

(2023) 06 CHH CK 0005
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 983 Of 2014

Harichand

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 300, 302, 304I, 304II
Evidence Act, 1872 — Section 106

Citation : (2023) 06 CHH CK 0005

Hon'ble Judges : Sanjay K. Agrawal, J;Arvind Singh Chandel, J

Bench : Division Bench

Advocate : Mohit Kumar, Sameer Uraon

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal has been preferred by the appellant under Section 374(2) of CrPC against the impugned judgment dated 29/05/2014 passed by learned Sessions Judge Balod in Sessions Trial No. 13/2014 whereby he has been convicted for offence punishable under Section 302 of IPC and has been sentenced to undergo life imprisonment with fine of Rs. 200/- in default of payment of fine, additional R.I. for one month.

2. Case of the prosecution, in brief, is that on 24/01/2014 at about 11 PM at Dewardera, Sanjay Nagar within the ambit of Police Station Doundilohara, the appellant herein committed maar peet with his wife Jayantribai on account of which she suffered grievous injuries and died and he, thereby, committed the aforesaid offence.

3. Further case of the prosecution is that on 25/01/2014 at about 08:15 AM, appellant's brother Giriram Dewar (P.W.-1) lodged first information report (Ex. P/2) at the Police Station that the appellant had kept Jayantribai as his wife and

they were residing together for the last two years in a separate house. From the last one year, Jayantribai used to run away from their house frequently and the appellant used to get her back and on that account, dispute persisted between both of them. On the date of the incident, i.e. 24/01/2014 at about 3-4 PM, again Jayantribai was running away from her home, however, the appellant caught hold of her and brought her back and committed maar peet with her with hands and fists and also assaulted her with rolling pin due to which Jayantribai suffered grievous injuries and died. On the basis of the said information, merger intimation was registered vide Ex. P/1 and summons were issued to the witnesses vide Ex. P/3 and pursuant to conducting inquest vide Ex. P/4, the dead body of Jayantribai was subjected to postmortem which was conducted by Dr. Kush Pandey (P.W.-10) and as per the postmortem report (Ex. P/16), cause of death is said to be shock due to intracerebral haemorrhage. From the spot, plain soil as well as blood-stained soil, blood-stained shawl and broken bangles of the deceased were seized vide Ex. P/8 and blood-stained rolling pin as well as appellant's blood-stained shirt were seized from the appellant vide Ex. P/9. The said seized articles were sent for forensic examination and as per the FSL report (Ex. P/23), human blood was found on the shawl as well as on appellant's shirt. After due investigation, the appellant was charge-sheeted for offence punishable under Section 302 of IPC which was committed to the Court of Sessions for trial in accordance with law. The appellant abjured his guilt and entered into defence.

4. In order to bring home the offence, prosecution examined as many as 11 witnesses and brought on record 23 documents. Statement of the appellant was recorded under Section 313 of CrPC wherein he denied guilt, however, he examined none in his defence.

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

6. Mr. Mohit Kumar, learned counsel for the appellant, would firstly submit that prosecution has failed to prove the offence beyond reasonable doubt and the trial Court has erred in convicting the appellant for offence punishable under Section 302 of IPC, as such, the appellant deserves to be acquitted. In alternative, he would submit that the case of the appellant is covered with Exception 4 to Section 300 of IPC and at the most, he is liable to be convicted for offence punishable under Section 304 Part I or II of IPC and since the appellant is in jail since 25/01/2014 i.e. for more than 9 years, he be sentenced to the period already undergone.

7. Per contra, Mr. Sameer Uraon, learned State counsel, would submit that appellant's wife Jayantribai died in the house and at the time of the incident, there was no other person in the house except for the appellant and the deceased, therefore, the appellant has rightly been convicted for offence

punishable under Section 302 of IPC by virtue of Section 106 of the Evidence Act. He would further submit that it is not a case which would fall within Exception 4 to Section 300 of IPC, thus, 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 the consideration would be whether the death of deceased Jayantribai was homicidal in nature ?

10. Learned trial Court has recorded an affirmative finding in this regard and held the death of deceased Jayantribai to be homicidal in nature relying upon the expert medical opinion of Dr. Kush Pandey (P.W.-10) who has proved the postmortem report (Ex. P/16) in which cause of death is said to be shock due to intracerebral haemorrhage. Learned trial Court has clearly recorded a finding that Dr. Kush Pandey (P.W.-10) has clearly stated in his statement before the Court that the injuries suffered by the deceased could not have been caused by falling. Considering the statement of Dr. Kush Pandey (P.W.-10) as well as the postmortem report (Ex. P/16) and the grievous injuries suffered by the deceased, we are of the considered opinion that the trial Court has rightly held the death of deceased Jayantribai to be homicidal in nature, more so, when it has not been seriously questioned by learned counsel for the appellant. We hereby affirm the said finding recorded by the trial Court.

11. This brings us to the next question for consideration, which is, whether the appellant committed maar peet with his wife Jayantribai and caused her death ?

12. Taking consideration of the extra-judicial confession made by the appellant to his brother Giriram (P.W. -1) and further considering that deceased died in the house of the appellant and at the time of the incident, there was no other person in the house except for the appellant and the deceased, in such a case, the appellant was required to give an explanation with regard to the death of his wife, which he has failed to do, as such the trial Court has rightly held that appellant is the author of the crime in question and he has caused the death of his wife Jayantribai by committing maar peet. Moreover, shawl belonging to the deceased was seized from the spot vide Ex. P/8 and rolling pin and appellant's shirt were seized from him vide Ex. P/9 which was sent for forensic examination and as per the FSL report (Ex. P/23), blood was found on the rolling pin and human blood was found on the shawl and appellant's shirt. As such, considering the entire evidence available on record, we are of the considered opinion that it is the appellant who has caused the death of wife Jayantribai and it has rightly been held by the trial Court. We hereby affirm the said finding recorded by the trial Court.

13. The last question for consideration would be whether the trial Court is justified in convicting the appellant for offence punishable under Section 302 of

IPC or his conviction is liable to be converted to Section 304 Part I or II of IPC, as contended by learned counsel for the appellant ?

14. In order to consider the plea raised by learned counsel for the appellant, it would be appropriate 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."

15. With regard to the issue in hand, in the matter of Felix Ambrose D'Souza v. State of Karnataka (2009) 16 SCC 361, the Supreme Court has held in paragraph 7 as under :-

"7. The learned counsel for the appellant in the alternative has made a submission that, at any rate, the facts even held proved, could not be considered to be just and sufficient to warrant a conviction under Section 302 IPC and if at all conviction under Section 304 Part II IPC alone could have been rendered possible. Though the learned counsel for the respondent State strongly insisted that keeping in view the gravity of the offence and the brutal manner in which it has been committed with the background of animosity and ill-will there was no need for altering the nature of offence and that the finding of the High Court in this regard may not call for any interference. AS noticed earlier and having regard to the materials and the evidence on record as spoken to even by the prosecution witnesses there does not appear to be any premeditated plan or intention to either put an end to the life of the deceased or cause any injury with the intention of causing his death or causing such bodily injury which within the knowledge of the accused was likely to cause his death even in the ordinary course of nature. Irrespective of the silent nature of ill feelings which existed between the parties, it appears to have surfaced with a violent turn on the fateful day due to sudden quarrel which even according to the prosecution witnesses, commenced with an altercation and attempts to break open the lock which was said to have been placed on the door of the storeroom by the appellant in addition to the one part by the father and the deceased. In the tussle and altercation and an attempt to break the lock by the deceased with a hammer in his hand and attempts made by the appellant to physically prevent the deceased from doing so, and use of physical force in the process, passions seem to have flared up beyond proportion all of a sudden, perhaps, neither anticipated nor intended by either of them. The prosecution version itself lends credence and support to the plea of sudden provocation on the spur of the moment. Therefore, we are of the view that the High Court was not right in arriving at the conclusion to convict the appellant under Section 302 IPC. In our considered view, on the proved facts the only offence that could reasonably be said to have been made out and for which the appellant could be convicted would be under Section 304 Part II IPC and to this extent we partly allow the appeal and set aside the order

of conviction under Section 302 IPC and instead convict him under Section 304 Part II IPC.”

16. The Supreme Court in the matter of Arjun v. State of Chhattisgarh (2017) 3 SCC 247 has elaborately dealt with the issue at hand 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 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”.

17. 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.

18. Reverting to the facts of the present case in light of the decision rendered by the Supreme Court in the matter of Felix Ambrose D'souza (supra) and Arjun (supra), it is quite vivid that deceased Jayantribai stayed with the appellant at his house as his wife and dispute persisted between them as deceased used to run away from the house often and the appellant used to get her back home. On the date of the incident, deceased again tried to run away, however, the appellant brought her back and out of sudden anger and in heat of passion he committed maar peet with her and also assaulted her with hands and fists as well as a rolling pin. Although there was no premeditation on the part of the appellant to cause the death of the deceased, however, looking to the injuries suffered by the deceased, the appellant must have had the intention as well as knowledge that his act would likely cause the death of the deceased. Thus, the case of the appellant would fall within exception 4 to Section 300 of IPC and his conviction for offence punishable under Section 302 of IPC is altered to Section 304 Part I of IPC and he is sentenced to undergo R.I. for 10 years. The sentence of fine as imposed by the trial Court shall remain intact.

19. Accordingly, this Criminal Appeal is allowed to the extent indicated herein-above.

20. Let a certified copy of this order along with the original record be transmitted to trial Court concerned for necessary information and action, if any.