

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

**DIVISION BENCH: HON'BLE SHRI JUSTICE ALOK VERMA &
HON'BLE SHRI VED PRAKASH SHARMA, JJ**

CRIMINAL APPEAL NO.423/2014

Unkar S/o Buda

Vs.

State of Madhya Pradesh

Shri Ramlal Patidar, learned counsel for the appellant.

Shri C.S.Ujjainia, learned counsel for respondent/State.

J U D G M E N T

(Passed on this 24th day of April, 2017)

PER: ALOK VERMA,J.

Aggrieved by the judgment of conviction and sentence passed in S.T.No.382/2013 by learned Additional Sessions Judge, Kukshi, district Dhar, dated 18.01.2014, this criminal appeal is filed challenging his conviction under Section 302 of IPC and sentence of life imprisonment and fine of Rs.2,000/- with default stipulation.

2. The prosecution story in brief is that the deceased was wife of Bhuvan PW-4. Bhuvan was earlier married to one Tarlibai, who eloped with some another person about 10-15 years prior to the incident which took place on 08.09.2013. The deceased was residing with Bhuvan as his wife. The present appellant is son of the deceased Ramtubai from her first

husband. The complainant Shardabai is daughter of first wife of Bhuvan, PW-4 and Tarlibai. She is married but on the date of incident, she came to her parents' house. As per the facts stated in the FIR, the incident took place on 08.09.2013 at about 6 P.M. The appellant was fighting with the deceased Ramtubai. He was unhappy that she left him alone with his father and contracted second marriage with Bhuvan. On this, they fought and then it is alleged that he gave various blows by fists and kicks and also gave a blow by stone on back of head of the deceased. According to the post-mortem, the cause of death was due to rupture of spleen, due to which haemorrhage took place and abdominal cavity was found filled with blood. Aggrieved by this judgment and conviction this criminal appeal is filed.

3. Learned counsel for the State opposes this appeal on the ground that all the witnesses supported the prosecution story and, therefore, no interference is called for.

4. Sharda Bai PW-1 is the complainant and stated that at about 6 P.M. the present appellant came to their house and he was fighting with the deceased Ramtubai. He gave her blows by fists and kicks and one blow by stone. Sunil PW-2 is younger brother of the complainant. He also stated the same story. Similarly, PW-3 Sunita is younger sister of the

complainant, who also narrated the same story. Bhuvan PW-4 is father of the complainant and husband of the deceased. He was not present at the time of incident. However, he stated in his statement that after the incident took place he was informed about the incident. Keriya PW-5 is also brother of the complainant. He also stated the same story and supported the prosecution story. Thansingh PW-6 is brother of Bhuvan, the husband of the deceased.

5. Dr.H.S.Muvel PW-7 performed post-mortem on the body of the deceased and found four injuries (i) abrasions multiple on right maxillary and cheek (right side of the face) (ii) contusions multiple on front side of chest over the liver (iii) lacerated wound $\frac{1}{2} \times \frac{1}{4}$ inches bone deep on back of head (iv) contusions multiple left side of abdomen over spleen area.

6. Suresh Gagrani PW-8 is the investigating officer. In this case the report was made on 08.09.2013, at about 9 P.M. three hours after the incident, while the place of incident is 15 Km from the police station. The statements were also recorded immediately after the investigation. No discrepancy is pointed out indicating any ground on which the prosecution witnesses may be disbelieved.

7. Learned counsel for the appellant submits that it is a case of homicide not amounting to murder and as such punishable under Section

304-II of IPC. According to him, the marriage of the deceased took place about 10-15 years prior to the incident. It cannot be said that there was an immediate provocation for the appellant to kill the deceased. It is also admitted by the prosecution witnesses that the appellant was under the influence of liquor. He was not happy because he had to live alone, as his mother left him and married again to Bhuvan, PW-4. He was in fit of anger and, therefore gave some blows by kicks and fists and also hit her with stone. The counsel pointed out that the learned trial Court considered this aspect of the matter and opined that as the injury on the back of head of the deceased was caused by stone which was a sharp object it was not a case of homicide not amounting to murder as his case was not covered in all the exceptions given under Section 300 of IPC.

8. However, for coming to the conclusion whether it is a case of murder or homicide not amounting to murder, it is to be seen whether the appellant had any intension to kill the deceased and whether the injuries caused to the deceased were serious enough to cause death in ordinary course of nature. It is also to be seen whether he had knowledge that by causing such injuries there is likelihood of causing death of the deceased.

9. In the present case, the trial Court erred in holding that the appellant caused injury by sharp object i.e. stone on back of head of the

deceased. The injury on back of head of the deceased was not the cause of death, it was only bone deep and skull bone was not found fractured by the injuries and, therefore, it was not possible to cause death by such injury. The trial Court failed to notice that the death was caused due to rupture of spleen, the abdominal cavity was filled with blood and due to such haemorrhage, the deceased suffered death. It is nowhere stated by the prosecution witnesses that he gave blows on abdomen and chest of the deceased with such force that it could be inferred that he wanted to rupture the spleen. On the contrary, the prosecution witnesses admitted that the deceased was in the habit of consuming liquor. There might be a possibility that her spleen was enlarged and, therefore, when the appellant gave her blows by fists and kicks, her spleen ruptured and she suffered death.

10. In this view of the mater, in our considered view he was not intending to kill her firstly, and secondly, he had no knowledge that he was causing such injuries, which in ordinary course of nature would result in death of the deceased. It may also be noticed that he was not armed with any lethal weapon like axe, iron rod, spade which are normally available in rural homes and taking all these facts into consideration, we find that the case falls under the provisions of Section 304-II of IPC.

Accordingly, this appeal is partly allowed. His conviction and sentence under Section 302 of IPC are hereby set aside. He is convicted under Section 304-II of IPC and sentenced to 7 years R.I. and fine of Rs.2,000/-. He is further directed to undergo R.I. for 3 months in case of default in payment of fine. Directions issued by the trial court under Section 428 IPC are confirmed. Seized property be destroyed.

With the aforesaid modification in conviction and sentence of the appellant, this appeal stands disposed of.

C.C.as per rules.

(ALOK VERMA)
JUDGE

(VED PRAKASH SHARMA)
JUDGE

RJ