CRA No. 1372 of 2016

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1372 of 2016

- Ram Kumar S/o Hemlal Manjhi Aged About 29 Years Occupation - Labour, Resident Of Village - Naharpali, Thana Bhupdevpur, Tahsil - Kharsiya Revenue And Civil Raigarh District - Raigarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through - Police Station Bhupdevpur - Tahsil - Kharsiya District - Raigarh Chhattisgarh

---- Respondent

For Appellant : Shri A.L. Singraul, Advocate.
For Respondent : Shri Vikash Shrivastava, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ

Judgment On Board By Prashant Kumar Mishra, J

22/07/2019 :

1. This Appeal is directed against the judgment of conviction and order of sentence dated 5th April, 2011 passed by the Sessions Judge, Raigarh in ST No.101/2009 whereby the appellant has been convicted for commission of offence under Section 302 of the IPC and sentenced to undergo imprisonment for life.

2. According to the prosecution, deceased Geeta Bai was the appellant's sister-in-law. The appellant had developed fancy/liking for the deceased, which was ignored by her for the

reason that such fancy/liking usually occurs between a married man and his *Saali* (i.e. sister-in-law). In this backdrop, marriage of the deceased was fixed and it had taken place on the previous day of the incident. On 17.4.2009, her *Vidai* was to take place in the morning. Before this, at about 5 am the deceased had gone to attend the nature's call along with (PW-3) Santoshi and (PW-4) Shaniro Bai. The appellant had also gone to attend the nature's call. When all were returning after attending the nature's call, the appellant enquired from Santoshi as to whether fuel wood is available, to which Santoshi replied that she does not belong to his family, therefore, how can she be aware of the availability of the fuel wood. Hearing this reply, the appellant, after few minutes, inflicted one severe axe blow over the neck of the deceased cutting her carotid artery, jugular veins and caused fracture of the neck bone. The deceased went to her house and embraced her father. After some time, she was taken to the Police Station in an ambulance and from there she was taken to the hospital.

3. FIR (Ex.-P/13) was lodged by the deceased herself at about 7.30 am wherein she has narrated the entire sequence of events as mentioned above. She has also mentioned that the incident is witnessed by Santoshi (PW-3) and Shaniro Bai (PW-4).

4. (PW-3) Santoshi, an eyewitness, has fully supported the case of the prosecution. Similarly, (PW-4) Shaniro Bai, a girl aged about 13 years, has also supported the prosecution case by reiterating the same allegations which are mentioned in the FIR and in the deposition of (PW-3) Santoshi.

5. Autopsy surgeon (PW-7) Dr. T.K. Tondar has proved the postmortem report (Ex.-P/10). According to him, the deceased had sustained incised wound over the left side of neck, which had cut carotid artery and jugular veins and caused fracture of the neck bone. He would opine that the deceased died on account of excessive bleeding due to injuries over the neck and the death was homicidal. He admits that if the deceased would have been administered treatment immediately after the incident, her life could have been saved.

6. The deceased having died immediately after lodging FIR, we are required to dwell on the legal character of the document i.e. FIR as to whether the same is admissible in evidence as dying declaration. In this connection, it is necessary to refer to the judgment rendered by the Supreme Court in the matter of **Dharam Pal & Ors. Vs. State of UP** {AIR 2008 SUPREME COURT 920}, wherein the Supreme Court has observed thus in Para-10:-

> "**10**.....
> .....
> .....
> .....
> .....
> It cannot be left out of sight that Raghu also said that the deceased dictated the FIR to the police. In any view of the matter, the report of occurrence was dictated by the deceased himself and the same was read over to him after which he had put his thumb impression on the same. This report is admissible under Section 32 of the Evidence Act as a dying declaration.....
> .....
> .....
> ....."

7. Similarly, in the matter of **Ismail Vs. State of Karnataka** {2000 CRI.L.J. 1994}, the Division Bench of the Karnataka High Court has observed in para-4 as under:-

> "**4**.....
> .....
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> .....
> It is true that as indicated by us earlier the statement recorded by PW.14 has virtually changed complexion from being a complaint or a F.I.R. to a dying declaration but in our considered view, there are no technical compartments which prescribe that a statement or a complaint cannot be treated as a dying declaration if it satisfies all the ingredients. It is true that this is very unusual case but after having carefully considered the law on the point, we are of the considered view that Ex.P.23 has rightly been treated as a dying declaration."

8. The legal position is therefore well settled that the FIR lodged by the deceased would attain the character and legal status of dying declaration, if the victim dies before his/her examination in the Court.

9. Considering the prompt FIR by the deceased herself which is in the nature of dying declaration, as has been held by the Supreme Court and the Karnataka High Court in the matters of **Dharam Pal** and **Ismail** respectively, (Supra), evidence of eyewitnesses namely, (PW-3) Santoshi, (PW-4) Shaniro Bai and (PW-10) Samarin, as also the expert medical evidence as deposed by (PW-7) Dr. T.K. Tondar, the trial Court has rightly found that it is the

appellant, who has committed the act which has resulted into death of the deceased.

10. At this stage, learned counsel for the appellant would submit that the act of the appellant would not amount to culpable homicide but it would amount to culpable homicide not amounting to murder and at best, the offence would fall under Section 304 Part-I of the IPC and not under Section 302 of the IPC. He would refer to the judgment rendered by the Supreme Court in the matter of **Lavghanbhai Devjibhai Vasava Vs. State of Gujarat** {(2018) 4 SCC 329}.

11. In the matter of **Lavghanbhai Devjibhai Vasava**, Supra, the Hon'ble Supreme Court has referred to its earlier decision in the matter of **Dhirendra Kumar Vs. State of Uttarakhand** {2015 SCC OnLine SC 163} to delineate the parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 or under Section 304 of the IPC. The said parameters are reproduced hereunder:-

> "(a) The circumstances in which the incident took place;
> (b) The nature of weapon used;
> (c) Whether the weapon was carried or was taken from the spot;
> (d) Whether the assault was aimed on vital part of body;
> (e) The amount of the force used;
> (f) Whether the deceased participated in the sudden fight;
> (g) Whether there was any previous enmity;
> (h) Whether there was any sudden provocation;
> (i) Whether the attack was in the heat of passion; and
> (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or

unusual manner."

12. If we consider the case in hand on the parameters of law laid down by the Supreme Court, it is to be seen that the appellant was perturbed or rather disturbed on account of marriage of the deceased for whom the appellant had developed fancy/liking. It may not be a case of grave and sudden provocation on the spot but it can definitely be said that the appellant was a bit provoked due to the circumstances and was not able to reconcile that the lady for whom he has developed fancy/liking would belong to someone else.

13. The appellant has inflicted one single blow over the neck of the deceased. He has not acted in cruel or unusual manner in the sense that after giving one blow he did not repeat the blow. More importantly, (PW-7) Dr. T.K. Tondar has stated that the deceased would have been saved if she would have been administered treatment immediately after the incident. The relatives of the deceased committed a mistake by taking the deceased to the Police Station first, rather taking her to the hospital, which is clearly stated by (PW-1) Asharam, brother of the deceased, that the deceased was first taken in ambulance to the Police Station and thereafter to the hospital but she died on the way. In any case, the incident has taken place at about 5-5.30 am and the FIR has been lodged by the deceased at 7.30 am. Thus a delay of 2½ hours has been caused for arranging the vehicle and taking the deceased to the hospital. This is one such mitigating factor which would prove that the deceased has not died instantly but she could have been saved if she would have been admitted in the hospital.

14. Shri Hari Agrawal, learned counsel present in the Court belongs to the area where the incident had happened. He would inform that village Naharpali, where the incident had taken place, is at a distance of about 18 km from the District Hospital, Raigarh. Thus, the deceased could have been taken to the hospital within half an hour from the incident but the family members committed a mistake in taking her first to the Police Station rather than to the District hospital.

15. Considering the backdrop of the relationship between the appellant and the deceased, the medical opinion, as stated in para-9 of the evidence of (PW-7) Dr. T.K. Tondar that the deceased could have been saved had she been taken to the hospital immediately, as also for the reason that the appellant has inflicted only one blow on the person of the deceased, we are of the considered opinion that the appellant has committed offence with knowledge that it may cause death of the deceased but had no intention to commit murder. Thus, offence would fall under Section 304 Part-I of the IPC and not under Section 302 of the IPC.

16. Accordingly, the Appeal is allowed in part. Conviction imposed upon the appellant under Section 302 of the IPC is set aside and instead the appellant is convicted under Section 304 Part-I of the IPC. The appellant is in jail since 7.8.2009 i.e. almost for a period of 10 years. Thus, we are of the considered opinion that the jail sentence of nearly 10 years already suffered by the appellant would be adequate for the offence under Section 304 Part-I of the IPC. Hence the appellant is sentenced to the period already undergone by him. The appellant be released forthwith unless

required to be detained in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of the CrPC. The appellant shall appear before the higher Court as and when directed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Barve

H E A D L I N E S

Victim dying after lodging of FIR, the same would be admissible as dying declaration under Section 32 of the Evidence Act.

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Ram Kumar

Versus

State Of Chhattisgarh

Judgment dated 22/07/2019