

(2022) 11 CHH CK 0069
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1115 Of 2015

Baidar Alami

APPELLANT

Vs

State Of Chhattisgarhstate Of Chhattisgarh

RESPONDENT

Date of Decision : 22-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 300, 302, 304I, 304II

Citation : (2022) 11 CHH CK 0069

Hon'ble Judges : Sanjay K. Agrawal, J;Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Nirupama Bajpai, Anmol Sharma

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant herein assailing the impugned judgment dated 09/07/2015 passed by learned Session Judge, South Bastar, Dantewada in Sessions Trial No. 91/2013 whereby he has been convicted for offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that on 30/12/2012 at about 8 PM, at the house of Smt. Rambati (P.W.-2) at Village Koyam within the ambit of P.S. Barsur, District Dantewada, the appellant, with the intention of causing death of his wife Smt. Dippebai, assaulted her with tangi, on the ground that without taking his permission and without informing him she went to her matrimonial home, and caused grievous injury on her back near her vertebral column due to which she died instantaneously and thereby, the appellant committed the aforesaid offence.

3. Further case of the prosecution is that the marriage of deceased Dippebai was solemnized with the appellant ten years prior to the date of the offence and they had no issue. The appellant, under influence of liquor, used to assault the

deceased frequently. On the date of the offence i.e. on 30/12/2012, deceased Dippebai had come to her mother's home and told her mother Smt. Rambati (P.W.-2) that appellant used to assault her after drinking alcohol and after taking their meals, both deceased as well as Smt. Rambati (P.W.-2) were about to sleep when at about 8 PM, appellant came to his in-laws' house armed with a tangi and after angrily asking his wife (deceased) as to how did she come here without his permission or without informing him, he inflicted a single blow on the back of Dippebai below her neck due to which she died instantaneously. Smt. Rambati (P.W.-2) tried to intervene but appellant also tried to assault and kill her and only when she started shouting loudly, the appellant absconded from the spot. Thereafter, Smt. Rambati (P.W.-2) informed her neighbours Baldev (P.W.-3) and Lakhmuram (P.W.-7). When both of them reached the spot, they noticed the dead body of Dippebai. Rambati's husband Bodiram (P.W.-1) had gone to village Harrakoder at the time of the incident and she informed him about the same when he returned home. Thereafter, a meeting was convened in the village and on 01/01/2013 at about 07:20 AM, Smt. Rambati (P.W.-2) registered merger intimation at the Police Station vide Ex. P/13 and lodged first information report against the appellant for offence punishable under Section 302 of IPC vide Ex. P/12. The Investigating Officer, Manish Singh Parihar (P.W.-11), after getting the dead body identified, proceeded to conduct inquest vide Ex. P/16 and subjected the dead body to postmortem, which was conducted by Dr. Sudam Das (P.W.-12) and as per the postmortem report (Ex. P/21), cause of death is said to be massive hemorrhage as a result of incised wound on the back of vertebral column and the nature of death is homicidal. Thereafter, pursuant to memorandum statement of the appellant vide Ex. P/5, recovery of blood stained tangi was made at the instance of the appellant vide Ex. P/6. The said tangi was sent to Dr. Sudam Das (P.W.-12) for query as to whether the injury suffered by the deceased could have been caused by the said tangi and as per the query report (Ex. P/22), the Doctor has opined that the injury suffered by the deceased could have been caused by the seized tangi. After due investigation, the appellant was charge-sheeted for offence punishable under Section 302 of IPC which was committed to the Court of Session for trial in accordance with law.

4. In order to bring home the offence, prosecution examined as many as 12 witnesses and brought on record 22 documents. The statement of appellant/accused person was recorded wherein he denied guilt, however, examined none in his defence.

5. Learned trial Court, after appreciation of oral and documentary evidence on record, holding the death of deceased Dippebai to be homicidal in nature and further holding the appellant to be the perpetrator of the crime in question, proceeded to convict him for offence punishable under Section 302 of IPC and sentenced him as aforesaid.

6. Ms. Nirupama Bajpai, learned counsel for the appellant, would make two-fold submission :-

i) that, merely on the basis of ocular evidence in the form of testimony of Smt. Rambati (P.W.-2), who is an interested witness, conviction of the appellant could not have been recorded by the trial Court, as such, the impugned judgment be set aside and he be acquitted of the charge by allowing the instant appeal in toto.

ii) that, even if appellant is held to be the perpetrator of the crime in question, his case would fall within exception 4 to Section 300 of IPC as he did not have any premeditation to cause the death of the deceased and only out of sudden anger and in heat of passion, he assaulted her on the ground that she had come to her matrimonial home without asking or telling him and as such, his conviction under Section 302 of IPC be altered to Section 304 Part I or II of IPC and the instant appeal be allowed in part.

7. Per contra, Mr. Anmol Sharma, learned State counsel, would support the impugned judgment and submit that prosecution has been able to bring home the offence and the trial Court has rightly convicted the appellant for the said offence on the basis of testimony of eye-witness Smt. Rambati (P.W.-2), as such, the instant appeal deserves to be dismissed.

8. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

9. The first question for consideration, is whether the death of deceased Dippebai was homicidal in nature ?

10. Learned trial Court has recorded an affirmative finding in this regard holding the death of deceased Dippebai to be homicidal in nature relying upon the expert medical opinion of Dr. Sudam Das (P.W.-12) as well as the postmortem report (Ex. P/21) in which it has been clearly recorded that the cause of death is due to massive hemorrhage as a result of incised wound on the back of vertebral column and the nature of death is homicidal. We are of the considered opinion that the trial Court has rightly relied upon the statement of Dr. Sudam Das (P.W.-12) as well as the postmortem report (Ex. P/21) to hold the death of deceased to be homicidal in nature. We hereby affirm the said finding recorded by the trial Court, more so, when it has not been seriously questioned by learned counsel for the appellant.

11. The next question for consideration is, whether the appellant is the perpetrator of the crime in question ?

12. Learned trial Court has also recorded an affirmative finding in this regard relying upon the testimony of eye-witness Smt. Rambati (P.W.-2), mother of the deceased, who was staying along with the deceased on the date and time of offence and in her statement before the Court, she has stated in clear words that on the fateful day, her daughter deceased Dippebai had come to her matrimonial home complaining that her husband (appellant) had committed maarpeet with her and also cut her hair and threatened to leave her. On the night of the

incident, she and her daughter both had taken their meals and had gone to sleep when the appellant came to her house armed with tangi and inflicted a blow on the back of the deceased due to which, she died on the spot. Even though Smt. Rambati (P.W.-2) has been subjected to some length of cross-examination but she has remained consistent in her version and nothing substantial has come on record to demolish and shatter her testimony and to hold that she is not an eye-witness.

13. In the first information report (Ex. P/12) as well, Smt. Rambati (P.W.-2) has stated that at the night of the incident, the appellant came to her house and out of anger as to why Dippebai had come to her matrimonial house without telling him, he assaulted her with tangi on her back and as a result of the said injury, Dippebai died instantaneously.

14. As such, the testimony of Smt. Rambati (P.W.-2) is quite clear, coherent and reliable to hold that appellant is the perpetrator of the crime in question. Even it is well-settled law that on the basis of sole testimony of eye-witness, conviction can be rested, sans any other evidence, provided always, the evidence of eye-witness is absolutely credible. Thus, we are of the considered opinion that learned trial Court has rightly held the appellant to be the perpetrator of the crime in question relying upon the sole testimony of eye-witness Smt. Rambati (P.W.-2).

15. Now, the question for consideration is, whether the case of the appellant would fall within Exception 4 to Section 300 of IPC and whether his conviction under Section 302 of IPC can be altered to Section 304 Part I or II of IPC, as contended by learned counsel for the appellant ?

16. At this stage, it would be relevant to notice Exception 4 to Section 300 of IPC, which states as under :-

“Exception 4 – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

17. In the matter of Sukhbir Singh v. State of Haryana (2002) 3 SCC 327, it has been observed by the Supreme Court as under :-

“21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not amounting to murder

punishable under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.”

18. Thereafter, in the matter of Gurmukh Singh v. State of Haryana (2009) 15 SCC 635, Their Lordships of the Supreme Court have laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused which state as under :-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen for its special perspective. The relevant factors are as under :

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused with premeditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature death but the death was because of shock;
- (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;
- (m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other

words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused."

19. Likewise, in the matter of State v. Sanjeev Nanda (2012) 8 SCC 450, their Lordships of the Supreme Court have held that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both. It is further been held that to make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.

20. Further, the Supreme Court in the matter of Arjun v. State of Chhattisgarh (2017) 3 SCC 247 has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-

"20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under :(SCC p. 220, para 7)

"7. To invoke this exception four requirements must be satisfied, namely, (I) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

"9. '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A

fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provisions means "unfair advantage".

21. In the matter of Arjun (supra), the Supreme Court has held that when and if there is intent and knowledge, the same would be case of Section 304 Part-I IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II IPC.

22. Reverting to the facts of the present case in light of the aforesaid principle of law laid down by Their Lordships of the Supreme Court in Arjun (supra), it is quite vivid that on the date of the incident, deceased Dippebai had gone to her matrimonial home without telling or informing the appellant and at night, the appellant went to the house of Smt. Rambati (P.W.-2), and after angrily asking the deceased as to why she had come there without telling him, the appellant assaulted the deceased with a tangi on the back portion of her body below her neck, due to which she suffered grievous injury and died on the spot, which goes to show that there was no premeditation on the part of the appellant to cause the death of deceased, and out of sudden anger and in heat of passion, he assaulted her and inflicted a single blow and did not take advantage of the situation or act in a cruel manner. As such, the case of the appellant would fall within Exception 4 to Section 300 of IPC. However, Smt. Rambati (P.W.-2) has stated in her testimony that on the day of the incident, her daughter deceased Dippebai had come to her house and had complained that appellant used to assault her under the influence of liquor and he had also threatened to leave her, as such, the appellant had the intent to commit the offence in question and moreover, looking to the injury suffered by the deceased, the appellant must have had the knowledge that his act is likely to cause the death of the deceased. Therefore, we are of the considered opinion that conviction of the appellant under Section 302 of IPC can be altered to Section 304 Part I of IPC, as contended by learned counsel for the appellant.

23. In conclusion of the aforesaid discussion, we set aside the conviction of the appellant for offence punishable under Section 302 of IPC and the sentence so awarded by the trial Court and we hereby convict the appellant for offence punishable under Section 304 Part I of IPC and sentence him to undergo rigorous imprisonment for 10 years.

24. Accordingly, this criminal appeal is allowed to the extent indicated herein-above.