

(2024) 02 CHH CK 0040
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 227 Of 2017

Sahebdas Manikpuri @ Chote @ Satya @ Satan	APPELLANT
Vs	
State Of Chhattisgarh	RESPONDENT

Date of Decision : 20-02-2024

Acts Referred:

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

Citation : (2024) 02 CHH CK 0040

Hon'ble Judges : Sanjay K. Agrawal, J; Sanjay Kumar Jaiswal, J

Bench : Division Bench

Advocate : Shailendra Sharma, Ankur Kashyap

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal preferred under Section 374(2) of Cr.P.C. is directed against the impugned judgment dated 28.11.2016, passed by the Additional Sessions Judge, Raipur, in Sessions Trial No.83/2016, by which, the appellant herein has been convicted for the offence under Section 302 of Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs.500/-, in default of payment of fine, 2 months additional simple imprisonment.

2. Case of the prosecution, in brief, is that on 31.12.2015, the appellant herein assaulted her sister-in-law Rinky Manikpuri by grinding stone, by which, she suffered grievous injuries. The said fact was informed by her husband Jawahar Manikpuri (PW-4) to Smt. Prabha Manikpuri that Rinky Manikpuri was undergoing treatment at Mekahara Hospital, Raipur then she reached to Mekahara Hospital and she was informed by Sukhsagar (not examined) that appellant has assaulted Rinky Manikpuri. Then, the matter was reported to the police, pursuant to which, dehati nalishi was registered vide Ex.P-4, FIR was registered vide Ex.P-18 and during course of treatment, Rinky Manikpuri (now deceased) died on 04.01.2016

and then merged intimation was registered vide Ex.P-11, inquest was conducted vide Ex.P-7 and dead body of deceased Rinky Manikpuri was subjected to post-mortem, which was conducted by Dr. M.Nirala (PW-12), who proved the post-mortem report vide Ex.P-16, in which cause of death was stated to be cardio respiratory failure as a result of head injuries and death was homicidal in nature. Pursuant to memorandum statement of the appellant Ex.P-9, grinding stone was seized vide Ex.P-10, which was sent for chemical examination to FSL along-with other seized articles and as per the FSL report Ex.P-24, human blood was found on the seized grinding stone. After due investigation, appellant was charge-sheeted for the aforesaid offence under Section 302 of I.P.C. before the jurisdictional criminal court, which was ultimately committed to the Court of Sessions for hearing and disposal in accordance with law, in which the appellant abjured his guilt and entered into defence stating that he has not committed any offence and he has been falsely implicated.

3. In order to bring home the offence, prosecution examined as many as 16 witnesses and exhibited 26 documents and the appellant-accused in support of his defence has not examined any witness but has exhibited one document Ex.D-1.

4. The trial Court, after appreciation of oral and documentary evidence on record, convicted the appellant herein for the offence under Section 302 of Indian Penal Code and sentenced him to undergo life imprisonment against which the present appeal has been preferred.

5. Mr. Shailendra Sharma, learned counsel for the appellant would submit that the appellant has not committed any offence, he has been falsely implicated. He further submits that considering the nature of injury and further considering the fact that incident occurred on 31.12.2015 and deceased died on 04.01.2016, at the most, offence under Section 304 Part-II of I.P.C. is made out and the appellant is in jail since 10.01.2016 i.e. more than 8 years, therefore, conviction of the appellant under Section 302 of I.P.C. be altered to Section 304 Part-II of I.P.C. and the appellant be sentenced for the period already undergone and the appeal be allowed in part.

6. Mr. Ankur Kashyap, learned State counsel would submit that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellant for the offence under Section 302 of I.P.C. He further submits that it is not the case where the sentence of the appellant can be altered to Section 304 Part-II of I.P.C. and, as such, the instant appeal deserves to be dismissed.

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

8. The first question for consideration as to whether the death of deceased Rinky Manikpuri was homicidal in nature, has been answered by the trial Court in

affirmative relying upon the post-mortem report Ex.P-16 proved by Dr. M.Nirala (PW-12), which in our considered opinion is a correct finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and accordingly, we hereby affirm the said finding.

9. Now, the next question is, whether the appellant had caused the death of deceased Rinky Manikpuri ?

10. Taking into consideration the statement of Smt. Prabha Manikpuri (PW-2) who had seen the appellant & deceased lastly together, as appellant & deceased residing together along-with Jawahar Das Manikpuri (PW-4) and furthermore Smt. Madhumita Shekhar (PW-8) had seen the appellant absconding from the spot and further the weapon of offence i.e. grinding stone was recovered pursuant to memorandum statement of the appellant, on which, human blood was found as per the FSL report Ex.P-24, we are of the considered opinion that the finding recorded by the trial Court that appellant had caused the death of deceased Rinky Manikpuri is correct finding of fact based on evidence available on record and accordingly, we affirm the said finding.

11. Now, whether the appellant's case deserves to be converted under Section 304 Part-II of I.P.C., as contended by the learned counsel for the appellant ?

12. Considering the nature of injury and further considering the fact that deceased died during the course of treatment after five days of incident and Dr. M. Nirala (PW-12) did not say that the injuries caused were sufficient to cause death in the ordinary course of nature in order to attract clause Thirdly of Section 300 of I.P.C.

13. In that view of the matter, it would be appropriate to notice the decision of the Supreme Court in the matter of Nankaunoo v. State of Uttar Pradesh (2016) 3 SCC 317 in which their Lordships in paragraph 12 & 13 held as under :

12. The emphasis in clause three of Section 300 IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place.

13. Keeping in view the above principles, when we examine the facts of the present case, the deceased sustained gunshot wound of entry 1½" x 1½" on the back and inner part of left thigh, six gunshot wounds of exit each 1/3" x 1/3" in size in front and middle left thigh. Due to the occurrence in the morning at the barber shop of the deceased, the appellant emerged from the northern side of

the grove carrying pistol in his hand and fired at the deceased. The weapon used and the manner in which attack was made and the injury was inflicted due to premeditation clearly establish that the appellant intended to cause the injury. Once it is established that the accused intentionally inflicted the injury, then the offence would be murder, if it is sufficient in the ordinary course of nature to cause the death. We find substance in the contention of the learned counsel for the appellant the injury was on the inner part of left thigh, which is the non-vital organ. Having regard to the facts and circumstances of the case that the gunshot injury was caused in the inner part of left thigh, the sufficiency of injury to cause death must be proved and cannot be inferred from the fact that death has taken place. But the prosecution has not elicited from the doctors that the gunshot injury on the inner part of left thigh caused rupture of any important blood vessel and that it was sufficient in the ordinary course of nature to cause the death. Keeping in view the situs and nature of injury and in the absence of evidence elicited from the doctor that the said injury was sufficient in the ordinary course of nature to cause death, we are of the view that it is a fit case where the conviction of the appellant under Section 302 IPC should be under Section 304 Part 1 IPC.

14. Reverting to the facts of the case in light of the decision of the Supreme Court, it is quite vivid that admittedly death occurred after five days from incident, as the date of incident is 31.12.2015 and deceased died on 04.01.2016 and keeping in view the situs and nature of injury in absence of evidence given by the doctor that the said injuries were sufficient to cause death, we are of the view that it is a fit case where the conviction of the appellant under Section 302 of I.P.C. should be under Section 304 Part-II of I.P.C.

15. In the result, the conviction of the appellant under Section 302 of I.P.C. is modified as conviction under Section 304 Part-II of I.P.C. and the appellant is sentenced to undergo 8 years' rigorous imprisonment, which he had already undergone and the appeal is partly allowed.

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