

SUPREME COURT OF INDIA**Bench: Justices B.R. Gavai and Sandeep Mehta****Date of Decision: 22nd April 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2024

(Arising out of SLP(Criminal) No(s). of 2024)

(Diary No. 24868/2023)

KARIMAN ...APPELLANT(S)**VERSUS****STATE OF CHHATISGARH ...RESPONDENT(S)****Legislation:**

Section 302, 304 Part II of the Indian Penal Code (IPC), 1860

Section 313 of the Code of Criminal Procedure, 1973

Subject:

Appeal against High Court judgment affirming conviction under Section 302 IPC for the murder of Dasmot Bai, modified to conviction under Section 304 Part II IPC by Supreme Court.

Headnotes:

Condonation of Delay & Grant of Leave – Special leave petition delayed by 2461 days; delay condoned due to lack of legal knowledge and assistance while in incarceration; leave granted to appeal High Court's judgment [Paras 1-4].

Challenged Judgment – High Court upheld trial court's life sentence for murder under Section 302 IPC dated back to 2001; Supreme Court examined potential reduction to Section 304 IPC [Paras 5, 8, 9].

Factual Background – Accused allegedly killed Dasmot Bai by striking her with stones during a sudden quarrel; reliance on medical evidence and eyewitness accounts to challenge the degree of criminal liability [Paras 6-7, 10-16].

Medical Evidence – Single fatal injury not conclusively sufficient to cause death in the ordinary course of nature, challenging the intent required for Section 302 IPC [Paras 17-20].

Murder Charge Evaluation – Section 302 IPC – Appeal against High Court's affirmation of trial court conviction under Section 302 IPC for the death of Dasmot Bai. Reevaluation based on medical testimony and eyewitness accounts suggesting a sudden quarrel and a single fatal injury without premeditation. [Paras 5-18]

Modification of Conviction – Substantial reevaluation of the intent and circumstances of the injury leading to death, resulting in the reduction of the charge from Section 302 IPC (Murder) to Section 304 Part II IPC (Culpable Homicide not amounting to Murder). Conviction altered due to lack of

evidence for intention to cause death, aligned with the infliction of a single, impulsive injury during a quarrel. [Paras 19-22]

Decision – Modification of Conviction – Supreme Court modifies the conviction from Section 302 IPC (murder) to Section 304 Part II IPC (culpable homicide not amounting to murder). Sentence reduced to seven years of rigorous imprisonment, acknowledging the 17 years already served by the appellant. [Paras 21-23]

Referred Cases: None .

J U D G M E N T Mehta, J.

1. This special leave petition filed on behalf of the accused petitioner is delayed by 2461 days.
2. It is specifically mentioned in the application seeking condonation of delay that the accused petitioner was prevented from filing the special leave petition in time because he was not aware regarding the legal procedure and no guidance was provided to him in jail. While being incarcerated in jail, the petitioner came to know about legal aid being provided by the Supreme Court Legal Services Committee and accordingly, a request was made on behalf of the petitioner to the Supreme Court Legal Services Committee and consequently, a free legal aid counsel was appointed by the Committee to defend the petitioner and to file the special leave petition on his behalf.
3. The delay in filing of the special leave petition is thus, condoned.
4. Leave granted.
5. The instant appeal is directed against the judgment and order dated 27th June, 2016 passed by the High Court of Chhattisgarh, Bilaspur in Criminal Appeal No. 712 of 2003 whereby the appeal preferred by the appellant was rejected and judgment and order dated 30th October, 2001 rendered by the Court of Third Additional Sessions Judge, Ambikapur, Sarguja(C.G.), in Special Sessions Case No. 359/99, convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860(hereinafter

- being referred to as the 'IPC') and sentencing him to imprisonment for life, was affirmed.
6. As per the prosecution case, deceased Dasmot Bai was living with the appellant as his second wife. It is alleged that on 11th September, 1999 at about 2.00 p.m., the appellant assaulted Dasmot Bai by fists and stones and thereby, caused her death. Budhram(PW-2), the uncle of the deceased Dasmot Bai lodged a report of the incident at the Kusmi Police Station on the very same day, at about 5.20 p.m., on the basis of which an FIR(Exhibit P-6) being Crime No. 61/99 came to be registered against the appellant for the offence punishable under Section 302 IPC. The usual process of investigation was started. Inquest was conducted on the dead body and thereafter, the same was sent for post mortem. Dr. R.K. Tripathi(PW-11) conducted autopsy upon the dead body of Dasmot Bai and issued the post mortem report(Exhibit P-24) taking note of a bruise admeasuring 10 cm X 8 cm on the posterio lateral aspect of left side of the body over 5th to 10th ribs area. The 8th rib was found fractured underneath this injury which led to laceration of spleen causing hypovolemic shock and proved fatal.
 7. Charge sheet was filed against the appellant after conclusion of investigation and the case upon committal was sent to the Court of Third Additional Sessions Judge, Ambikapur, Sarguja on transfer. The accused was charged for the offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial. Eleven witnesses were examined and relevant documents were exhibited by the prosecution to bring home the guilt of the accused. The statement of the accused appellant was recorded under Section 313 of Code of Criminal Procedure, 1973 wherein he denied the circumstances as appearing against him in the prosecution case and claimed to be innocent. However, no evidence was led in defence.
 8. As stated above, the trial Court convicted and sentenced the appellant as above and the appeal preferred against conviction was rejected by the High

Court vide judgment dated 27th June, 2016, which is assailed in the present appeal.

9. Vide order dated 21st July, 2023 this Court issued limited notice to examine whether the conviction of the accused under Section 302 IPC could be converted either to Part I or Part II of Section 304 IPC.
10. Shri Vijay Hansaria, learned senior counsel representing the appellant contended that even if the allegations set out in the deposition of the prosecution eye-witnesses[Tara Bai(PW-4), Thouli Bai(PW-5) and Lalo Bai(PW-6)] are taken into account, apparently some sudden dispute arose between the accused and Dasmot Bai(deceased) whereafter the accused chased the lady and on catching up, he hit her with fists and slaps. Thereafter, the accused picked up a stone lying nearby and gave a single blow to the deceased. Learned senior counsel urged that if the opinion of Dr. R.K. Tripathi, Medical Jurist(PW-11) is seen, evidently the offence under Section 302 IPC is not made out against the appellant. He urged that as per Dr. R.K. Tripathi, Medical Jurist(PW-11), only one injury being a bruise admeasuring 10 cm X 8 cm was seen on the postero lateral aspect of left side of the body under which the 8th rib was broken causing laceration of the spleen. Shri Hansaria submitted that the Medical Jurist(PW-11) did not state in his evidence that the injury caused to Dasmot Bai(deceased) was sufficient in the ordinary course of nature to cause death. He further urged that it is a case of a single injury being inflicted by the accused to the deceased during the course of a sudden quarrel without acting in a cruel manner and thus the charge, if any, against the accused cannot travel beyond Section 304 Part II of IPC.
11. He submitted that the appellant has already remained in custody for a period of almost 17 years and hence, while toning down the offence, suitable reduction in the sentence may be directed.

12. *Per contra*, Ms. Archana Pathak Dave, learned AAG appearing on behalf of the State, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant. She urged that as per the testimony of the eyewitnesses(PW-4, PW-5 and PW-6), the appellant chased down Dasmot Bai(deceased) without any reason and after she had fallen down, the appellant hit her with a stone measuring about one foot and thus, both knowledge as well as intention to cause death of the victim can be attributed to the accused-appellant. She thus, implored the Court to dismiss the appeal.

13. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have gone through the impugned judgments and have minutely analysed the evidence available on record.

14. Admittedly, the appellant and the deceased were living together as husband and wife by virtue of prevailing customary practices. From a perusal of the statements of the eyewitnesses(PW-4, PW-5 and PW-6), it is evident that the accused appellant was seen chasing Dasmot Bai(deceased), said to be his second wife. However, the genesis behind the incident was not divulged by any of the prosecution witnesses. The first information report(Exhibit P-6) was lodged by Budhram(PW-2), the uncle of deceased Dasmot Bai. He did not utter a single word in his evidence that his niece who was living with the appellant was ever treated with cruelty by the accused. It was admitted by the witness in cross examination that both the accused as well as Dasmot Bai(deceased) used to consume liquor. It is thus, apparent that the appellant had no motive to hurt the deceased and some sudden quarrel had flared up between the accused and Dasmot Bai(deceased) which led to the incident.

15. As per the admitted case set out in the evidence of the eyewitnesses(PW-4, PW-5 and PW-6), when the accused was chasing Dasmot Bai(deceased), he was unarmed. It is only after Dasmot

Bai(deceased) had fallen down, that the accused picked up a stone lying nearby and gave a blow thereof to the deceased.

16. Lalo Bai(PW-6) admitted in her cross examination that Dasmel Bai(deceased) fell on the road with boulders and sustained injuries due to the fall on the ground.

17. Dr. R.K. Tripathi, Medical Jurist(PW-11) proved the post mortem report(Exhibit P-24) taking note of the presence of one bruise admeasuring 10 cm X 8 cm on the left side of the body of the deceased resulting into the fracture of one rib. The said fractured rib caused laceration of the spleen. The cause of death was opined as shock due to internal bleeding. Thus, by no stretch of imagination, can be it accepted that the accused had the intention to cause injury/injuries to the victim with the intention or knowledge that the same would result into her death.

18. The act of the accused is not covered by any of the four clauses contained in Section 300 IPC which are reproduced hereinbelow for the sake of ready reference:-

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or— *2ndly.*—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or— *4thly.*—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

19. The accused can at best be attributed with the knowledge that the injury of the nature which he inflicted upon Dasmel Bai(deceased) was likely to cause death but without any intention to cause death or to cause such bodily injury as was likely to cause death. Thus, the act of the accused is

covered under Part II of Section 304 IPC which is extracted hereinbelow for ready reference:-

“304. Punishment for culpable homicide not amounting to murder.—

.....or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

(emphasis supplied)

20. It may also be noted that Dr. R.K. Tripathi, Medical Jurist(PW-11) did not express opinion that the single injury caused to the deceased was sufficient to cause death in the ordinary course of nature.
21. Hence, we are of the opinion that the conviction of the accused as recorded by the trial Court and affirmed by the High Court for offence under Section 302 IPC is unsustainable in facts as well as in law.
22. Thus, the conviction of appellant herein for the offence punishable under Section 302 IPC is modified and altered to that under Part II of Section 304 IPC. The appellant is directed to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 304, Part II of IPC.
23. As the appellant has already undergone sentence for about 17 years, we do not propose to impose any fine upon him. The appellant is in custody and shall be released forthwith, if his detention is not required in any other case.
24. The appeal is partly allowed in these terms.
25. Pending application(s), if any, shall stand disposed of.
26. We express our appreciation for able assistance provided by Shri Vijay Hansaria, Sr. Advocate acting as a free legal aid counsel on behalf of the appellant.

*Disclaimer: Always compare with the original copy of judgment from the official website.