

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 1692 of 2019

- Mangaleshwar @ Magdish Rawat S/o Ravi Ratan Rawat Aged About 35 Years R/o Village Jambahar, Police Station Tapkara, District Jashpur Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through The District Magistrate, District Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

---- Respondent

For Appellant
For State

Mr. MPS Bhatia, Advocate
Mr. Ashish Gupta, Panel Lawyer

**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mr. Justice Gautam Chourdiya**

Judgment On Board by Prashant Kumar Mishra, J.

8.1.2020

1. This appeal would call in question the appellant's judgment of conviction under Section 302 of IPC passed on 30.4.2009 by the Additional Sessions Judge, Jashpur District Jashpur (CG) in ST No.49/2008.
2. This appeal was barred by 3787 days as it came to be filed only when this Court directed for physical verification of each of the inmates to find out as to whether their appeals have been filed or not.

3. During scrutiny by the District Legal Services Authority, the appellant was found not to have preferred any appeal. Thereafter, the present appeal was filed on 13.11.2019 and is now listed for hearing.
4. Since the appellant is in jail w.e.f. 26.4.2008, we heard learned counsel for the parties finally with their consent.
5. The appellant has been convicted for committing murder of his wife Sumitra Bai at about 7:00 p.m. on 25.4.2008. The FIR -Ex.P/2 was lodged by the appellant's sister-in-law (*Bhabhi*) Lilavati Bai (PW-1) informing the Police that when the deceased had gone to attend the nature's call in the evening of 25.4.2008, the appellant followed her and when she returned, the appellant questioned her as to why there was delay in her returning to the house. The deceased stated to the appellant that he is unnecessarily suspecting her character and started murmuring. The appellant asked her to make the bed. When the deceased was brooming the floor, the appellant brought out one axe and caused injuries over her body, due to which, she fell down and became unconscious. The informant also stated that soon after the deceased fell down, her relatives Ramnandan (PW-2) and Chitranjan reached the spot.
6. The postmortem was conducted by PW-11 Dr. Ajit Kumar Minj. He found the following injuries over the person of the deceased :

(1) Lacerated wound 1' x ½ cm- in right leg below

knee- hard and blunt object.

(2) lacerated wound 1 cm x 2.3 mm in nose – hard and blunt object.

(3) chop wound 2 ½' x 1 ½ cm x 1 cm in head -sharp and blunt object.

(4) Bleeding from P/V by abrasion due to internal injury.

All injuries are antemortem in nature”

As per the postmortem report -Ex.P/9, the cause of death was brain haemorrhage due to head injury; mode of death was Syncope and; nature of death was homicidal.

7. The axe used for causing the injuries was recovered vide Ex.- P/6, however, the memorandum statement of the appellant was not recorded. The axe was recovered from Chitranjan as he had snatched away the axe from the appellant as soon as he reached the house of the appellant. Informant Lilavati Bai has been examined as PW-1. She has supported the prosecution by reiterating the contents of the Merg Intimation-Ex.P/2 and the FIR-Ex.P/2. She is also a witness to the inquest- Ex.P/3. Ramnandan (PW-2) reached the place of occurrence along with Chitranjan immediately after the incident. Ramnandan (PW-2) caught hold of the appellant and fell him on the ground and thereafter, Chitranjan snatched the blood stained axe from his possession. Although Chitranjan has not been examined, but this witness has fully supported the prosecution.

8. Considering the statements of PW-1 Lilavati, PW-2 Ramnandan and PW-11 Dr. Ajit Kumar Minj collectively, it clearly appears that after the assault made by the appellant over the person of the deceased, Ramnandan (PW-2) reached the spot and caught hold of the appellant, and Chitranjan snatched away the blood-stained axe. Lilawati (PW-1) had reached the place of occurrence before Ramnandan (PW-2). Even though both these witnesses have not stated that they have seen the occurrence, but they reached the place of occurrence within minutes and caught the appellant with axe in his hand.
9. PW-1 Lilavati being the relative of the appellant, her presence on the spot is very natural and her statement cannot be ignored. Moreover, the appellant and the deceased being husband and wife were alone in the house at the time of occurrence and the appellant has not put-forth any explanation that any other person might have committed the murder of his wife. Since the appellant was found present in the house with axe in his hand, the principle under Section 106 of the Evidence Act, which requires the person, within whose exclusive knowledge special facts are available, to explain the circumstances, would apply against the appellant.
10. For the foregoing, we are satisfied that the trial Court has rightly found that the appellant has caused the injuries resulting in death of the deceased.
11. We are now required to consider as to what offence would be

made out against the appellant in the facts and circumstances of the case.

12. There is material on record indicating that the appellant had followed his wife when she went to attend the nature's call and later, when she returned, he questioned her as to why she was so late in returning home. The deceased stated to the appellant as to why he is suspecting her character. Even though there is no evidence that the appellant had seen the deceased in the company of some other person but the contents of the FIR is suggestive of the fact that when the appellant followed the deceased and questioned her as to why she was so late, it was obvious that he had some suspect in his mind as to the deceased's meeting with some other person. He committed the offence in such state of mind being enraged and provoked by the conduct of his wife.

13. It is not a case where the appellant stated that the deceased would be killed or he planned to commit her murder. The offence took place without premeditation in a fit of anger and heat of passion. However, the appellant having caused more than one injury, he had not only the knowledge that the injuries caused may result in death of the deceased but had also the intention to cause such bodily injuries which may result in her death. Hence, the whole act would not amount to committing murder punishable under Section 302 of IPC but it would fall under Section 304 Part-I of IPC.

14. The appellant being in jail since 26.4.2008 i.e. more than 11 ½ years, in our considered view, the jail sentence already suffered by the appellant is adequate enough for the offence committed by him.

15. Accordingly, the appeal is allowed in part. Appellant's conviction under Section 302 of IPC is set aside and he is convicted under Section 304 Part-I of IPC. The appellant is sentenced to the period already undergone. He be released forthwith if not required in any other case, 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. The bail bond shall remain in operation for a period of 6 months as required under Section 437A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

16. The appeal is allowed in part.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Gautam Chourdiya)

Judge

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