

Budhu Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-20-1998

Reported in : I(1999)DMC196

Judge : Rajeev Gupta and ;Usha Shukla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304 and 304(I)

Appeal No. : Crl. Appeal No. 1236 of 1988

Appellant : Budhu

Respondent : State of M.P.

Advocate for Def. : Reejaz Mohd., G.A.

Advocate for Pet/Ap. : None

Judgement :

Rajeev Gupta, J.

1. Appellant Budhu has preferred this appeal against his conviction under Section 302 of the Indian Penal Code (for short the IPC), with sentence of imprisonment for life, vide judgment dated 30.9.1988, passed by Sessions Judge, Ambikapur in Sessions Trial No. 30/1988.

2. The factual matrix of the case, as disclosed in the charge-sheet, is that Mst. Kandi Bai (since deceased) was the wife of accused Budhu. On 1.5.1987, accused Budhu, along with his wife deceased Kandi Bai, had gone to their field for doing agricultural operations. In the evening, while coming back to their house, Kandi Bai, in a complaining tone, asked accused Budhu as to why he used to loiter late in the night. The accused felt offended and asked his wife Kandi Bai, as to whether she was suspecting his illicit relationship with someone. During the ensuing altercation, accused Budhu is said to have assaulted his wife Kandi Bai by means of 'bahanga' (a wooden stick). It appears that one or two blows unfortunately resulted in some internal damage, leading to her death. The First Information Report about the incident, was lodged by Nathia, brother of accused Budhu, in the noon of 2.5.1987, at P.S. Kamleshwarpur, District Surguja giving rise to the registration of a case at Crime No. 11/1987, under Section 302, of the IPC. The Autopsy Surgeon found as many as 12 external injuries on the body of deceased Kandi Bai, and in his opinion the cause of her death was coma as a result of cerebral haemorrhage due to trauma on temporal region. After completing the investigation, police Kamleshwarpur charge-sheeted accused Budhu for the commission of the offence under Section 302 of the IPC.

3. Accused Budhu abjured his guilt and pleaded false implication to the charge, framed by the Trial Court under Section 302 of the IPC.

4. At the trial, prosecution examined as many as 16 witnesses in support of its case, whereas the accused did not examine any witness in his defence.

5. On a close scrutiny of the ocular and medical evidence on record, the Trial Court held it proved that deceased Kandi Bai had sustained multiple external injuries on 1.5.1987, and had died a homicidal death. Though there was no eye-witness account available in the case for connecting the accused with the commission of murder of his wife Kandi Bai, but relying upon the evidence led by the prosecution for establishing the incriminating circumstances against the accused, the Trial Court held him guilty of commission of murder of his wife Kandi Bai and therefore, convicted and sentenced him as mentioned above.

6. Appellant Budhu had filed this appeal from jail. As he was unrepresented, Shri Sharad Verma, Advocate, was appointed to represent him in this appeal. No one had appeared when this appeal was taken up for hearing. As this is an old appeal, of the year 1988, and appellant Budhu has all along been in custody for the last more than 10 years, we did not deem it proper to adjourn the hearing of the appeal and the same was heard with the assistance of the learned State Counsel.

7. The homicidal nature of death of deceased Kandi Bai was neither disputed by the defence, at the trial, nor we find any scope for challenge in that behalf. The overwhelming evidence -- ocular and medical, on record establish the above fact beyond any shadow of doubt. We, therefore, uphold the Trial Court's finding in that behalf.

8. True, no one had seen appellant Budhu causing injuries on his wife Kandi Bai, resulting in her death, and the appellant's conviction is founded on the circumstantial evidence of the deceased having been last seen alive in the company of the appellant; the appellant brought the body of the deceased from the jungle; the appellant had given an incorrect explanation about the injuries and the death of his wife Kandi Bai to his father-in-law Pahru (PW 2), and that the appellant had absconded after the commission of the offence and could be apprehended only on 6.5.1987. We have gone through the entire evidence on record in general, and the evidence of Sudhu (PW 1), Pahru (PW 2), Bifaiya (PW 3), Budhna (PW 5), Budhna (PW 6), Nathia (PW 7), Saltu (PW 11), Shankar (PW 12), Rangi Bai (PW 13), and Dr. I.D. Gupta (PW 15) in particular. On a close scrutiny of the evidence of the above-named witnesses, we agree with the Trial Court's finding that the above evidence sufficiently establishes the circumstances of deceased Kandi Bai having been last seen alive in the company of her husband, appellant Budhu; the appellant himself had brought the body of the deceased to his house, and that he gave an incorrect explanation to his father-in-law about the injuries and the death of his wife Kandi Bai. Though the fact that appellant Budhu could not be arrested for about 5 days, by itself, cannot be a clinching circumstance against him, but his conduct of remaining away from his house for a period of about 5 days speaks volumes about his guilty mind. His above conduct can certainly be taken into consideration for leading assurance to

the finding of guilt which can very well as arrived at, on the abovementioned incriminating circumstances against him. The above incriminating circumstances, on evidence on record, stand established conclusively. These circumstances, taken together, in the absence of any explanation by appellant Budhu, either before the witnesses or in his examination under Section 313 of the Code of Criminal Procedure, as to how and in what circumstances his wife Kandi Bai came to sustain as many as 12 external injuries, and died a homicidal death, lead to the irresistible conclusion that it was the appellant and appellant Budhu alone who had caused injuries on his wife Kandi Bai, resulting in his death. We, therefore, uphold the finding recorded by the Trial Court, holding appellant Budhu guilty of causing those injuries on his wife, resulting in her death.

9. The most crucial question, which now crops up for our consideration in this appeal, is whether the above proved act of appellant Budhu, in causing injuries on his wife Kandi Bai, resulting in her death, would amount to the offence of commission of murder, punishable under Section 302 of the Indian Penal Code? In that regard, from the charge-sheet we gather that it was the prosecution case itself that when the deceased and her husband, appellant Budhu, were coming back to their house some altercation in regard to the character of the appellant had taken place between the deceased and the appellant, which obviously must have offended the appellant. To us it appears that on being provoked by the false charge against him, by his wife deceased Kandi Bai, the appellant in the fit of anger, lost control over himself and gave repeated blows by means of a wooden stick which is usually carried by the villagers. It is rather unfortunate that one or two blows which the deceased wife Kandi Bai came to sustain, at the hands of her enraged husband, without resulting in fracture of the skull bones, caused damage to the brain resulting in cerebral haemorrhage, which ultimately led to her death. There is no such material on record which may be suggestive of any reason or motive for the appellant to cause the death of his wife Kandi Bai. We are completely left in dark to guess as to what actually might have transpired between deceased wife, Kandi Bai and her husband, appellant Budhu, leading to this unfortunate incident. Be that as it may, the fact remains that the present was not a case of pre-meditated assault by the husband on his wife. On the other hand, the prosecution case itself was that the actual assault on deceased Kandi Bai was

preceded by an altercation between the husband and the wife. The prosecution case contains sufficient material to make out a case of grave and sudden provocation, in favour of the appellant. On an overall assessment of the entire material on record, including the initial prosecution case as contained in the charge-sheet, we find it quite unsafe to hold that appellant Budhu, while causing those injuries on his wife Kandi Bai, had intended to cause her death. As the requisite intention, for making out a case of commission of murder punishable under Section 302 of the IPC, is lacking in the present case, the appellant's conviction under Section 302 of the IPC cannot be sustained. Nevertheless, the appellant cannot escape his liability for the commission of the offence of 'culpable homicide not amounting to murder' and in the facts and circumstances of the present case, we hold that his above act would make him liable for conviction under Section 304(I) of the IPC.

10. As for the sentence, on taking into consideration the background of the incident, the number and nature of the injuries and the other surrounding circumstances, we are of the view that sentence of rigorous imprisonment for 10 years would be the sufficient punishment for the offence under Section 304(I) of the IPC, and would meet the ends of justice.

11. For the foregoing reasons, the appeal filed by appellant Budhu, is allowed in part. His conviction under Section 302 of the Indian Penal Code and sentence of imprisonment for life are hereby set aside. Instead, he is convicted under Section 304(I) of the Indian Penal Code, and is sentenced to rigorous imprisonment for 10 years.

12. Appellant Budhu, who is in custody, if is found to have already undergone the whole of the sentence of 10 years rigorous imprisonment, now awarded by us on his conviction under Section 304(I) of the IPC be set at liberty forthwith, if not wanted in connection with any other case.