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HIGH COURT OF CHHATTISGARH : BILASPUR

**DIVISION BENCH: HON'BLE SHRI T.P.SHARMA AND
HON'BLE SHRI R.L.JHANWAR, JJ.**

Criminal Appeal No.548 of 2005

APPELLANT
(In Jail)

: Bharat Nishad, s/o Phoolsingh Nishad,
aged about 28 years, resident of village
Mudpar, Police State Arjuni, Distt.
Dhamtari (C.G.) Present address:
resident of village Giroud, Police Station
Magarlod, Dist. Dhamtari (C.G.)

VERSUS

RESPONDENT

: State of Chhattisgarh, Through Police
Station – Magarlod, Dist. Dhamtari
(C.G.)

**CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CRIMINAL
PROCEDURE CODE**

Appearance:

Shri Prakash Tiwari, counsel for the appellant.
Shri Arun Sao, G.A. for the State.

Per T.P.Sharma, J.

ORAL JUDGMENT
(Passed on 30/09/2010)

The challenge in this appeal is to the judgment of conviction and order of sentence dated 30.12.2004 passed in S.T.No.78/2004 by the Additional Sessions Judge, Dhamtari, Sessions Division Raipur whereby and whereunder after holding the appellant guilty for commission of culpable homicide amounting to murder of his wife Sevantin Bai, the Court below convicted the appellant under Section 302 of the I.P.C. and sentenced to imprisonment for life with fine of Rs.100/-.

2. The conviction is impugned on the ground that without iota of evidence, the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.



3. As per the case of prosecution, the appellant and his wife Sevantin Bai (since deceased) were present in their house on 22.01.2004 at 6.00 A.M. On account of some dispute, the appellant assaulted his wife over her head with a small club, due to which, she fell down and the room was bolted from inside. P.W.2 Chamruram entered the room after jumping the wall and opened the door. The appellant was present inside the room and was weeping. P.W.2 immediately took Sevantin Bai to Magarlod Primary Health Center where P.W.7 Dr.K.K.Som examined the injured vide Ex.P.7(A) and found lacerated wound over temporal region on left ear and left cheek of 4 x 2 x 2 cm., 3 x 2 x 2 cm., 2 x 1 x 1 cm. and 1 x 1 x 1 cm. Bleeding from injured area and both nostrils and mouth and thereafter she was referred to Government Hospita, Dhamtari where ultimately Sevantin Bai succumbed to the injuries caused by the appellant. Thereafter, F.I.R. was lodged by P.W.1 Ramlal vide Ex.P.1 at police station Magarlod. After summoning the witnesses vide Ex.P.10, inquest over the dead body was prepared vide Ex.P.11. Merg intimations were recorded vide Ex.P.9 and P.14. Dead body was sent for autopsy vide Ex.P.12 and autopsy was conducted by Dr. R.K.Tripathi P.W.7 vide Ex.P.7 and found the following injuries:

1. Left ear was cut in two pieces.
2. Lacerated injury over left side of cheek of 2" x 1/2" x 1/4."
3. Lacerated injury near left eye of 2" x 1/2" x 1/4"
4. Lacerated wound of left cheek of 1 1/4" x 1/4" x 1/3".
5. Muscles of temporal region were lacerated. Fracture of temporal bone was found cut.

Mode of death was shock.

Blood stained soil and plain soil were recovered from the spot vide Ex.P.3. Spot map was prepared vide Ex.P.4. One small club and a small stick were recovered vide Ex.P.2. Sealed cloths of the deceased was seized vide Ex.P.13.

4. Statements of witnesses under Section 161 of the Cr.P.C. were recorded. After completion of investigation, charge sheet was fined before J.M.F.C. Dhamtari, who in turn committed the case to the Court of Sessions Judge, Raipur. The learned Additional Sessions Judge received the case on transfer for trial.

5. In order to prove the guilt of the appellant, the prosecution examined as many as 11 witnesses. The accused was examined under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded his innocence and false implication.

6. After affording an opportunity to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as aforesaid in paragraph 1 of this judgment.

7. Shri Prakash Tiwari, learned counsel for the appellant and Shri Arun Sao, learned G.A. for the State are heard at length. We have perused the records of trial Court and the impugned judgment.

8. Learned counsel for the appellant vehemently argued that in the present case in the light of evidence of P.W.2 Chamruram, P.W.3 Heminbai P.W.4 Ramprasad, P.W.5 Niranjana and P.W.1 Ramlal especially the evidence of P.W.2 Chamruram (brother-in-law of the appellant) and P.W.3 Heminbai that the appellant assaulted his wife inside the room which was bolted from inside, P.W.2 Chamruram entered the room by jumping the wall and opened the door and saw the injured Sevanti Bai and appellant inside the room, he is not disputing the fact that appellant caused injuries to his wife. Counsel further argued that evidence adduced on behalf of the appellant that prosecution clearly reveals that he has not caused injury with intent to cause death of his wife but he has caused injury to his wife on sudden quarrel with her.

9. On the other hand, learned counsel for the State opposed the appeal and submitted that the evidence of P.W.2 Chamruram and P.W.3 Heminbai is sufficient for drawing an inference that the appellant was the person who caused the injuries to his wife resulting into her death. He further submitted that after appreciating the evidence available on record, the Court below has rightly convicted and sentenced the appellant.

10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution. In the present case, homicidal death of deceased – Sevanti Bai on account of fatal injuries has not been substantially disputed on behalf of the appellant, but on the other hand also established by the

evidence of P.W.6 Dr. R.K.Tripathi P.W.6 and autopsy report Ex.P.7 and death was homicidal in nature.

11. As regards complicity of the appellant in crime in question, as per evidence of P.W.2 Chamruram and P.W.3 Heminbai, they heard the noise of assault by the accused from the inside room of appellant. They tried to open the door but as the same was bolted from inside, P.W.2 Chamruram jumped the wall and entered the room where he saw Sevantin Bai in an injured condition and the appellant who is also present inside the room. This much of evidence is sufficient for drawing an inference that only the appellant assaulted his wife and nobody caused her death.

12. As regards the question of motive, in case of direct evidence motive loses its importance; even otherwise, motive only aids in criminality and it can be inferred from the use of weapon, part on the body affected and other similar circumstances. In the present case, as per evidence of P.W.2 Chamruram the appellant was present inside the room and he was also weeping. As per evidence P.W.2 Chamruram and P.W.3 Heminbai, there was no previous enmity between the spouses except the sudden quarrel. They have admitted the injured in Magarlod Primary Health Center and thereafter took the injured to Dhamtari Hospital and at that time also appellant had accompanied them upto Hospital. This shows that he has not caused any injury with intent to cause the death of his wife but the injuries found over the dead body were fatal injuries.

13. Considering the aforesaid evidence, the act of the appellant does not travel beyond the scope of Section 304 Part I of the I.P.C.

14. While convicting the appellant, the learned Additional Sessions Judge has not considered the aforesaid aspect of evidence and thereby committed illegality.

15. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 302 of the I.P.C. is altered to Section 304 Part 1 of the I.P.C. and sentenced him to 10 year R.I.

**Sd/-
T.P. Sharma
Judge**

**Sd/-
R.L. Jhanwar
Judge**