

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 384 of 2010

- Nohar Sai, S/o Ramcharan, aged about 32 years, Occupation - Agriculturist, R/o Village Dandgaon, Harrapara, PS Udaipur, Distt. Surguja (CG)

---- Appellant
in jail

Versus

- State Of Chhattisgarh, Through Chowki In-charge Tara, Police Station Premnagar, Distt. Surguja (CG)

---- Respondent

For appellant : Shri AN Pandey, Advocate.

For Respondent/State : Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice C.B. Bajpai,

Judgment On Board by Justice Pritinker Diwaker

10/12/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 27.5.2010 passed by the I Additional Sessions Judge, Surajpur, Distt. Surguja in S.T.No.544/09 convicting the accused/appellant under Sections 302, 323 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.200/-; and fine of Rs.300/- respectively with default stipulations.

02. Brief facts of the case are that on 25.10.2009 merged intimation Ex.P/5 was recorded at the instance of PW-1 Sukhnath, grand-father of deceased Hiralal, intimating the police that on 22.10.2009 as his crop was damaged by goat of the appellant, he had killed that goat and run away from the village. He has alleged that on 24.10.2009 the accused/appellant along with other accused persons came in search of him to his house, they beat his wife and when his grand-son Hiralal

came there, the accused/appellant lifted him and threw on the floor as a result of which he died. Immediately after mereg intimation, unnumbered FIR Ex.P/4 was recorded and then numbered FIR (Ex.P/6) was recorded against the appellant and four other persons under Sections 302, 147, 148, 323 and 506 of IPC. Inquest over the dead body of Hiralal was performed vide Ex.P/8. Injured Naiharo (PW-2) was medically examined vide Ex.P/3 wherein the doctor noticed swelling on her waist caused by hard and blunt object and opined the said injury to be simple in nature. Postmortem on the body of deceased was conducted by Dr. AR Jayant vide Ex.P/2, which has been proved by PW-5 LK Pandey, investigating officer, as it was admitted by the accused persons during trial. As per postmortem report, the deceased suffered bruise as well as fracture of skull bone and the cause of death was fracture of skull bone and the death was homicidal in nature. After investigation charge sheet was filed against the accused persons under Sections 147, 148, 302, 323 and 506 of IPC. However, the trial Court framed charges under Section 323/34 and 302/34 of IPC against them.

03. So as to hold the accused persons guilty, the prosecution examined as many as 5 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting other accused persons of all the charges,

convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that even if the entire prosecution case is taken as it is, at best the accused/appellant is liable to be convicted under Section 304 Part-II of IPC and not under Section 302 because the incident had taken place upon a sudden quarrel in the heat of passion without any premeditation where the accused/appellant out of anger lifted the deceased child and threw him on the floor which unfortunately resulted in his death. He submits that the accused/appellant has already been in jail for the last more than six years and therefore, after converting his conviction into Section 304 Part-II of IPC, his sentence may be reduced to the period already undergone. He has placed his reliance on the the judgment of the Apex Court in the matter of ***Sarabjeet Singh and others Vs. State of UP, AIR 1983 SC 529.***

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is based on proper appreciation of the evidence and there is no infirmity in the same. He, however, submits that in case this Court comes to the conclusion that the accused/appellant is liable to be convicted under Section 304 Part-II of IPC, then suitable compensation may be awarded to the deceased family.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 Naiharo, injured eyewitness to the incident, while supporting the prosecution case has stated that the goat of the appellant was killed by her husband Sukhnath with stone and for this reason, the appellant was demanding compensation. She has stated that on the date of incident the accused/appellant came to her house and started beating her by leg and fists saying that he will take life for life. The accused/appellant picked up her grand-son Hiralal and threw him on the floor as a result of which Hiralal died on the spot. She has stated that on the date of incident it is only the accused/appellant who had come to her house and not the other accused persons, and at the relevant time her husband Sukhnath had gone to other village. In cross-examination she has stated that her one son Munna is in jail for committing murder of his wife and in that case report was lodged by the accused/appellant. She has further admitted that she and her family members had filed an application for compensation but the same was rejected at the instance of accused/appellant. In cross-examination she has reiterated that goat of the accused/appellant was killed by her husband and therefore, relations between the families were strained.

09. PW-1 Sukhnath, grand-father of the deceased and lodger of merg intimation and FIR, has stated that he was informed by his wife that it is the accused/appellant alone who caused her injuries and killed his grand-son Hiralal by throwing him on the floor. This witness has also admitted the fact that his son Munna is behind the bars for committing murder of his wife and report of the said incident was lodged by the accused/appellant. He has further admitted the fact

that a day or two prior to the incident he had killed the goat of the appellant and in lieu thereof the appellant was demanding compensation.

10. PW-3 Bansh Gopal, a hearsay witness, has turned hostile. PW-4 Amit, witness to seizure Ex.P/1, has though been declared hostile but admitted his signature on the document. PW-5 LK Pandey, investigating officer, has duly supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that a day or two prior to the date of incident, goat of the appellant was killed by Sukhnath (PW-1), lodger of merg intimation and FIR, for which the appellant was demanding compensation. On the date of incident, the accused/appellant went to the house of Sukhnath and in his absence beat his wife Naiharo (PW-2) and when Hiralal, a child aged 4 years, came there, he picked him up and threw on the floor leading to his instantaneous death. The prosecution case finds due corroboration from the evidence injured witness Naiharo as also the postmortem report Ex.P/2 of the deceased. Thus, on the basis of evidence available on record, complicity of the accused/appellant in commission of the offence stands proved beyond reasonable doubt.

12. Now the only question which arises for consideration of this Court is whether act of the accused/appellant amounts to murder or is culpable homicide not amounting to murder?

13. Evidence goes to show that the accused/appellant came to the house of Sukhnath, beat his wife and in the process, with a view to causing some harm and wrecking vengeance also lifted the innocent

child Hiralal, incapable of causing any harm to him, and threw him on the ground which unfortunately resulted in his death. In the facts and circumstances of the case, even if the accused/appellant may have the only intention to cause injuries to the minor, considering the manner in which he assaulted the deceased by lifting him and throwing on the ground with such a force that his skull bone got fractured leading to his instantaneous death, he can safely be attributed with the knowledge that by his act death of the minor child was likely to take place. Being so, his case would squarely fall under Section 299 of IPC, which defines culpable homicide not amounting to murder and therefore, he is liable to be convicted under Section 304 Part-II of IPC, which provides for punishment if the act is done with the knowledge that it is likely to cause death without such intention or to cause such bodily injury as is likely to cause death.

14. As regards quantum of sentence, the accused/appellant is reported to be in jail for the last more than six years and therefore, in the facts and circumstances of the case and the legal position in such cases, ends of justice would be served if his jail sentence is reduced to the term already undergone by imposing additional fine of Rs.5000/- on him.

15. In the result, the appeal is allowed in part. While acquitting the accused/appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-II of IPC and his jail sentence is reduced to the period already undergone by him. However, in addition to fine imposed on him by the trial Court, he shall pay a fine of Rs.5000/- and in default thereof shall suffer additional RI for one

year. The fine amount so deposited by the appellant shall be disbursed to Naiharo Bai (PW-2) and in case of her death, to Sukhlal (PW-1).

Sd/

(Pritinker Diwaker)
Judge

Sd/

(C.B. Bajpai)
Judge

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