



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1376 OF 2022

BADEBAMA @ SATHPATHI SETH

Appellant(S)

VERSUS

THE STATE OF CHHATTISGARH

RESPONDENT(S)

O R D E R

1. The appellant was charged under sections 354 and 302 of IPC in pursuant to the complaint lodged by PW-5 in Crime No. 99 of 2011. The occurrence took place on 01.04.2011.

2. It is the case of the prosecution that when the deceased was having a bath in her courtyard, the appellant went there and with an intention to outrage her modesty, started teasing her. Upon resistance from the deceased, the appellant picked up a wooden raft lying there and gave repeated blows on her head resulting in her death. On hearing the cries of the deceased, PW-5, who was the author of the First Information report also being a neighbour of the deceased saw the occurrence. The appellant fled from the place of occurrence leaving the wooden raft at the place of occurrence itself which was also witnessed by PW-2, PW-4, PW-8 and PW-12.

3. The Trial Court while convicting the appellant for the offence punishable under section 302 of the IPC, acquitted him under section 354 of the IPC. The appeal filed by the appellant was also dismissed.

4. When the matter was taken up for hearing on last few occasions, there was no representation on behalf of the appellant.

Accordingly, we appointed Mr. Ajay Marwah, learned Advocate on Record as an Amicus Curiae to assist the Court.

5. Learned counsel appearing for the appellant submits that the evidence of PW-5 cannot be trusted despite being called as the eye witness. His presence is highly doubted as he cannot be a neighbour. Reliance has been placed on the Nazari Map in support of the said submission. Alternatively, it is submitted that the recovery as alleged under section 27 of the Indian Evidence Act is not true as the wooden raft was found at the place of occurrence. This was also recorded by the trial Court. The evidence of the eye witnesses that the appellant was seen running away from the place of occurrence was also to the effect that he threw the wooden raft at the place of occurrence itself and then ran away. As there is no motive proved, coupled with the acquittal for the charge under section 354 of the IPC, this can be a case which might attract a conviction and sentence under section 304, Part I, but not under Section 302 of the IPC.

6. Learned counsel appearing for the State submits that there is no material to disregard the evidence of PW-5. He did not have any motive to implicate the appellant. The evidence of PW-5 has been read by both the Courts along with the evidence of PW-2, PW-4, PW-8 and PW-12. The crime details form clearly shows that the residence of PW-5 is near the place of occurrence. Considering the nature of injuries suffered, both the Courts have rightly held that the case would come under section 302, IPC.

7. We are of the view, that the appellant is not entitled for acquittal as PW-5 has clearly stated about the role played by the

appellant. Despite his cross examination, he stood firm being the sole eye-witness. We are concerned with the quality of the witness as against quantity. The crime details form also indicates that PW-5 was a neighbour of the deceased. His house was situated on the north of the place of occurrence. The evidence of PW-5 along with that of PW-2, PW-4, PW-8 and PW-12 would clearly show that the act committed by the appellant was a culpable homicide.

8. However, we find force in the arguments submitted by the learned counsel appearing for the appellant. The appellant has been convicted for the offence punishable under section 302 of the IPC. It is nobody's case that he took the wooden raft with him to the place of occurrence. On the contrary, it was left by him in the said place. The so-called recovery under section 27 of the Indian Evidence Act as rightly submitted by learned counsel for the appellant cannot be accepted being contrary to the case of the prosecution itself. Witnesses have deposed that the appellant left the wooden raft at the scene of the occurrence itself. Whenever any homicide takes place, the prosecution, upon getting confirmed, has to rule out the possibility of the attraction of section 304, Part I and Part II before zeroing in on section 302, IPC. There is absolutely no material to indicate the motive of the appellant.

9. Thus, taking note of the aforesaid facts, we have no hesitation in holding that the appellant can only be convicted under section 304, Part I of IPC. We have been informed that the appellant has already been in incarceration beyond the period of ten years. In such view of the matter, the appeal stands partly allowed by convicting the appellant for the offence punishable

under section 304 Part I of IPC and consequently, sentencing him to the maximum period of ten years. As the said sentence is already over, he should be set free until and unless he is required in any other case.

We place on record our appreciation for the assistance rendered by Mr. Ajay Marwah, Amicus Curiae.

Pending application(s), if any, shall stand disposed of.

..... J.
[M.M. SUNDRESH]

..... J.
[ARAVIND KUMAR]

NEW DELHI;
AUGUST 28, 2024

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.1376/2022

BADEBAMA @ SATHPATHI SETH

Appellant(s)

VERSUS

THE STATE OF CHHATTISGARH

Respondent(s)

(IA No. 87140/2021 - EXEMPTION FROM FILING O.T. AND IA No.
35726/2022 - GRANT OF BAIL)

Date : 28-08-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE ARAVIND KUMARFor Appellant(s) Mr. Ajay Marwah, AOR (Amicus Curiae)
Mr. Swaroopananda Mishra, Adv.
Mr. Tapan Masta, Adv.
Ms. Tajinder Viridi, Adv.
Mr. Arkam Khan, Adv.
Mr. Tarun Rajput, Adv.For Respondent(s) Mr. Praneet Pranav, D.A.G.
Mr. Vinayak Sharma, Standing Counsel, Adv.
Mr. Ravinder Kumar Yadav, AOR
Ms. Kritika Yadav, Adv.
Mr. N Amrut, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal stands partly allowed in terms of signed order.

The relevant operative portion of the order reads as under:

" 9. Thus, taking note of the aforesaid facts, we have no hesitation in holding that the appellant can only be convicted under section 304, Part I of IPC. We have been informed that the appellant has already been in incarceration beyond the period of ten years. In such view of the matter, the appeal stands partly allowed by convicting the appellant for the offence punishable under section 304 Part I of IPC and consequently, sentencing him to the maximum period of ten years. As the said sentence is already over, he should be set free until and unless he is required in any other case."

(RAJNI MUKHI)
COURT MASTER (SH)(POONAM VAID)
COURT MASTER (NSH)

(Signed order is placed on the file)