

(2022) 12 CHH CK 0050
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 737 Of 2013

Noharu Ram Gond

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 313, 374(2)
Indian Penal Code, 1860 — Section 300, 302, 304II

Citation : (2022) 12 CHH CK 0050

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

Bench : Division Bench

Advocate : Upasana Mehta, Sudeep Verma, Afroz Khan

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal under Section 374(2) of the CrPC filed by the appellant herein is directed against the impugned judgment of conviction and order of sentence dated 25-6-2013 passed by the Sessions Judge, Rajnandgaon, in Sessions Trial No.39/2012, by which the appellant has been convicted under Section 302 of the IPC twice on two counts and sentenced to undergo imprisonment for life and pay fine of ₹ 3,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for one year.

2. Case of the prosecution, in brief, is that on 20-4-2012 at night at Village Sarauli, Police Station Manpur, District Rajnandgaon, the appellant has assaulted his wife Shobhe Bai and paramour of his wife Fattu Nareti by wooden stick by which they suffered injuries and died, and thereby committed the offence. Further case of the prosecution is that the appellant had a field in which he has sown maize and for the purpose of guarding crops in his field, he had constructed a machan (lari) and he and his wife Shobhe Bai used to sleep in nights on the said machan for guarding his field. On 20-4-2012, the appellant

and his wife both had gone to participate in a marriage in the house of one Sirdar Tekam of the same village from where his wife came before the appellant reached and at 10.00 p.m. when the appellant reached to his field, he has seen his wife and her paramour Fattu Nareti in objectionable condition and out of grave and sudden provocation, he picked up the wooden stick lying therein and firstly assaulted Fattu Nareti and murdered him and thereafter, murdered his wife also and thrown the dead bodies in a place near his field. Next day morning at 05.00 a.m., the appellant informed Sujan Singh (PW-1) who had a field near the field of the appellant and then Sujan Singh informed to Bir Singh (PW-2), Adhari Ram (PW-3), Durgu Ram (PW-6), Khomanlal (PW-9) & Jhumuklal (PW-10) whereupon all reached to the spot and saw the dead bodies of Shobhe Bai and Fattu Nareti. The appellant made extra-judicial confession before Sujan Singh (PW-1) & Khomanlal (PW-9) that he found Shobhe Bai with Fattu Nareti in objectionable position, then he murdered both of them.

3. First information report (FIR) was lodged by Sujan Singh (PW-1) vide Ex.P-3 and morgue intimation Exs.P-2 & P-3 were written at the instance of Sujan Singh (PW-1) which were got registered by Police Station In-charge Noharlal Mandavi (PW-12). Inquest on the dead body of deceased Shobhe Bai was prepared vide Ex.P-5 and inquest on the dead body of deceased Fattu Nareti was prepared vide Ex.P-7. On the recommendation of panchas, dead bodies of the deceased were sent for postmortem to Community Health Centre, Manpur vide Exs.P-23 & P-24. Postmortem on the dead body of Shobhe Bai was conducted by Dr. Seema Thakur (PW-13) vide Ex.P-23A in which cause of death was stated to be excessive internal bleeding and fat embolism due to long bone fracture and death was homicidal in nature. Similarly, postmortem on the dead body of Fattu Nareti was conducted by Dr. Mohan Tikam (PW-14) vide Ex.P-24A in which cause of death was stated to be haemorrhagic shock due to excessive internal bleeding from ruptured vital organs (heart, left lungs) and death was homicidal in nature. The appellant was taken into custody and pursuant to his memorandum statement Ex.P-10, one wooden bamboo stick was seized from his possession vide Ex.P-13 and it was sent for inviting medical opinion of doctor whereupon Dr. Mohan Tikam (PW-14) in his query report Ex.P-26A has opined that the injuries found on the persons of the deceased could have been caused by the wooden bamboo stick which was seized pursuant to the memorandum statement of the appellant. However, though the said wooden bamboo stick was sent to the FSL for chemical analysis, but the FSL report was not brought on record to hold that the said lathi was used as the weapon of offence.

4. Statements of the witnesses were recorded under Section 161 of the CrPC.. After completion of investigation, charge-sheet was filed against the appellant before the Court of Judicial Magistrate First Class, Ambagarh Chowki and the case was committed to the Court of Sessions, Rajnandgaon for trial where the trial was conducted.

5. The trial Court has framed charge against the appellant for offence punishable

under Section 302 of the IPC (twice / two counts) and proceeded on trial. The appellant abjured guilt and entered into defence stating that he has not committed the offence and he has been falsely implicated.

6. The prosecution in order to bring home the offence examined as many as 16 witnesses and exhibited 28 documents Exhibits P-1 to P-28. Defence has examined Sirdar Tekam (DW-1), but exhibited no document. Statement of the appellant was recorded under Section 313 of the CrPC in which he abjured the guilt and pleaded innocence.

7. The trial Court after completion of trial and after appreciating oral and documentary evidence available on record, convicted and sentenced the appellant in the manner mentioned in the opening paragraph of this judgment against which this appeal under Section 374(2) of the CrPC has been preferred by him calling in question the impugned judgment.

8. Ms. Upasana Mehta, learned counsel appearing for the appellant, would submit that taking the finding of the trial Court as recorded in paragraph 29 of the judgment as it is that the appellant assaulted deceased Shobhe Bai & Fattu Nareti finding them in objectionable position, even then, Exception 1 to Section 300 of the IPC would be attracted and offence is liable to be altered to Section 304 Part-II of the IPC. Therefore, the appeal be allowed in part.

9. Mr. Sudeep Verma, learned Deputy Government Advocate and Mr. Afroz Khan, learned Panel Lawyer appearing on behalf of the State / respondent, would support the impugned judgment and would submit that the trial Court is absolutely justified in convicting the appellant under Section 302 of the IPC twice on two counts and rightly convicted him which is not liable to be altered / converted, as the case in hand would not fall under Exception 1 to Section 300 of the IPC and the appeal deserves to be dismissed.

10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

11. The trial Court after appreciating oral and documentary evidence on record relying upon the statements of the medical officers – Dr. Seema Thakur (PW-13) & Dr. Mohan Tikam (PW-14) and taking into consideration their postmortem reports Exs.P-23A & P-24A, has rightly come to the conclusion that death of Shobhe Bai & Fattu Nareti was homicidal in nature, which is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record and we hereby affirm the said finding.

12. The trial Court relying upon six incriminating circumstances mentioned in paragraph 26 of the impugned judgment came to the following conclusion in paragraph 29 of the judgment: -

13. A careful perusal of paragraph 29 of the impugned judgment would show that when the appellant reached to his field on the fateful night at 10.00 p.m., he

found his wife Shobhe Bai and her paramour Fattu Nareti in objectionable position and thereafter assaulted them by wooden stick by which both suffered injuries and succumbed to death.

14. It is the submission on behalf of the appellant that Exception 1 to Section 300 of the IPC would attract in the present case.

15. Exception 1 to Section 300 of the IPC states as under: -

"Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

16. Exception 1 to Section 300 of the IPC applies when due to grave and sudden provocation, the offender, deprived of the power of self-control, causes the death of the person who gave the provocation. Exception 1 also applies when the offender, on account of loss of self-control due to grave and sudden provocation, causes the death of any other person by mistake or accident.

17. Their Lordships of the Supreme Court in the matter of K.M. Nanavati v. State of Maharashtra AIR 1962 SC 605 laid down the conditions which have to be satisfied for the exception to be invoked which are as under: -

(a) the deceased must have given provocation to the accused;

(b) the provocation must be grave;

(c) the provocation must be sudden;

(d) the offender, by the reason of the said provocation, should have been deprived of his power of self-control;

(e) the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and

(f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident.

Their Lordships held that for determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an usually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. Their Lordships in paragraphs 84 & 85 of the report observed as under: -

"(84) Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society

to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

(85) The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to S. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

18. Very recently, the Supreme Court in the matter of *Dauvaram Nirmalkar v. State of Chhattisgarh Criminal Appeal No.1124 of 2022*, decided on 2-8-2022 relying upon *K.M. Nanavati* (supra) held in paragraphs 12 & 13 as under: -

"12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. [See the opinion expressed by Goddar, C.J. in *R v. Duffy*, (1949) 1 All.E.R. 932] The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be

short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self-control and the accused had acted without planning and premeditation. This has been aptly summarised by Ashworth [1975 Criminal LR 558-559, and George Mousourakis's elucidation in his paper 'Cumulative Provocation and Partial Defences in English Criminal Law'] in the following words:

"[T]he significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the accused – and indeed the relation of the retaliation to that act – can be neither understood nor evaluated without reference to previous dealings between the parties."

Exception 1 to Section 300 recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation."

19. Furthermore, in the matter of *Hansa Singh v. State of Punjab* AIR 1977 SC 1801, where the accused appellant therein on seeing G committing the act of sodomy on his son, lost his power and self-control which led him to commit the murderous assault on G and where the accused was convicted under Section 302 of the IPC, their Lordships of the Supreme Court found the murder to be committed during grave provocation and altered the conviction to one under Section 304 Part-II of the IPC. Their Lordships observed as under: -

"We, however, feel that the occurrence took place while the deceased was committing sodomy on Haria and that gave such a sudden and grave provocation and annoyance to the appellant which impelled him to assault the deceased. For these reasons we are satisfied that the case of the appellant falls clearly within the purview of Section 304, Part II of the Indian Penal Code. The appellant on seeing the deceased committing the act of sodomy on his son, lost his power and self-control and it was undoubtedly a grave and sudden provocation for him which led him to commit the murderous assault on the deceased."

20. Reverting to the facts of the present case in light of the parameters laid down by the Supreme Court in K.M. Nanavati (supra) and Hansa Singh (supra), it is abundantly clear that the appellant was forcefully driven to the crime which was not premeditated and the occasion had sprung up the moment, as the appellant had reached to his field and seen his wife Shobhe Bai and her paramour Fattu Nareti in objectionable position and had lost his self-control, and due to grave and sudden provocation, inflicted the injuries on both the deceased, successively within few minutes and by such grave and sudden provocation enhanced, the appellant assaulted both the deceased. In our considered opinion, it was undoubtedly a grave and sudden provocation for the appellant which led him to commit the murderous assault on his wife Shobhe Bai and her paramour Fattu Nareti. As such, we are satisfied that the appellant's case would clearly fall within the purview of Exception 1 to Section 300 of the IPC and the offence would fall under Section 304 Part-II of the IPC.

21. Accordingly, we alter the conviction of the appellant from one under Section 302 of the IPC to that under Section 304 Part-II of the IPC. The appellant has been in jail since 22-4-2012 i.e. for more than ten years. Therefore, we reduce the sentence from life imprisonment to the period already undergone. The appeal is allowed in part. The appellant be released forthwith, if his detention is not required in any other offence.