

2023 LiveLaw (SC) 322

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

B.R. GAVAI; J., ARAVIND KUMAR; J.

APRIL 10, 2023.

CRIMINAL APPEAL NO. 1044 OF 2023 (Arising out of SLP(Crl.) No. 4523 of 2023) @ DIARY NO. 26160 OF 2021

SUMITRA BAI versus THE STATE OF CHHATTISGARH

Indian Penal Code, 1860; Section 302 - Prosecution has failed to prove the real genesis of the incident. There is absolutely no evidence to establish that the accused had any motive to commit the murder of her own father. On the contrary, her father had brought her to the house of PW.1 for treating her mental ailment. The prosecution has utterly failed to establish that the act was done by the accused, with the intention to cause the death of the deceased. The case would fall under Part-I of Section 304 of the IPC and as such, conviction under Section 302 of the IPC would not be tenable. Therefore, the appeal is partly allowed and the conviction under Section 302 of the IPC is altered to Part-I of Section 304 of the IPC. Since the accused has been incarcerated for a period of more than 12 years, the said sentence would subserve the ends of justice for the offence punishable under Section 304, Part-I of the IPC.

(Arising out of impugned final judgment and order dated 01-08-2018 in CRLA No. 244/2015 passed by the High Court of Chhatisgarh at Bilaspur)

For Petitioner(s) Mr. A Sirajuddin, Sr. Adv. Mr. Tilak Raj Pasi, Adv. Mr. Keerthik Vasani, Adv. Mr. Satyapal Khushal Chand Pasi, AOR

For Respondent(s) Ms. Prachi Mishra, AAG Mr. Dinesh Singhal, Adv. Mr. Vishal Prasad, Adv. Mr. Nishanth Patil, AOR

J U D G M E N T

B.R. GAVAI, J.

1. Delay condoned.
2. Leave granted.
3. This appeal challenges the concurrent judgment and order dated 16th October 2014 passed by the learned Additional Sessions Judge, Pratappur, District Surajpur, Chhattisgarh, in Sessions Trial No.1 of 2013 thereby convicting the appellant under Section 302 of the Indian Penal Code, 1860 (for short, "IPC") and the judgment and order dated 1st August 2018 passed by the High Court of Chhattisgarh, Bilaspur in Criminal Appeal No.244 of 2015, thereby dismissing the appeal filed by the present appellant.
4. We have heard Shri Shri A. Sirajuddin, learned Senior Counsel appearing on behalf of the appellant and Ms. Prachi Mishra, learned Additional Advocate General (for short, "AAG") appearing on behalf of the State of Chhattisgarh.
5. Shri A. Sirajuddin submits that, from the materials placed on record it would reveal that the appellant had no intention to cause death of her father. He submits that the evidence would clearly show that the deposition of PWs.1 to 4 would reveal that the appellant was mentally ill and was brought to the house of PW.1-Mahipal for treating her. He submits that the weapon alleged to have been used in the crime i.e. a spade is also recovered from PW.1-Mahipal. He further submits that the evidence

itself would clearly show that the weapon used was the one which was very much available in the house of PW.1-Mahipal. He therefore, submits that the present appellant is entitled to get benefit under Section 84 of the IPC.

6. Ms. Prachi Mishra vehemently opposes the appeal. She submits that, for granting benefit under Section 84 of the IPC read with Section 105 of the Evidence Act, 1872, it is necessary for the accused to establish as to what was the nature of mental illness and also to prove that the accused was suffering from insanity, so as to disable an accused from knowing as to what he/she was doing. In support of her contention, Ms. Mishra, relies on the judgments of this Court in the cases of *Prem Singh v. State (NCT of Delhi)*¹, *Bapu alias Gujrat Singh v. State of Rajasthan*² and *Surendra Mishra v. State of Jharkhand*³.

7. No doubt, that Ms. Mishra is right in relying on the judgments of this Court, as cited above, which hold that, for entitling an accused of the benefit of Section 84 of the IPC, it is necessary for an accused to establish as to what was the nature of mental ailment and also that the accused suffered from insanity, which disabled the accused from knowing as to what he/she was doing.

8. However, a perusal of the evidence of PW.1-Mahipal would reveal that the incident has taken place in his house. His evidence would show that the accused-Sumitra Bai along with the deceased-Mangal Sai, who was her father, had come to the house of PW.1-Mahipal for treating her mental ailment. He states that in the evening of the date of the occurrence, while they were lighting fire for cooking dinner in their courtyard, the accused picked up the spade (*fawda*) and assaulted the deceased-Mangal Sai on his head. PW.1Mahipal further states that when his son-Tilsai returned home, he saw that the accused had already assaulted and killed the deceased-Mangal Sai, after which PW.1-Mahipal entered and saw Mangal Sai lying dead.

9. PW.1-Mahipal has admitted in his cross-examination that the accused-Sumitra Bai was mentally insane. He has further admitted that a lot of people come to him to be treated for mental illness. He has further admitted that he did not see the accused assaulting the deceased. He admitted that since he had not witnessed the incident, he could not state anything about the same.

10. PW.3-Tilsai is the son of PW.1-Mahipal. He also states that when he came home after washing his hands and feet, he had seen that the accused had assaulted and killed Mangal Sai, on which he screamed and his parents came hearing him. He has also admitted in his evidence that the accused and her father-Mangal Sai had been staying there for approximately one and a half months. He further admitted that mentally ill people come to his house for treatment. He has admitted that the spade used in the incident belongs to them.

11. PW.4-Ajay is the son of the deceased and the brother of the present appellant. He also admitted that the appellant-Sumitra Bai was mentally ill and that she was brought by Mangal Sai for treatment at the house of PW.1-Mahipal.

¹ (2023) 3 SCC 372

² (2007) 8 SCC 66

³ (2011) 11 SCC 495

- 12.** It could thus be seen that, neither of the witnesses have seen the appellant assaulting the deceased. However, since the appellant herself does not dispute the fact that the deceased was assaulted by her, we do not find it necessary to go into that question.
- 13.** The only question that requires to be considered is whether the prosecution has proved the case beyond reasonable doubt for conviction under Section 302 of the IPC.
- 14.** Admittedly, the incident has occurred in the house of PW.1-Mahipal, when only the deceased-Mangal Sai and the appellant-Sumitra Bai were there. It is only after the incident had occurred, when PW.3-Tilsai came to the house, noticed it and after his shout, PW.1-Mahipal had arrived at the spot.
- 15.** The fact that, the appellant was brought to the house of PW.1-Mahipal for her treatment on account of her mental ailment, has been established by the evidence of PW.1Mahipal, PW.3-Tilsai and PW.4-Ajay. It is also not in dispute that the appellant has used the spade, which was very much available in the house of PWs.1 and 2.
- 16.** We, therefore, find that the prosecution has failed to prove the real genesis of the incident. There is absolutely no evidence to establish that the appellant had any motive to commit the murder of her own father. On the contrary, her father had brought her to the house of PW.1-Mahipal for treating her mental ailment.
- 17.** We, therefore, find that the prosecution has utterly failed to establish that the act was done by the appellant, with the intention to cause the death of the deceased.
- 18.** We find that the case would fall under Part-I of Section 304 of the IPC and as such, conviction under Section 302 of the IPC would not be tenable.
- 19.** Therefore, the appeal is partly allowed and the conviction under Section 302 of the IPC is altered to Part-I of Section 304 of the IPC.
- 20.** Since the appellant has been incarcerated for a period of more than 12 years, we find that the said sentence would subserve the ends of justice for the offence punishable under Section 304, Part-I of the IPC.
- 21.** The appellant is directed to be released forthwith, if not required in any other case.
- 22.** Pending application(s), if any, shall stand disposed of.