

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1523 of 2007

BABULAL SAHU

..... APPELLANT

VERSUS

STATE OF CHHATISGARH

..... RESPONDENT

O R D E R

This appeal challenges the concurrent finding of conviction and sentence awarded to the appellant under Section 302 IPC for having murdered his wife Basanti Bai. In the light of the fact that leave had been granted in this matter on the 29th October, 2007, only as to the nature of the offence, only the bare facts are required to be given. Suffice it to say that on the intervening night of 3rd and 4th January, 2000, the appellant sought to have sex with his wife. She, however, retorted that she would not oblige him for the reason that whenever his bhabhi was around he would prefer having sex with her. As per the prosecution story this infuriated the appellant and he committed the murder of his wife by strangulating her. During the course of the investigation, it was found that

there were no eye witnesses to the incident and the entire case hinged on six pieces of circumstantial evidence. The trial court and the High Court have both found that the circumstances aforesaid have been proved and have led to the conviction of the appellant. Mr. Vijay Panjwani, the learned Amicus Curiae taking a clue from the leave granted has argued that the case would fall under Exception (4) to Section 300 of the Indian Penal Code and the appellant was, therefore, liable to be convicted under Section 304 Part (i) or Part (ii) thereof and the appeal to that extent should be allowed. The learned counsel has also placed reliance on the judgment of the Bombay High Court reported as Ghan Sham v. State of Maharashtra (1996) 1 CRL.LJ 27. We have gone through the evidence on record and considered the submissions made by the learned counsel for the parties. It will be seen that as per the prosecution story the incident happened because the deceased refused to have sex with the appellant who was her legally wedded husband and this refusal apparently had annoyed him, leading to the murder. Exception 4 to Section 300 of IPC reads as under:

"S.300 Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the

offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault."

A bare reading of this provision would indicate that it refers to certain specific ingredients which have to be kept in mind before it can be taken as applicable. The last two points that are relevant are that the offender should not have taken undue advantage of his position or acted in a cruel or unusual manner. We find that these conditions are not satisfied in this case. We have gone through the evidence and the post mortem report and see that the appellant caused as many as 14 injuries on the neck of the deceased and strangled her with enormous force. He had, therefore, taken undue advantage of the fact that he was a male and was much stronger physically and the murder had also been committed in a revolting and cruel manner. It is true that the refusal of a wife to have sexual relations with her husband had led to the quarrel between the spouses but we find that in the circumstances all the conditions for the applicability of Exception 4 have not been fulfilled.

Mr. D.K. Sinha, learned counsel for the respondent-State of Chhattisgarh has also pointed out that the demand of the appellant for sex had apparently been satisfied as was clear from the medical evidence which showed that semen had been found on the clothes of the victim as well as of the appellant, which is, indicative that the murder had been committed after sex between the couple. In other words, the deceased had already obliged her husband and the cause for the sudden quarrel no longer existed. We, therefore, find no merit in the appeal which is dismissed accordingly.

The learned Amicus Curiae will have his fee of ₹7,000/-.

.....J
[HARJIT SINGH BEDI]

JUDGMENT

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
APRIL 13, 2011.