

(2020) 07 MP CK 0175

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 381 Of 2010

Nandabai W/O. Mantu @ Mangilal

APPELLANT

Vs

State Of MP

RESPONDENT

Date of Decision : 02-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161

Indian Penal Code, 1860 — Section 302, 302II, 304I, 304II, 498A

Citation : (2020) 07 MP CK 0175

Hon'ble Judges : S. C. Sharma, J;Vivek Rusia, J

Bench : Division Bench

Advocate : M.K. Sharma, Archana Kher

Final Decision : Partly Allowed/Disposed Of

Judgement

Vivek Rusia, J

1. The appellant has filed the present appeal being aggrieved by the judgment dated 26th March 2010 passed by the 12th Additional Sessions Judge, Indore in Sessions Trial No.1216/2009; whereby she has been convicted under Section 302 of IPC and sentenced to undergo life imprisonment with fine of Rs.1,000/-.

2. Facts of the case, in short, are as under:-

On 24.08.2009, near about 10.30 p.m., Manju Yadav (P.W.-1) a resident of Vill.Seonikheda, was sleeping in his house along with other family members. The present appellant came there and told that in the house her husband Mantu @ Mangilal is lying in a pool of blood. He along with his daughter Ramkanya and appellant rushed there and saw that deceased Mantu lying on the floor bleeding from the injuries on his face. He had already died. P.W.-1 immediately gave information to his brother Vijay, Subhash and Shravan on mobile. Police reached the spot upon information given by Manju (P.W.-1) . According to Manju, the appellant used to quarrel with her husband and he heard the voice of quarrel at 8.30 p.m. and the appellant herself told him that she was fed up with the

deceased and killed him by an axe. The Police completed the recorded the statement of witnesses under Section 161 of Cr.P.C. and completed the usual investigation. The Final Report was filed before the Magistrate on 07.10.2009. The trial was committed to the Sessions Court; where the appellant abjured the guilt and pleaded for trial. According to the appellant, three unknown persons assaulted her husband and thrown in front of her house, thereafter she dragged him inside the house and called Manju (P.W.-1) i.e. elder brother of the deceased . In order to prove the sole charge against the appellant, the prosecution examined Manju as P.W.-1, the daughter of the appellant and deceased Ranjeeta (aged about 8 years) as (P.W.-2), Dr. Bharat Prakash, Medical Officer (P.W.-3), Mayabai (P.W.-4), Dheeraj (seizure witness) (P.W.-5), Kamal Singh, A.S.I. (P.W.-6), Sunil Kumar Uikey, Sub-Inspector-cum-Investigating Officer (P.W.-7) and Kailash Chandra, Head Constable (P.W.-8). In defence the appellant did not examine any witness

3. After appreciating the evidence came on record the learned Additional Sessions Judge vide judgment dated 26.03.2010 has convicted the appellant under Section 302 of IPC and sentenced to undergo life imprisonment with a fine of Rs. 1000.00. Hence, this appeal before this Court.

4. While admitting the appeal for final hearing vide order dated 28.06.2010 this Court has dismissed the application for suspension of sentence. The appellant remained in jail during the trial hence, she is in jail since the date of arrest i.e. almost 10 years.

5. Learned counsel appearing on behalf of the appellant has addressed us only on the question of the untenability of the conviction under section 302/ IPC. According to counsel, this is a clear case under section 302 Part-II of IPC. hence appellant is entitled to the reduction of sentenced from life imprisonment to the period already undergone.

6. We may very briefly advert to the material facts necessary to appreciate this submission. According to the learned counsel, the appellant got married to deceased Mantu 18-20 years back. He was a habitual drinker and used to assault the appellant. On the date of the incident also he was drunk and they fought, because of the sudden provocation she gave blows on the head of the deceased and due to which he died. She had no intention to kill her husband because she used the blunt side of the axe. Had there been an intention to kill him, she would have used the sharp side of axe. She is in jail since last more than 10 years. No one is in the family to look after the daughter who was aged about 8 years at the time of the incident and now she has attained the majority, therefore, the sentence be reduced from life to 10 years or the period already undergone whichever is lesser.

7. Learned Dy. Advocate General opposes the aforesaid prayer by submitting that the deceased sustained as many as 5 injuries by a repeated blow given by the appellant. She had an intention to kill the deceased husband, therefore, she has

rightly been convicted under Section 302 of IPC hence no interference is called for.

8. We have considered the rival contentions of the parties and perused the record.

9. According to defence put forth by the appellant before the trial court, in her absence three unknown persons assaulted the deceased and thrown his body in front of the house, thereafter she dragged him inside the house, thereafter she called Manju (PW-1). Manju saw the dead body of the deceased in the blood pool with certain injuries on his head. As per Manju (PW-1), he had a suspicion that the present appellant had caused the injuries to the deceased because they used to squabble. The prosecution examined the daughter of the appellant Ranjeeta (PW-2), who did not support the case of the prosecution. Mayabai (PW-4) has turned hostile. There is no eye witness in this case and the entire case is based on circumstantial evidence and sole testimony of (P.W.-1). According to the prosecution, a blood-stained axe was recovered on a disclosure by the appellant. The Police seized the axe, clothes of the deceased on 25.08.2009 but sent to the Forensic Science Laboratory on 26.09.2009, thereafter the Police filed the Chalan on 07.10.2009. The report of Forensic Science Laboratory came on 26.02.2010 but the same was not produced before the Trial Court. A copy of the unexhibited report is available in the record of the Trial Court. As per the report, bloodstains over the clothes and the axe are disintegrated. There is no blood match by the Scientific Officer. Ranjeeta (PW-2), who was examined to support the (P.W.-1) but she did not support the case of the prosecution. The Police recorded the statement of as many as 20 witnesses but examined only 8 witnesses in the Court including Doctor, Constable, Assistant Sub-Inspector and Sub-Inspector, therefore, the appellant has been convicted only on the basis of sole testimony of Manju (PW-1) without any corroboration. Manju (PW-1) who is an elder brother of the deceased also had an apprehension about causing the injuries by the present appellant because they used to fight as husband and wife, therefore, on the very weak type of investigation and evidence the learned Court has convicted the appellant under Section 302 of IPC.

10. In case of Hardev Bhanji Joshi vs State Of Gujarat re-reported in AIR 1993 SC 297 has held as under-

5. Even, according to P.W. 2, A-2 dealt only one blow. The nature of the injury shows that the sharp edge of the axe was not used, the whole thing happened in a sudden manner. Under these circumstances Clause I of Section 300 I.P.C. is not attracted. If A-2 had the intention to cause death, one would expect him to use the sharp edge of the axe. The very fact that he used the blunt side of the axe shows that he had no intention to cause the death. Further it is not a pre-meditated act. Now coming to clause III of Section 300 I.P.C., admittedly he caused only one injury with the blunt side of the axe which unfortunately resulted in fracture of skull bone. Further this happened during the quarrel. Under these circumstances, it is difficult to hold that he intended to cause that

particular injury which the Doctor found to be sufficient in the ordinary course of nature to cause death. Under similar circumstances, the courts have held that the offence punishable would be one of culpable homicide as the knowledge that he was likely to cause death by such an act can be attributed to the accused. Accordingly, we set aside the conviction of the appellant under Section 302 I.P.C. and the sentence of imprisonment for life thereunder. Instead, we convict him under Section 304 Part II and sentence him to five years R.I. He shall surrender and serve out the sentence. The appeal is partly allowed.

11. Since the appellant is not challenging the findings, therefore, we are not inclined to interfere with the said finding but we are convinced with the argument raised by the learned counsel for the app that it is a case of an offence punishable under Section 304 Part-II because the appellant had no intention to kill his husband as she used the blunt side of the axe. (P.W.-1) heard the voice of fight between appellant and deceased i.e. husband and wife at 8.30 pm just before the alleged incident. The axe was already there in the house which was used for causing the injury. There was no pre-planned murder of the deceased by the appellant and the unfortunate incident took place due to sudden provocation as the deceased was drunk and fighting with the appellant, therefore, in our considered opinion the act of the appellant falls under the purview of Section 304 Part-II of IPC instead of Section 302 of IPC.

12. The Hon'ble Supreme Court in a case of Gurpal Singh v. State of Punjab, AIR 2017 SC 471 has altered the conviction from s.302 to 304Part 1 on the following circumstances. Para 10 of the judgment reads thus:

"10. However, in the singular facts of the case and noticing in particular, the progression of events culminating in the tragic incident, we are inclined to reduce the sentence awarded to him. Incidentally, the occurrence is of the year 2004 and meanwhile twelve years have elapsed. Further, having regard to the root cause of the incident and the events that sequentially unfolded thereafter, we are of the comprehension that the appellant was overpowered by an uncontrollable fit of anger so much so that he was deprived of his power of self- control and being drawn in a web of action reflexes, fired at the deceased and the injured, who were within his sight. The facts do not commend to conclude that the appellant had the intention of eliminating any one of those fired at, though he had the knowledge of the likely fatal consequences thereof. Be that as it may, on an overall consideration of the fact situation and also the time lag in between, we are of the view that the conviction of the appellant ought to be moderated to one under Sections 304 Part 1 IPC and 307 IPC. Further, considering the facts of the case in particular, according to us, it would meet the ends of justice, if the sentence for the offences is reduced to the period already undergone. We order accordingly."

13. The Hon'ble Supreme Court has laid down the law in the case of Prabhakar Vithal Gholve v. State of Maharashtra, AIR 2016 SC 2292 that if the assault on deceased could be said to be on account of the sudden fight without

premeditation, in heat of passion and upon a sudden quarrel, Conviction of the appellant cannot be sustained under S.302 and altered to one under Section 304 part-I of IPC. Relevant para 7 of the judgment reads thus:

"7. In the facts and circumstances noted above, there appears merit in the submission advanced by learned counsel for the appellant that in view of Exception 1 or Exception 4 in Section 300 of the IPC the case made out against the appellant is that of culpable homicide not amounting to murder. It would be natural for the family members of juvenile offender Balu on hearing his cries, to rush for his help and when injury on the appellant has also been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. The assault on the deceased, in absence of intention to cause death could be on account of sudden fight without pre-meditation, in the heat of passion and upon a sudden quarrel. We therefore feel persuaded to and do set aside the conviction of the appellant under Section 302 IPC and substitute the same with conviction under Section 304 Part I of the IPC. The certificate of imprisonment available on record discloses that the appellant has by now undergone more than 12 years of actual imprisonment. The aforesaid period, in our estimate is sufficient to meet the ends of justice. Hence the sentence of imprisonment for life is reduced to imprisonment for the period already undergone by the appellant. In view of such modification in the sentence, the appellant is directed to be released from custody forthwith if not required to be kept in custody in connection with any other criminal case. The appeal stands allowed to the aforesaid extent."

14. In the case of Sikandar Ali Vs. State of Maharashtra, AIR 2017 SC 2614, the Apex Court has altered the conviction u/s 302 IPC to one u/s 304 part-2 IPC in the following circumstances:

"7. We have no doubt about the complicity of all the accused in the homicide of Sarfraj. A-1 attacked the deceased with the knife and caused injury on his neck which resulted in his death. The other accused assisted him in committing the crime by holding the hands of the deceased. However, the only question that falls for our consideration is whether the accused are liable to be punished for an offence under Section 302 IPC. After considering the submissions made by the counsel for the Appellants and scrutinising the material on record, we are of the opinion that the accused are not liable to be convicted under Section 302 IPC. We are convinced that there was neither prior concert nor common intention to commit a murder. During the course of their business activity the accused reached the dhaba where the deceased was present. An altercation took place during the discussion they were having behind the dhaba. That led to a sudden fight during which A-1 attacked the deceased with a knife. Exception 4 to Section 300 is applicable to the facts of this case. As we are convinced that the accused are responsible for the death of Sarfraj, we are of the opinion that they are liable for conviction under Section 304 part II of the IPC. We are informed that A-1 has undergone a sentence of seven years and that A-2 to A-4 have undergone four

years of imprisonment. We modify the judgment of the High Court converting the conviction of the accused from Section 302 to Section 304 part II of the IPC sentencing them to the period already undergone. They shall be released forthwith."

15. In view of the above discussion we hereby allow the appeal in part. The appellant is held guilty for the offence under Section 304 Part-II of IPC instead of Section 302 of IPC. Considering the nature of the incident, the relation of the appellant, no one to look after young daughter and period of custody with the deceased and other facts and circumstances of the case, we find that the ends of justice would be achieved by awarding sentence of imprisonment already undergone. Hence appellant is held guilty for the offence under Section 304 part-II of IPC and imprisonment for the period already undergone with fine as awarded by the learned trial Court.

16. With the aforesaid, the appeal is partly allowed and disposed of. Record be sent back. The appellant be immediately released from the jail if she is not required in any other offence.