IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL
&
JUSTICE VIVEK JAIN

CRIMINAL APPEAL No. 973 OF 2011

BETWEEN :-

BHURU S/O BIHARI LAL KOURKU AGED 22 YEARS, RESIDENT OF VILLAGE JAAMLI DAMAANI, POLICE STATION HANDIYA, DISTRICT HARDA (M.P.)

……...APPELLANT

(BY SHRI MADAN SINGH – ADVOCATE)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION HANDIYA, DISTRICT HARDA, M.P.

…..RESPONDENT

(BY SHRI A.N. GUPTA - GOVERNMENT ADVOCATE)

Reserved on : 06/02/2024
Pronounced on : 09/02/2024

This Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement this day, ***Justice Sujoy Paul*** *pronounced the following :*

J U D G M E N T

This appeal filed under Section 374(2) of Criminal Procedure Code is directed against the judgment dated 07.03.2011 passed in

Session Trial No.22/2011 by learned Sessions Judge Harda, Distt. Harda whereby the appellant has been convicted and sentenced.

2. The appellant faced trial for murdering his wife Laxmi Bai on 13.12.2010. The accusation against the appellant was that his marriage was solemnized with deceased Laxmi Bai an year before the date of incident i.e.13.12.2010. Both were labourers. A quarrel had taken place between the husband and wife because appellant-husband had doubt about the conduct of the wife. Because of said quarrel, the wife went back to her maternal house at village Mirzapur. It was the case of the prosecution that on 13.12.2010 at about 2:00 pm he reached his in-laws' house where his wife Laxmi Bai was residing. The appellant was allegedly carrying *Palwa Katne Ka Daranta*. The appellant inquired from sister-in-law of his wife about his wife. She informed that Laxmi Bai is inside the house. The appellant entered the said room where Laxmi Bai was available and caused injuries by means of *Daranta* and chopped her left hand from the elbow and the left leg. Phoolwati Bai (PW-8) initially caught hold of appellant but he could fled away from the place of incident. Phoolwati (PW-8) took help of her mother and brother and took Laxmi Bai to Harda. On the basis of report of Laxmi Bai Crime No. 528/2010 under Section 307, 506 IPC was registered and investigation commenced. During the course of treatment, Laxmi Bai succumbed to injuries on 13.12.2010. The postmortem of Laxmi Bai was carried out and appellant was arrested. The weapon used in commission of crime and his clothes were recovered. The seized material was sent to Forensic Science Laboratory (FSL) Bhopal.

3. After completion of investigation, chalan was filed in the Court of Judicial Magistrate which was committed to the Sessions Court. In sessions case No. 22/2011, proceedings commenced. The appellant abjured the guilt.

4. The Court below framed three questions for its determination, recorded statements of 10 prosecution witnesses and examined 19 documents from Ex.P-1 to Ex.P-19.

5. After hearing the parties, the judgment dated 07.03.2011 was passed whereby appellant was held guilty for committing offence under Section 302 of IPC and directed to undergo Life Imprisonment with fine of Rs. 1000/- and under Section 450 of IPC sentenced to undergo R.I. for two years with fine of Rs.500/- with default stipulations. This judgment is subject matter of challenge in this appeal.

Contention of appellant :

6. Shri Madan Singh, learned counsel for the appellant faintly submitted that the prosecution could not establish the presence of appellant at Mirzapur in the house of parents of Laxmi Bai. For this purpose, he placed reliance on the statement of Sushila Bai (PW-3). An effort was made to show that when incident had taken place, Sushila Bai (PW-3) was taking bath. Thus, she is a hearsay witness who narrated the incident on the basis of information received from her daughter-in-law Phoolwati Bai.

7. The main argument of learned counsel for the appellant is that the appellant had no intention to cause death of his wife. He caused

injuries in sudden impulse. Both the injuries were caused on non-vital parts of the body. Thus, in the light of following judgments the conviction may be altered to one under Section 304 Part-I / II of IPC :

(i) **Subhash Vs. State of Uttar Pradesh** reported in **(2022) 6 SCC 592**,

(ii)**Prakash Kumar Mewari Vs. The State of M.P.** (Criminal Appeal No. 831 of 1996) dated 14.11.2022.

(iii) **Sunita Bai Behni Vs. The State of M.P..** (Criminal Appeal No. 505 of 2016) dated 21.08.2023.

(iv) **Shahajan Ali and Ors. Vs. State of Maharashtra** reported in **(2017) 13 SCC 481**.

(v) **Laljibhai Maganbhai Vasava Vs. State of Gujarat** reported in **(2018) AIISCR(Crl)509**.

(vi) **Alam Khan and Anr. Vs. State of M.P.** reported in **2005(4) MPLJ 292**.

(vii) **Ankush Shivaji Gaikwad Vs. State of Maharashtra** reported in **AIR 2013 SC 2454**.

Contention of State Counsel :-

8. Shri A.N. Gupta, learned G.A. on the other side supported the impugned judgment and stated that the FIR was lodged on 13.12.2010 by deceased Laxmi Bai itself. The FIR should therefore be treated as dying declaration. The prosecution witnesses have deposed in the line of FIR was recorded. There exists no material contradiction in their statements. The Court below has not committed any error in

appreciating the evidence and imposing the punishment. Thus, no interference is required to be made.

9. Learned counsel for the parties confined their arguments to the extent indicated above.

10. We have heard learned counsel for the parties at length and perused the record.

Findings :-

11. The incident had place on 13.12.2010. The FIR was lodged by Laxmi Bai on the same day at around 2:00 pm. The lodging of instant FIR by Laxmi Bai gives credence to the prosecution story. More so, when she was subjected to medical examination on 13.12.2010 itself in the District Hospital, Harda by Dr. Pramod Chandra (PW-4). PW-4 found the following injuries on the body of Laxmi Bai:

01. कटा हुआ घाव 10 x 10 से0मी0 हड्डी की गहराई तक बाये हाथ के ऊपर हिस्से में था, बाया हाथ पूरा शरीर से अलग था। नसे, मसल्स एवं बोन दिखाई दे रही थी।

02. कटा हुआ घाव 18 x 10 से0मी0 जो मसल्स की गहराई तक बांये पैर के निचले हिस्से के बीच वाले भाग पर टीबिया बोन तक था।

03. कटा हुआ घाव 6 x 2 से0मी0 जो मसल्स की गहराई तक पैर के निचले वाले हिस्से के बीच भाग तक था।

04. कटा हुआ घाव 12 x 2 से0मी0 पैर के निचले वाले हिस्से में बीच के भाग में था जिसमें टीबिया फिबिया बोन के टुकड़े मौजूद थे।

12. Learned counsel for the appellant although faintly argued that the credibility of prosecution statements is doubtful regarding presence of appellant at the scene of crime and his culpability etc., on perusal of

evidence, we do not find any merit in the said contention. It is important to note here that star eye-witness to the incident is Phoolwati Bai (PW-8). As per her deposition, she was taking bath when she heard the cry of Laxmi Bai to save her. She instantaneously reached the room of Laxmi Bai where appellant was present and he assaulted her by means of *Daranta*. Her deposition is clear and explicit and no amount of cross-examination could cause any dent on her statement. Pertinently, this witness PW-8 is real sister of the appellant. In para-5 and 6 of the cross-examination, she candidly admitted that appellant is her real brother and if he would have been a good person, he would not have committed such crime.

13. Other prosecution witnesses played their roles like preparation of spot map, proving of recovery etc. The star witness of the prosecution is Phoolwati Bai (PW-8). Her statement is trustworthy and appellant's culpability can be determined on the basis of her statement.

14. The opinion given in the autopsy report is that cause of death is due to shock and hemorrhage arising out of multiple injuries on the body and death was homicidal in nature. Dr. Shailendra Singh Thakur (PW-5) and autopsy surgeon in clear terms stated about the nature of injuries. In this view of the matter, there is no scintilla of doubt that appellant and appellant alone has caused multiple injuries on his wife Laxmi Bai because of which she succumbed to the injuries on 13.12.2010.

15. The alternative argument and ancillary question is whether the conviction and sentence deserves to be altered as argued by learned

counsel for the appellant. It is already noticed that four injuries were found on the person of deceased. The appellant reached the scene of crime and there he caused aforesaid injuries on his wife.

16. Shri Madan Singh, learned counsel for the appellant placed reliance on the certain judgments. The judgment of **Subhash (supra)** cannot be pressed into service because in that case the accused was acquitted by giving him 'benefit of doubt'. In the instant case, we have already recorded our finding that incident had taken place and appellant has committed the crime. Thus, this judgment is not no assistance to the appellant.

17. The judgments passed by this Court in **Prakash Kumar Mewari (supra)** and **Sunita Bai Behni (supra)** are based on different factual matrix. In the said case, in a sudden quarrel the accused person poured kerosene and set the deceased ablaze. In the case of **Shahajan Ali (supra)**, in a sudden fight A1 attacked the deceased with a knife. The Apex Court opined that conviction is liable to be converted from Section 302 IPC to Section 304 Part-II of IPC with the aid of exception 4 to Section 300 IPC. In **Laljibhai Maganbhai Vasava (supra)** the conviction is altered in the same manner because injury was not caused on the vital part of the body. In **Ankush Shivaji Gaikwad (supra)** only one injury was caused and no further blow made after deceased fell down. In this backdrop, the Apex Court opined that it is not a case of murder. It is noteworthy that in catena of judgments the Apex Court and this Court considered the aspect whether causing bodily injury on

non-vital part can become basis for conviction under Section 302 of IPC.

18. The Apex Court in **(1976) 4 SCC 362 (Molu v. State of Haryana)** adopted the same course where 16 injuries by blunt objected were caused on non-vital parts of the body. The relevant portion reads as under:

> **"12.**....... Furthermore, the injuries are not on any vital parts of the body and even those which are on the scalp portion appear to be very superficial. There is nothing to show that the accused intended to cause the deliberate murder of the two deceased persons. There is no evidence to show that any of the accused ordered the killing of the deceased persons or incited or in any way expressed a desire to kill the deceased persons at the spot. In these circumstances we are satisfied that there is no legal evidence in this case that the accused intended to cause the murder of the deceased. The fact, however, remains that the accused have caused multiple injuries on both the deceased persons on various parts of their bodies and, therefore, they undoubtedly had the knowledge that the cumulative effect of the injuries would result in the death of the deceased."
>
> **(Emphasis Supplied)**

19. In **(1993) 3 SCC 32 (Subran v. State of Kerala)** the Apex Court took the similar view. The relevant portion reads thus:

> "13. .....since the injuries inflicted by him were not found to be sufficient in the ordinary course of nature to cause death of Suku, but looking to the weapon with which he was armed and the nature,

> number and seat of injuries inflicted by him though not on any vital part, he can certainly be attributed with the knowledge that with those injuries it was likely that death of Suku may be caused and, therefore, he can be clothed with the liability of causing culpable homicide not amounting to murder.”
>
> **(Emphasis Supplied)**

20. In **(1998) 1 SCC 526 (Kasam Abdulla Hafiz v. State of Maharashtra)** the Apex Court recorded as under:

> **“12. …….** From the evidence of Sanjay it is crystal clear that not only the accused gave the stabbing blow on the abdomen of the deceased but even tried to give a second blow which missed and it is at that point of time that Sanjay intervened and he was also ultimately injured. Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the Ist Part of Section 304 IPC. The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed. In that view of the matter we are of the considered opinion that the High Court has rightly convicted the appellant under Section 304 Part I IPC.”

21. Likewise, in case of **Sukumar Roy v. State of W.B.** reported in **(2006) 10 SCC 635** the Apex Court poignant held as under:

> **"10.** From the facts narrated above, it is evident that there is no dispute that the deceased Prafulla was assaulted by the appellant Sukumar Roy with a bhali (ballam) which pierced the abdomen of Prafulla as a result of which his intestine and omentum came out through the wound.
> **12.** From the above evidence it is evident that the deceased Prafulla died due to the wound in his abdomen which was 4 inches deep. In our opinion this shows the intention of the assailant to kill or to cause such bodily injury as is likely to cause death. There is no reason to disbelieve the evidence of the prosecution witnesses that it was the appellant Sukumar who caused the injury on Prafulla, the deceased. The prosecution evidence of the eyewitnesses is corroborated by the medical evidence."

22. The Division Bench of this Court in **2021 SCC OnLine MP 3393 (Himanshu Kuril v. State of M.P.)** converted the conviction to 304 Part-I IPC from Section 302 IPC where repeated stab injuries were caused on thigh by means of a knife. The following paras are important:

> **"38.** In view of the statements of Dr. Kumawat (PW-7), the injuries on the leg would not have resulted in death, if timely treatment was made available. Thus, it does not appear that provisions of Section 300(3rdly) of IPC would be applicable. <u>Further, all the injuries were caused on leg only</u> and Dr. P.M. Kumawat (PW-7) has stated that leg is not a vital part of the body. Thus, it cannot be stated that it was in the knowledge of the appellant that the injuries were so imminently dangerous that in all probability

death would have resulted. Hence, Section 300(4thly) of IPC would also not be applicable.

40. Learned counsel for the appellant has submitted that the intention of causing death was not there on the part of the appellant because he had deliberately caused injuries on the thigh, which is a non vital part. He has referred to the citation of *State of M.P.* v. *Gangabishan* reported in (2018) 9 SCC 574. In this judgment it was held that the death due to gun-shot injury on the thigh which was a non vital part, would result in conviction under Section 304 Part-I and not under Section 302 of IPC. He has referred to the statement of Dr. P.M. Kumawat (PW-7), in which he has stated that the leg is not a vital part of the body.

45. For the applicability of Section 300(2ndly) of IPC "*with the intention of causing such bodily injury as the offender knows to be likely to cause death*", the prosecution has to prove that there was subjective knowledge that death will be the likely consequence of the intended injury. The Hon'ble Apex Court in the case of *Anda* v. *State of Rajasthan* reported in AIR 1966 SC 148 has observed as under:

> "The 2ndly in Section 300 mentions one special circumstance which renders culpable homicide into murder. Putting aside the exceptions in Section 300 which reduce the offence of murder to culpable homicide not amounting to murder, culpable homicide is again murder if the offender does the act with the intention of causing such bodily injury which be knows to be likely to cause the death of the person to whom harm is caused. This knowledge must be in relation to the person harmed and the offence is minder even if the injury may not be

> generally fatal but is so only in his special case, provided the knowledge exists in relation to the particular person. If the element of knowledge be wanting the offence would not be murder but only culpable homicide not amounting to murder or even a lesser offence".
>
> **(Emphasis Supplied)**

23. The various Division Benches of this Court altered the conviction in the similar manner when injury was caused on the non-vital part of body. Reference may be made to : **2005 SCC OnLine MP 382 (Hariom Vs. State of M.P.)** and **2018 SCC OnLine MP 1700 (Shivprasad Panika Vs. State of M.P.).**

24. In this light of aforesaid legal journey and principles laid down, if evidence of instant case is considered, it will be clear that appellant had caused four injuries but no injury was caused on any vital part of the body. The Doctor who conducted the postmortem deposed that cause of death is shock, hemorrhage and excessive bleeding. If appellant had intended to cause death of deceased then he could have attacked her at the vital part of her body. As injuries were only on the hand and leg of the deceased and there being no injury on the vital part of the body, it cannot be said that appellant had any intention to cause the death of deceased.

25. Under these circumstances, the conviction, in our opinion, deserves to be altered to Section 304 Part-I of IPC. Resultanly, the impugned judgment dated 07.03.2021 passed in ST No. 22/2011 is **set aside** to the extent appellant was held guilty for committing offence

under Section 302 of IPC. The conviction of appellant is directed to be altered to one under Section 304 Part-I of IPC with modified sentence of 10 years. If appellant has already undergone said sentence and his presence in the custody is not required in any other offence, he be released forthwith.

26. The appeal is **partly allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE

(VIVEK JAIN)
JUDGE

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