

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 306 of 2001**

1. Balram @ Balloo Son of Ramjee Rajak,
Aged about 21 years,
 2. Deepak @ Purroo Son of Badri Chouhan,
Aged about 16 years,
- Both residents of Tikrapara, Police Station-
City Kotwali, Bilaspur District Bilaspur

---- Appellants**Versus**

State of Chhattisgarh

---- Respondent

For Appellants	:-	Shri H.S. Ahluwalia, Advocate.
For Respondent/State	:-	Ms. Smita Ghai, Panel Lawyer .

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V Judgement**(.06. 2015)****Per P. Sam Koshy Judge,**

1. The Appellants in the instant Appeal have challenged the judgment of conviction and the order of sentence dated 07.03.2001 whereby the Appellant No. 1 has been convicted for offence under Section 302 of IPC and Appellant No. 2 has been convicted for offence under Section 302 /34 of IPC and have been sentenced for Life Imprisonment with fine of Rs. 200/- each with default stipulation passed in Sessions Trial No. 363/98 by the Additional Sessions Judge Bilaspur, District Bilaspur.
2. The facts relevant for adjudication of the appeal is that as per the prosecution on 12.06.1998 at around 12.15 A.M., the appellants is said to have made a criminal assault upon the deceased (Murli) on account of which

Murli received grievous injuries and later on succumbed to the said injuries.

3. As per the prosecution, the appellants herein were employees engaged by the deceased Murli in connection with the operation and management of the cycle stand at "Bihari and Gangashree" theaters. On the fateful day, it is said that the deceased is said to have found the appellants misappropriating the collection received from the cycle stand, the appellants were paying less money to the deceased and therefore, there was an altercation and the deceased is said to have had an heated altercation with the appellants and it is also said that the deceased had slapped one of the appellant namely Balram. Further, the altercation took turn of a fight and the appellants is said to have assaulted the deceased and when they reached near the laundry shop which is besides the sugarcane juice shop. The appellant Balram is said to have picked up a knife from top of the laundry shop and the other appellant Purroo is said to have caught hold the deceased while the appellant Balram is said to have given repeated blows with the knife on the deceased and then ran away from the place of occurrence and when the deceased was taken to the hospital by the persons who were present in the place of incident, where he was declared dead.

4. An F.I.R. was immediately lodged at around 01.10 A.M. by PW-11 Prahlad @ Pahloo an eye witness marked as Annexure P/17. Thereafter, "merg" was also recorded as Exhibit P/19 and the body of the deceased was sent for postmortem, which was conducted by PW-2 Dr. G. P. Naidu which is Exhibit P/2. During the course of the postmortem Doctor found that the deceased had sustained 19.2 cm long incised wound over the neck above the thyroid cartilage and all the vessels, muscles and nerves including trachea was cut off and there was another incised wound found on the left side of the chest (stab injury) measuring 4cmx1.5cm, there was another stab injury on the left side of the chest near the areola measuring 5.2cm x 2cm,

the left lung had one punctured wound. Similarly, on the stomach also there was a punctured wound measuring 1.6 cm x 0.5 cm and according to Doctor the cause of death was due to excess haemorrhage.

5. The prosecution in all examined 12 prosecution witnesses and the defence on its part had examined 2 defence witnesses, all the 12 witnesses examined, five of the witnesses i.e. Devendra Tiwari PW-4, Gopi PW-5, Jamil Khan PW-9, Hasrat Beg PW-10, Prahlad @ Pahloo PW-11 were examined as eye-witness. The knife used in the assault Exhibit P/7 was also seized and sent for examination in the examination it was established that the knife had blood on it. The blood stained cloths (*lungi* and shirt) of the accused were also seized and sent for examination which also have been established to have blood stains as per the Forensic report.

Based upon the deposition of the eye-witness, the Trial Court vide its impugned judgment convicted and sentence the Appellant No. 1 (Balram) for life imprisonment under section 302 of IPC and the Appellant No. 2 (Purroo) was convicted for the offence punishable under section 302 read with section 34 of IPC.

6. Counsel for the Appellants assailing the impugned judgment submitted that the version of the eye-witness are not reliable, in as much as, there are many contradictions and doubts proposition. From the deposition of the eye-witness it was doubtful whether they had in fact eye-witnessed the assault or not. He further stressed upon the fact that the case against the appellants could not be one under Section 302 of IPC for the reason that even if the prosecution story is to be accepted in its totality, then the admitted fact firstly is that the quarrel took place at the instance of the deceased, secondly the deceased had first given 2 -3 slaps to the Appellant No.1 and during the course of the quarrel in the heat of passion and spur of moment the Appellant No.1 lay hand upon a knife which was on the laundry shop and with which he

suddenly retaliated upon the Appellants causing injury to the deceased which later on proved to be fatal. According to the counsel for the Appellants, they never intended nor had any motive to kill the deceased neither did the Appellants had any sort of animosity with the deceased. Counsel for the Appellants submitted that since there was no intention or motive on the part of the Appellants for killing the deceased, the Appellants at best could have been convicted only for the offence punishable under section 304 Part II of IPC and the impugned judgment deserves to be interfered with accordingly.

7. Per contra, counsel representing the State opposing the contentions of the Appellants submitted that the impugned judgment does not warrant any interference as the charges leveled against the Appellants have been proved beyond all reasonable doubt. According to the State counsel the prosecution has been able to adduce sufficient evidence of five witnesses who have categorically deposed before the Court below of having witnessed the Appellants assaulting the deceased on account of which the deceased had died. Further, the State counsel also submitted that apart from the deposition of the eye-witness and the seizure of weapon of offence and also the seizure of blood stain *lungi* and shirt of the Appellants which on Forensic examination has been proved of having blood stain on it enhances the degree of proof adduced by the prosecution to prove the charges levelled against the Appellants and thus prayed for rejection of the Appeal.

8. Having considered the rival submission put forth by the counsel representing on the either side, if we peruse the evidence which has come on record and particularly that of the eye-witness PW-4 Devendra Tiwari he had categorically narrated the incident that on the date of incident some dispute arose between the deceased and the Appellants relating to the collection made at the cycle stand and in the course of heated discussion the deceased is said to have given 2 -3 slaps to the Appellant No. 1 (Balram)

and thereafter the dispute took turn of a fight and in the course of the fight they reached near the laundry shop opposite the "Gangashree" theater. There the Appellants is said to have given a kick to the deceased who fell down and immediately thereafter the Appellant No. 1 (Balram) took out a knife from the top of the laundry shop and the Appellant No. 2 Deepak @ Purro is said to have caught hold of the deceased and shouted to the Appellant No.1 for finishing the deceased and thereafter the Appellant No. 1 is said to have repeatedly stabbed the deceased on his chest and neck and ran away from the place of the incident.

9. Similar statements have also been recorded by the other eye-witnesses namely PW-5 Gopi, PW-9 Jamil Khan, PW-10 Hasrat Beg and PW-11 Prahlad @ Pahoo. Further, the blood stain *lungi* and shirt as well as weapon of offence also having blood stain as has been proved by exhibit P/24 the FSL report, establishes the involvement of the Appellant No. 1 in the commission of offence.

10. With all the aforesaid facts and circumstances of the case and particularly the same set of evidence being deposed by all the eye-witnesses and also the FSL report so far as the blood stained cloth and knife and the aggravating and mitigating factors going against the Appellants, the conviction of the Appellants for having killed the deceased can not be said to be in any manner uncalled for nor can it said to be without any evidence. Thus, the conviction of the Appellants for the said act is affirmed.

11. Now the next question which has to be determined is whether the act committed by the Appellants would fall within the ambit of Section 302 of IPC or whether it would fall within the fourth exception of Section 300 of IPC. A perusal of the deposition clearly shows that it was the deceased who had started the quarrel first and assaulted the Appellant No.1 (Balram) by giving him 2 -3 slaps and the said fight further got aggravated and took an ugly turn

whereby in the course of fight the Appellants who lay hand upon the knife which was on the top of the laundry shop with which he attacked the deceased after the deceased was dropped to the ground by the kick given by the Appellant.

12. For covering a case under fourth exception of Section 300 it must be shown that he acted without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel and unusual manner. If we take into consideration, the evidence which has come on record, it clearly reflects that the deceased was unarmed and being the owner of the cycle stand appears to have found the Appellants misappropriating the money collection received in the cycle stand and on account of which there was a quarrel and the deceased is said to have slapped one of the Appellants who were ultimately his employee. Though the deceased was unarmed yet in the course of the quarrel /fight the Appellants it is said to have drawn a knife from the top of the laundry shop and attacked the deceased. Further, it also reveals that it was not just one blow from the knife which the Appellants had given whereas the postmortem report itself shows that it was a gruesome attack and there were repeated blows which the Appellants inflicted upon the deceased. Thus, it can not be said that the Appellants had not taken any undue advantage or have not acted in a cruel manner so as to attract the provision of fourth exception to the Section 300 of IPC. Thus, the case of the Appellants would not fall within the fourth exception also.

13. Another point which needs to be determined is as to whether the act on the part of the Appellant would in any manner fall within the ambit of the section 304 of IPC.

Section 304 of IPC provides for punishment for culpable homicide not amounting to murder subject to the act of the Appellant /assailant falling

within the two specific circumstances “ firstly, if the act by which death is caused is done with an intention of causing death or such bodily injury as is likely to cause death and secondly, if the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death.

14. If we take into consideration, the factual matrix of the case admittedly the Appellants till around 12 o'clock at night were not having any sort of intention, preparation or any motive to kill the deceased. Similarly, till that time the Appellants neither had any sort of animosity with the deceased, on the contrary, the deceased was in fact the employer of two Appellants. However, at around mid night the deceased appears to have learnt the Appellants were misappropriating the money collected in the cycle stand of the theater and thereafter scolded the Appellant for that and in the course the deceased slapped the Appellant No. 1 Balram 2 -3 times which ignited the fight between the Appellants and the deceased and in the course of the fight the Appellant No. 1 got a knife in his hand from the top of the laundry shop with which he assaulted the deceased resulting in his death.

15. Thus, what is evolved from the above given facts is that admittedly before the deceased has slapped the Appellant No.1 and had quarreled with the Appellants and there was no intention of the Appellants of causing any harm to the deceased and that because of act of the deceased a fight arose and in the heat of passion the Appellants in the course of the fight first by a kick dropped the deceased to the ground and thereafter the Appellant No. 2 caught hold of the deceased and the Appellant No. 1 took a knife which was kept over the laundry shop and gave repeated stab injury to the deceased causing his death.

16. Clause (c) of section 299 and Clause (4) of Section 300 both require knowledge of the probability of the act causing death. It will be sufficient to

say that Cl. (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person in general as distinguished from a particular person or persons being caused from this imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

The question to be considered now would be whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether the act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. Then it should be determined whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be culpable homicide not amounting to murder, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder, punishable under the first part of Section 304, Penal Code.

17. Further, if we see the act on the part of the Appellant it clearly shows that after the deceased had fallen to the ground on account of the kick given by him, the Appellant No.1 immediately could lay hand to a knife from the top of the laundry shop and he immediately with the knife stabbed the deceased

on the vital parts of the body which proved fatal. The assault on the part of the Appellant upon the deceased itself shows that after the Appellant got the knife they clearly intended of causing such bodily injury as is likely to cause death and in as much as there was repeated stab wound on the vital parts of the body. One of the stab wound had punctured the left lungs while another injury was a 19.2 cm long cut injury across the neck and in the process the vessels, muscles and nerves including trachea was cut off which itself was sufficient to cause instantaneous death and as such the act on the part of the Appellant clearly would fall within the ambit of Part -I of section 304 of the IPC.

18. That since the accused did inflict three stab injuries on the vital parts of the body of the deceased resulting in his death and the injury was sufficient to cause death even in the ordinary course of nature. Even if, the Appellants were not premeditated for the death of the deceased but intention of the accused was clear of causing such bodily injury sufficient to cause death in the ordinary course of nature, therefore, the offence would be definitely culpable homicidal not amounting to murder. The over all facts lead us to conclude that the repetition of blows with the knife on vulnerable and vital parts of the body easily proves the intention of the assailants of causing injury sufficient to cause death of the deceased. Since the deceased was unarmed and was attacked by the Appellants with the knife, further the repeated stab injuries caused with the knife on the vital organs of the body, the intention to cause death can be safely concluded. The Supreme Court in 2008 Cr.LJ 4695 Raman v. State of Kerala had under somewhat similar circumstances where the accused during the scuffle stabbed the deceased with knife but evidence showed that it was deceased who had first pulled collar of the Appellant's shirt and tried to press his neck and in order to escape from the clutches of deceased, accused had inflicted a knife blow

held that he had exceeded his right of defence and the accused was held liable to be convicted under section 304 Part-I.

19. From the given facts and circumstances of the case, admittedly, the deceased was the first person who started the quarrel/ fight and it was the deceased who had first slapped the Appellant No.1 (Balram) 2-3 times and due to sudden provocation, the Appellants losing their self control in the course of fight the Appellants could lay hand to a knife and with the said knife inflicted three stab injuries resulting in the death of the deceased.

20. Taking into consideration, the nature of injuries inflicted by the Appellants which was apparently a gruesome attack, the case of the Appellants squarely would fall within the ambit of Section 304 Part-I of IPC instead of Section 302 of IPC and the fact that the Appellants had caused injuries to the deceased without premeditation and that there was no animosity between the Appellant and the deceased. The conviction of the Appellants is liable to be altered from under Section 302 of IPC to one under section 304 Part-I of IPC.

21. Accordingly, the accused/ Appellant No. 1 would stand convicted for the offence under Section 304 Part-I of the IPC instead of Section 302 of IPC and the Appellant No. 2 would stand convicted for the offence under Section 304 Part-I read with Section 34 of IPC and they are also sentenced to rigorous imprisonment of 10 years.

22. The bail bonds of Appellants – Balram @ Balloo and Deepak @ Purroo stands cancelled. They are directed to surrender forthwith and/or be taken into custody for serving out the remaining period of their sentences.

23. The appeal is allowed in part.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE

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CHIEF JUSTICE
.06.2015

Post for pronouncement of the judgment on .06.2015.

Judge
.06.2015