

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 407 of 2010

1. Amarjeet Singh S/o Mahabir Singh, Gond, aged about 42 years, R/o Village Podi, PS Khadgawa, At present Vishrampur, Sattpatta, District Sarguja, CG

---- Appellant

Versus

1. State of Chhattisgarh through Police Station Khadgawa, District Korja, CG

---- Respondent

For Appellant: Shri DN Prajapati, Advocate
For Respondent/State: Shri UKS Chandel, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice I.S. Uboweja

Order On Board by Pritinker Diwaker, J

11/09/2015

This appeal has been filed against the judgment of conviction and order of sentence dated 02.06.2010 passed by the Additional Sessions Judge, Manendragrah, District Korja in Sessions Trial No. 117/2009 convicting the accused/appellant under Sections 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500, plus default stipulation.

2. Prosecution case in short is that on 14.10.2009 the accused/appellant had gone to village Bachra (Turrapara) to drop his sister in her house and in the evening at about 6 O'clock he and the deceased both went for a stroll. At about 9 O'clock in the night accused/appellant got back home and had dinner with his brother-in-law. After some time deceased also returned home but refused to

have dinner. On this, the accused/appellant reacted saying that the deceased was in the habit of creating nuisance after consuming liquor without listening to anyone. After a while the deceased came out of the house followed by the accused/appellant and some altercation started between them in the course of which the accused/appellant picked up the crowbar and opened an assault by causing number of blows which eventually led to his death. Un-numbered *merg* Ex. P-5A was registered at the instance of father of the deceased namely Bhaiyalal (PW-4) and based thereon un-numbered FIR Ex. P-4A was registered. Thereafter, on the basis of numbered *merg* Ex. P-5 numbered FIR Ex. P-4 came to be registered against the accused/appellant under Section 302 IPC. Postmortem examination was conducted on the body of the deceased on 15.10.2009 by Dr. RP Singh (PW-12) who gave his report Ex. P-15 stating that cause of death was shock due to laceration and internal haemorrhage of brain tissue in posterior cranial cavity, and the death was homicidal in nature. After completion of investigation, challan was laid by the police under Section 302 IPC followed by framing of charge accordingly.

3. To hold the accused/appellant guilty the prosecution has examined 12 witnesses in support of its case. Statement of the accused/appellant has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as detailed in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That eyewitnesses namely Bhaiyalal (PW-4), Smt. Maharnia Bai (PW-5) and Ku. Rukmani (PW-5) being the father, mother and sister of the deceased are interested witnesses and being so they have falsely implicated the accused/appellant.

(ii) That the accused/appellant had no intention to cause death of the deceased and it is after consumption of liquor there was some altercation between the two and in the process the accused/appellant picked up the crowbar and assaulted the deceased which unfortunately proved fatal.

(iii) That even if the entire case of the prosecution is taken as it is, the act attributed to the accused/appellant cannot fall within the purview of Section 302 and at best it would be under Section 304 (Part-II) IPC. His submission thus is that if the accused/appellant is not going to be acquitted, by convicting him under Section 304 (Part-II) IPC, he may be sentenced to the period already undergone.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the Court below has been justified in recording the conviction on the basis of material available on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material on record.

8. Bhaiyalal (PW-4) - the father of the deceased has stated that on the date of incident at about 9 pm the accused/appellant had come to his house after consuming liquor and had dinner with them. At about 9.30 pm deceased also came there and there was some dispute between the accused and the deceased over

payment of travel expenses. Thereafter, on hearing an uproar outside his house, he went there and saw the accused/appellant assaulting the deceased with crowbar. Smt. Maharnia Bai (PW-5) – the mother of the deceased has stated in her evidence that on the date of incident the accused/appellant had come to her house and then in the evening he and the deceased had gone out for a stroll. According to this witness, at about 8.30 pm accused returned home and had dinner with them. Sometime thereafter, deceased also returned and on food being offered to him, he refused to have the same. According to this witness, some verbal feud over payment of travel expenses started between the accused and the deceased and after a while on hearing the cry of her son (deceased), she went out of her house and saw the accused assaulting him with crowbar and causing injuries on head. Ku. Rukmani (PW-11) the sister of the deceased has stated almost the same thing as has been stated by Bhaiyalal (PW-4) and Smt. Maharnia Bai (PW-5). Ramgopal (PW-1) is the witness to inquest Ex. P-2 and seizure of crowbar made under Ex. P-3 who has duly supported the case of the prosecution. Balbhadra (PW-6) is the Patwari who prepared spot map Ex. P-9. Smt. Vimla (PW-7) and Ramlakhan Singh (PW-8) are the witnesses who came to know about the incident from other persons after it had occurred. Rampratap Sahu (PW-10) is the investigating officer who has duly supported the case of the prosecution. Dr. RP Singh (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-15 describing the injuries present over it which are as under:

- (1) A contusion $1\frac{1}{2}$ x 0.3 “ horizontal over face below right lower eye-lid.
- (2) A contusion 6 x $1\frac{1}{2}$ ” obliquely over chest left side

from sternum to mid sternum, redness present.

(3) A contusion 5 1/2 x 1/2" obliquely over chest left side below injury No.2 redness present.

(4) A contusion 1 x 0.2" front of right ear.

(5) Swelling over head occipital region right side.

Cause of death was shock due to laceration and internal haemorrhage of brain tissue in posterior cranial cavity and the death was homicidal in nature.

9. Close scrutiny of the evidence of the witnesses clearly goes to show that on 14.10.2009 the accused/appellant had gone to the house of the deceased to drop his sister where after consuming liquor certain altercation took place between the two over payment of travel expenses and in furtherance of which the accused/appellant picked up the crowbar lying there and assaulted the deceased on head as a result of which he died on the spot. The incident was witnessed by three persons Bhaiyalal (PW-4) Smt. Maharnia Bai (PW-5) and Rukmani (PW-11) who have categorically supported the case of the prosecution. True it is that the injuries caused by the accused/appellant with the help of crowbar resulted in the death of the deceased but there is nothing on record to show that all this had happened with premeditation and due preparation etc. on the part of the accused. Rather the evidence suggests that it is the verbal feud over payment of travel expenses which enraged the accused to the extent of causing outburst of anger where in the fit of fury he dealt the deadly blow on the head of the deceased. Evidence on record thus cannot make the conviction of the accused/appellant under Section 302 IPC to sustain and it is liable to be set aside. The act of the accused in causing crowbar injury on the vital part of the deceased like head is suggestive of the fact that he had the intention to cause such bodily injury which

was likely to cause death, but in the absence of premeditation or prior preparation etc. the same would be covered with exception 4 of Section 300 IPC making him liable to be convicted u/s 304 (Part-I) IPC.

10. Accordingly, appeal is partly allowed. Conviction of the accused/appellant under Section 302 IPC and the resultant sentence are set aside. He however is convicted under Section 304 (Part-I) IPC and sentenced to undergo RI for 10 years. Appellant is already in jail and therefore no order regarding his surrender etc. is needed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S.Uboweja)
Judge