

(2018) 08 CHH CK 0262

**Chhattisgarh High Court****Case No:** Criminal Appeal (CRA) No. 280 Of 2013

Mohan Lal Tandan

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Aug. 24, 2018**Acts Referred:**

- Indian Penal Code, 1860 - Section 302, 304, 323, 498A
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Pritinker Diwaker, J; Rajani Dubey, J**Bench:** Division Bench**Advocate:** Anand Kumar Gupta, Ravindra Agrawal**Final Decision:** Partly Allowed

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**Judgement**

P. Diwaker, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.2.2013 passed by the learned 2nd Additional Sessions Judge,

Raigarh in S.T. No.34/10 convicting the accused/appellant under Section 302 & 498A of the Indian Penal Code (for short 'the IPC') and sentencing

him to undergo RI for life & fine of Rs.3,000/- and RI for 1 year & fine of Rs.2,000/-, plus default stipulations, respectively.

2. In the present case name of deceased is Anusuiya, wife of appellant.

3. As per case of the prosecution, there used to be frequent quarrel between the appellant and his wife (deceased) over not bringing proper food items

by the appellant in the house. Further case of the prosecution is that the accused/appellant used to treat the deceased with cruelty. On 13.11.2009 at

about 1 in the afternoon, the appellant caused three knife blows on the stomach of deceased. On hearing the cries of deceased, Saroj (PW-1),

daughter of accused & deceased, reached there and took the deceased to hospital where she breathed her last on 31.12.2009 and during this period

she was operated twice. On 13.11.2009 at 2 in the afternoon Dehati Nalishi (Ex.P-9) was lodged by the deceased herself. She was medically

examined by Dr. S. Lakda (PW-5) on 13.11.2009 and he noticed following injuries:-

â€¢ lacerated wound over left side of abdomen of 1.5x1"" x muscle deep.

â€¢ lacerated wound over left chest case of 1""x0.25"" x muscle deep

â€¢ two small lacerated wounds of 0.05 x 0.25"".

As per PW-3, the injuries sustained by the injured (deceased) were simple in nature and said injuries would heal within 12 days, if no complication.

would arise. X-ray examination of the deceased was done vide Ex.P-19 in which no bony injury was found. FIR (Ex.P-7) was registered on

14.11.2009 against the accused/appellant for the offence punishable under Sections 498A & 324 of IPC, however, after the death of deceased, the

offence was converted to the one under Section 302 of IPC. Inquest over the body of was prepared vide Ex.P-17 on 31.12.2009. Postmortem over

the body of deceased was conducted by Dr. Anil Kumar Kushwaha (PW-6) vide Ex.P-18 and he opined that the cause of death was syncope due to

injury to intestines and duration of death was about 6 to 18 hours prior to the post-mortem examination. Further case of the prosecution is that the

deceased made oral dying declaration before PW-8 that it is her husband who stabbed her.

4. After completion of investigation, charge sheet against the accused/appellant was filed under Sections 302 & 498A of IPC and accordingly the

charges under the aforesaid sections were framed against them by the trial Court. The prosecution in order to bring home the charges levelled against

the accused/appellant examined 13 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured

his guilt and pleaded innocence & false implication.

5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted &

sentenced the accused/appellants in the manner as described above.

6. Counsel for the appellant submits that the incident occurred on 13.11.2009 and the deceased died on 31.12.2009 i.e. after about 49 days of the

incident; MLC report of deceased speaks that the injuries sustained by her were simple in nature. Thus, considering the fact that injuries sustained by

the deceased were simple in nature and she had survived for about 1½ months, it is apparent that the injuries caused by the appellant were not

inflicted with the sole intention to cause death of deceased and as such, only inference which could be drawn against the appellant is that while

causing such injuries, the appellant had knowledge that such injuries are likely to cause her death and being so, the offence would fall under Section

304 Part II of IPC and not under Section 302 of IPC. He further submits that the appellant is in custody for the last more than 5½ years and

therefore while converting his conviction under Section 304 Part-II of IPC, he be sentenced to the period already undergone.

7. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that the manner in which and the part of the body

where the deceased had been assaulted, the intention on the part of the appellant to cause her death is writ large. In these circumstances, the

conviction of the appellant under Section 302 IPC and the resultant sentence is just and proper and no interference therewith is warranted.

8. We have heard learned counsel for the parties and perused the record of trial court including the impugned judgment.

9. Saroj (PW-1), landlady of accused & deceased, did not support the prosecution case and turned hostile. Khirobai (PW-2) has also not supported the

prosecution case and as such declared hostile. Dr. S. Lakda (PW-3) did the MLC of the deceased and noticed the injuries as mentioned above.

According to PW-3, the injuries were simple in nature, the same were caused within 2-3 hours duration by sharp-cut edge & pointed weapon and it

will heal within 12 days if no complication would arise. A.R. Sahu (PW-4) is the police person who assisted in the initial investigation. C.S. Jaiswal

(PW-5) is the investigating officer who has duly supported the prosecution case. Dr. Anil Kumar Kushwaha (PW-6) is the person who conducted

post-mortem on the body of deceased and opined that cause of death was syncope due to injuries to intestines. Devi Prasad Khunte (PW-7) is the witness of inquest (Ex.P-17).

10. Smt. Bhagwat Bai (PW-8) is the mother of deceased before whom oral dying declaration is said to have been made by the deceased. According to her, on coming to know that her daughter was stabbed by accused/appellant and she had been hospitalized, she rushed to the hospital where her daughter informed her that her husband stabbed in her stomach by a vegetable cutting knife.

11. Dr. Sunil Ratre (PW-9) is the doctor who did x-ray examination of the deceased vide Ex.P-19. Vijay Kashyap (PW-10) & Mahesh Jogi (PW-11) are the witnesses of inquest (Ex.P-17). Naduram Sarthi (PW-12) is the Revenue Inspector who prepared the spot map (Ex.P-20). Dr. Anil Kumar Tirkey (PW-13) is the doctor who treated the deceased at District Hospital, Raigarh. He has admitted that he never found the need to refer the deceased to any other hospital for treatment.

12. Close scrutiny of the evidence on record makes it clear that it is the accused/appellant who killed the deceased by causing stab injuries on the vital part of her body i.e. stomach, resulting in her death. Though the eyewitness of the incident namely Saroj (PW-1) has not supported the prosecution story and turned hostile, but the dying declaration of the deceased in the form of FIR is available on record. A perusal of FIR (Ex.P-7) shows that

deceased Smt. Anusuiya Bai has mentioned that in the wake of food related matters the accused/appellant used to harass her and for that on

13.11.2009 he inflicted knife blows on her abdomen. This FIR was registered on the basis of dehati nalishi (Ex.P-9) recorded on 13.11.2009 at the

instance of deceased and she only succumbed to her injuries as late as on 31.12.2009. Dr. Anil Kumar Tirkey (PW-13) who treated the deceased in

District Hospital, Raigarh, has admitted that he never found the need to refer the deceased to any other hospital for treatment. This goes to show that

she must have been fully conscious at the time of making dehati nalishi (Ex.P-9). Even, the defence has not been able to elicit anything in the

statement of treating doctor or autopsy surgeon that the deceased remained unconscious till her death and as such she was not in a position to lodge

dehati nalishi (Ex.P-9). Version of deceased in Ex.P-9 is supported by oral dying declaration made by her before Smt. Bhagwat Bai (PW-8), who has stated in categorical terms that on reaching the hospital when she enquired from her daughter (deceased) as to what had happened, the deceased informed her that her husband (accused) stabbed on her abdomen by a vegetable cutting knife. Thus, we see no reason to disbelieve the evidence adduced by the prosecution regarding the dying declaration of deceased contained in FIR (Ex.P-7) registered on the basis dehati nalishi (Ex.P-9) recorded at the instance of deceased. Hence, considering the overall evidence on record, we are of the opinion that the prosecution has been able to successfully prove the complicity of accused/appellant in the crime in question.

13. Now the next question which arises for consideration of this Court is whether the act of the appellant makes him liable to be convicted under Section 302 of IPC or for any other offence?

14. Undoubtedly, on the fateful day there was a quarrel between the couple as the accused had not brought the food articles to the house and during the course of that quarrel, the accused got enraged and stabbed the deceased thrice on her abdomen with a vegetable cutting knife. Thus, it is apparent that there was a sudden quarrel and that the fight was not premeditated to cause death of deceased. However, looking to the weapon used for causing the injuries i.e. knife, and the part of body of deceased where injuries were caused i.e. abdomen, it can safely be held that the death was caused by the acts of accused/appellant done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the 1st part of Section 304 of IPC and not under Section 302 of IPC.

15. Accordingly, the appeal is partly allowed. While acquitting the appellant of the charge under Section 302 of IPC, he is convicted under Section 304 Part I of IPC and sentenced to undergo RI for 10 years. Sentence of fine is, however, maintained along with its default clause. Since accused/appellant is already in jail, no further direction regarding his surrender etc. is needed.