

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 713 of 2015

- Shivkumar, S/o Laxman Bhuihar, Aged About 36 Years, R/o Masjidpara, Dharamjaigarh, Police Station- Dharamjaigarh, District Raigarh, Chhattisgarh.

---- Appellant

Versus

- The State of Chhattisgarh, Through Station House Office, Police Station- Dharamjaigarh, District- Raigarh, Chhattisgarh.

---- Respondent

For Appellant	:	Shri C.R. Sahu, Advocate.
For State/Respondent	:	Shri Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Hon'ble Shri Justice Deepak Kumar Tiwari

Judgment on Board

Arvind Singh Chandel, J.

07/12/2021

1. This appeal has been preferred against the impugned judgment dated 30.10.2013 passed by the Additional Sessions Judge, (FTC) District – Raigarh, (C.G.) in Sessions Trial No.58/2011 wherein appellant has been convicted and sentenced as under :-

<u>Conviction</u>	<u>Sentence</u>
U/s 302 of the I.P.C.	For life imprisonment and fine of Rs.2,000/- with default stipulations.
U/s 323 of the I.P.C.	R.I. for six months.
Both sentences to run concurrently.	

2. In the present case, name of the deceased is Radha Bai, who is the wife of the appellant. Sant Kumar (PW11) is the son of the appellant and the deceased who stay with them. According to the case of prosecution, on 02.01.2011 at around 8:30 PM, when deceased Radha Bai returned after attending call of nature, the appellant doubting upon the character of her wife and for the reason of late return, a quarrel took place between both of them, and appellant assaulted her with the help of club. When son of the appellant Sant Kumar (PW11) tried to intervene, then appellant also assaulted him with club. Then Sant Kumar called the neighbours where the incident was witnessed by Parsuram (PW9), Amar Sai (PW1), Rajni Bai (PW2), Gopal Sarthi (PW6), Fattu. Thereafter, injured Radha Bai was taken to the hospital and during course of treatment, at about 10:15 PM, she died. Complainant Sant Kumar (PW11) lodged the First Information Report (Ex.P16) and merged intimation (Ex.P17). Inquest proceeding was conducted vide Ex.P1. Post-mortem of the dead body was conducted by Dr. B.L. Bhagat (PW4). His report is Ex.P9. During course of investigation, disclosure statement of the appellant under Section 27 of the Evidence Act was recorded vide Ex.P3. On the basis of the said report, club was seized vide seizure memo vide Ex.P4. Statements of

the witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. Trial Court framed the charge. To prove the guilt of the accused/appellant, prosecution has examined as many as 12 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded innocence and false implication in the matter.

3. On completion of the trial, the trial Court has convicted and sentenced the appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
4. Shri C.R. Sahu, learned Counsel appearing on behalf of the appellant submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. He further submits that there was no motive or intention on the part of the appellant to kill his wife (deceased). Therefore, conviction of the appellant for the offence under Section 302 of the I.P.C. is bad in the eyes of law. Material independent witnesses Amar Sai (PW1), Rajni Bai (PW2), Budhan Sarthi (PW5), Gopal Sarthi (PW6), Banjare Sarthi (PW7) have not supported the case of the prosecution and have narrated different story. Therefore, whole prosecution story becomes suspicious. The trial Court without any material on record, has erred in convicting the appellant for the alleged offence only on the extraneous consideration of documents and evidences produced before it. The judgment of the trial Court is only based upon the assumption and presumption, which cannot be sustainable for conviction of appellant.
5. Per contra, Shri Sudeep Verma, learned Counsel appearing for the

State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.

6. We have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents available on record minutely.
7. There is no dispute on the point that deceased Radha Bai was the wife of the appellant and they used to stay together with their son Sant Kumar (PW11). Sant Kumar (PW11) in his Court statement, has deposed that on the date of incident at about 12:00 mid-night, a quarrel took place between his parents i.e. appellant and the deceased and when he tried to intervene, then appellant assaulted him in his arms. He also deposed that at that time appellant assaulted the deceased with the help of a club over her head, due to which she sustained injuries over her head. He further deposed that at the time of incident, Amar Sai (PW1), Gultan and 2-3 persons were also present. However, during cross-examination, this witness has admitted the fact that there was cordial relationship between his parents (appellant and deceased). His father (appellant) used to take good care of her mother (deceased).
8. Amar Sai (PW1) is the neighbour of the appellant. Supporting the statement of Sant Kumar (PW11), Amar Sai (PW1) has deposed that on the date of incident, when he was in his house, Sant Kumar (PW11) came to him and told that appellant was committing marpit with the deceased, upon which, he (Amar Sai) along with his son Gopal went to the house of the appellant and saw that appellant was assaulting the

deceased with his leg. At that time, deceased was lying faint and she was in unconscious condition.

9. Rajni Bai (PW2) in her Court statement has also deposed that after hearing the chaos, she went to the house of the appellant where she saw that deceased was lying down in the courtyard of the house. Same statement was also given by Gopal Sarthi (PW6) and he further deposed that at that time, appellant was standing near the deceased.
10. Dr. B.L. Bhagat (PW4) conducted the post-mortem of the dead body of the deceased. His post-mortem report is Ex.P9. According to the report, he found total seven injuries on the dead body of the deceased out of which three injuries were in the vital parts of the body. Injury No.5 occurred in the left parietal region of the scalp 6x2 cm in size, clotted blood in & around wound. Injury No.6 occurred in the left occipital region of scalp 4x2 cm in size, clotted blood in & around wound. Injury No.7 is a ruptured wound in the back side of the right ear. As opined by Dr. B.L. Bhagat (PW4), cause of death is due to syncope as a result of external bleeding and nature of death is found to be homicidal.
11. On minute examination of the evidence, it makes clear that deceased sustained total seven injuries on her body out of which three injuries occurred in the vital parts of the body, two of them were caused in the parietal region and one behind the right ear and as opined by the Doctor, the nature of death was homicidal. According to the statement of Sant Kumar (PW11), who is the real son of the appellant and deceased, all the above injuries were caused by the appellant with the help of a club. The above statement of Sant Kumar (PW11) is not duly

rebutted. During his cross-examination, he remained firm. The statement of Sant Kumar (PW11) is duly corroborated by Amar Sai (PW1). From the statements of Rajni Bai (PW2) and Gopal Sarthi (PW6), it is established that when they reached at the spot, they saw that deceased was lying in the injured condition and appellant was standing near her (deceased). Thus, from the evidence available on record, it is well-established that it is the appellant who caused death of his wife Radha Bai with the help of a club.

12. At this stage, Shri C.R. Sahu, learned Counsel for the appellant would next submit that having regard to the facts and circumstances of the case, the offence committed by the appellant would fall within one or the other exception to Section 300 of the I.P.C. and the appellant would be guilty of committing culpable homicide not amounting to murder and the act committed by the appellant would fall within the ambit of Section 304 of the I.P.C. only.
13. Per contra, Shri Sudeep Verma, learned State counsel would submit that there is total seven injuries out of which three injuries were found on the vital part of the body of the deceased, therefore, appellant had knowledge as well as intention to commit murder of his wife (deceased). Thus, the trial Court has rightly convicted and sentenced the appellant for the offence punishable under Section 302 of the I.P.C.
14. On perusal of evidence adduced by the prosecution, we find that, in the present case, the prosecution has failed to prove any motive on the part of the appellant for committing murder of his wife. It was the case of the prosecution that appellant used to doubt on character of his wife (deceased) and due to this, on the date of incident, a quarrel took

place between both of them and as a result, appellant committed murder of his wife. But as admitted by son of the appellant and deceased i.e. Sant Kumar (PW11), appellant and deceased had cordial relationship between them and appellant used to take good care of deceased. There is no material available on record which shows that appellant used to doubt on the character of his wife (deceased). On perusal of statement of Sant Kumar (PW11), it reveals that on the date of incident, in the late night, a quarrel took place between the appellant and the deceased and appellant assaulted the deceased with the help of a club. Though, deceased sustained seven injuries on her body, out of which only three injuries were caused on the vital part, and none of the injuries are grievous in nature. There is no motive on the part of the appellant for commission of murder of the deceased, but appellant has assaulted the deceased with the help of a club on the vital parts of the body, looking to the above, we are of the opinion that appellant had the knowledge about the consequences of the act committed by him and the said act would fall within the ambit of Section 304 Part 2 of the I.P.C. Accordingly, conviction of the appellant is altered from Section 302 of the I.P.C. to Section 304 Part 2 of the I.P.C. Conviction of the appellant under Section 302 of the I.P.C. is set aside. Conviction of the appellant under Section 323 of the I.P.C. is affirmed.

15. 10 years is the maximum prescribed punishment for the offence under Section 304 Part 2 of the I.P.C. It is reported that the appellant is in jail since 03.01.2011, thereby he has already undergone jail sentence of 10 years in this case. Therefore, he be released forthwith, if not required in any other case.

16. Consequently, the appeal is allowed in part to the extent indicated above.
17. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge

Sd/-

(Deepak Kumar Tiwari)
Judge