if there is no witness to the actual incident of committing murder, the fact remains that at the time of occurrence during the intervening night of 29th and 30th May, 2010, the appellant and his wife (deceased) were only two persons present in the house. Before this, witnesses had seen the appellant bringing his wife to his house. Immediately after the incident, the appellant made extra judicial confession to PW-4 Balakram Maravi and PW-5 Kriparam. There is thus clinching evidence to conclude that it was the appellant alone who could have and who has caused death of his wife Shyam Bai. The trial Court has rightly concluded that it was the appellant who has assaulted the deceased causing her death.

19. The issue now to be considered is whether the appellant's act of assault would constitute an offence under Section 302 of IPC or it would amount to culpable homicide not amounting to murder. Law in this regard is well settled as to when offence under Section 302 of IPC can be converted into one under Section 304 Part-I or Part-II of IPC.

20. 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.”

21. In the matter of ***Rampal Singh Vs. State of UP, AIR 2012 SCW 3765 : 2012 (6) Scale 574***, where the parties were related, had no

animosity, the incident took place over the demolition of constructions made by the accused in his land to prevent throwing of garbage in his land, there was exchange of hot words, the incident took place without any pre-meditation, the accused fired gun on lower part of the deceased, the accused knew that his act might result in death, the accused was held guilty of offence under Section 304 Part-I of IPC.

22. In the case of ***Nanak Ram Vs. State of Rajasthan, (2014) 12 SCC 297***, out of nine injuries, only injury no.1, viz, an incised wound of 6 ½" x ½" and deep up to brain on the head was held to be grievous in nature which was sufficient in the ordinary course of nature to cause death of the deceased. The assaults were made at random. Even the previous altercations were verbal and not physical. In the heat of passion upon a sudden quarrel the accused persons had caused injuries on the deceased. That being so Exception 4 to section 300 of IPC was applicable. Hence the accused were convicted under Section 304 Part-I of IPC and sentence of seven years' RI on each of the appellants was held sufficient to meet the ends of justice.

23. Keeping in view the principles of law laid down by the Hon'ble Supreme Court in the above-cited judgments (supra), if we examine the evidence available on record, it is seen that the appellant and his wife are Tribals where practice of consuming liquor is prevalent. The deceased had consumed liquor and had her lunch in the house of PW-1 Shivnath. When the appellant

reached his house and found his wife not present there, he went to the house of PW-1 Shivnath and brought her back. A dispute arose on the issue of having dinner in the house after which the appellant picked up wooden cot leg and assaulted over her legs, ears and temporal region. The only injury which resulted in her death was caused over the temporal region. The other injuries were on non vital regions. The appellant had not repeated the assault over vital part of the body. Moreover, the deceased as well as the appellant were drunk at the time of incident. The genesis of the incident was also a very trivial one inasmuch as when the deceased did not serve dinner, the appellant became enraged and started assaulting her. The appellant has not used any weapon for causing injuries but it was only a wooden cot leg which was used for assault. Thus, it clearly appears that while inflicting injury on vital part i.e. temporal region by the wooden cot leg, the appellant was having intention of causing her such bodily injury as would result in her death but had no knowledge that the injuries being inflicted by him would cause her death. Being so, his act would fall under Section 304 Part I of IPC because it is not a case of single assault but assault on other parts of the body apart from the one fatal assault over the temporal region. Accordingly, we hold that the appellant is guilty of committing offence under Section 304 Part-I of IPC.

24. The appellant is in jail since 31.05.2010 i.e. for more than ten years. Considering that at the time of commission of offence, the appellant was 34 years of age and has already remained in jail for

more than 10 years, the period already undergone by him would be sufficient jail sentence. Accordingly, we impose the jail sentence for the period already undergone for committing offence under Section 304 Part- I of IPC while keeping the fine amount with default sentence imposed by the trial Court intact.

25. In the result, the appeal succeeds in part to the above extent.

The appellant is in jail, therefore, he be released forthwith, if not required in any other case on his furnishing a personal bond for a sum of Rs.25,000/- to the satisfaction of the trial Court for his appearance before the higher forum as and when required as per provisions of Section 437-A Cr.P.C. This bail bond shall remain in force for a period of six months from today.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge

Akhilesh