

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 159 of 2011

- Shyam Lal Khadia @ Bablu S/o Rai Singh Khadia, aged about 25 years, Caste-Khadia, Occupation-Labour, R/o Village Amapali, P.S. & Tah.-Kharsia, Distt.-Raigarh, C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station: Kharsia, District Raigarh (CG)

---- Respondent

For appellant : Shri Manoj Jaiswal, Advocate.

For Respondent/State : Shri Ramakant Pandey, Panel Lawyer.

**Hon'ble Shri Justice Pritinker Diwaker, &
Hon'ble Shri Justice I.S. Uboweja, JJ**

Judgment On Board by Pritinker Diwaker, J

09/07/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 3.12.2010 passed by the IV Additional Sessions Judge (FTC), Raigarh in S.T.No.60/10 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.1000/- and in default thereof to undergo six months' R.I.

02. In the present case, name of the deceased is Rai Singh Khadia, father of the accused/appellant. As per the prosecution case, deceased Rai Singh was residing in the house of one of his relatives with the appellant and the appellant was asking him to vacate the said house

as the same was required by his relative and Rai Singh was not intending to vacate the said house. It is alleged that on account of this issue, in the night intervening 22/23rd March, 2010 the appellant had beaten the deceased with hands, fists and Chappal and also hit his head on the floor repeatedly, as a result of which the deceased died. Merg intimation Ex.P/2 was recorded on 23.3.2010 at the instance of PW-2 Nehrual, brother of the deceased and thereafter, FIR (Ex.P/3) was also lodged by PW-2 against the appellant under Section 302 of IPC. Postmortem on the body of the deceased was conducted on 23.3.2010 by PW-11 Dr. Sajan Kumar Agrawal vide Ex.P/25 wherein he noticed 8 injuries on the body of the deceased and opined that the cause of death was coma and shock due to injury over brain and lungs and that the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant under Section 302 of IPC and charge was framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 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 appellant can be convicted under Section 304 Part-I or II of IPC because the act done by him is culpable homicide not amounting to murder. He submits that the appellant is in jail since 23.3.2010 and therefore, after converting his conviction into Section 304 Part I or II of IPC, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He submits that the appellant has rightly been convicted under Section 302 of IPC and under no circumstances, his case would be covered by any of the exceptions to Section 300 of IPC.

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

08. PW-1 Sukhmati, wife of the deceased and mother of the appellant, has turned hostile and has not supported the prosecution case. When questions were put by the Court she has stated that she was residing in the house along with her husband, the appellant and younger son and she saw dead body of her husband in the house. She has stated that she has not seen anyone assaulting the deceased. She has categorically stated that she did not inform the police that it is the accused/appellant who had caused injury to her husband. PW-2 Nehrual, brother of the deceased, who lodged FIR, has not stated anything against the appellant and has been declared hostile. PW-3

Jagmohan Das, Kotwar, has stated that he had gone to Police Station to lodge FIR and had informed the police that in the night of the incident there was quarrel between the appellant and his father. When he went there, by that time the deceased had quietened down, the quarrel was over and therefore, he returned to his house and slept. In the next morning he was informed by mother of the appellant that the deceased has expired. When he again reached the place of occurrence, he saw dead body of the deceased and also noticed blood near the dead body. PW-4 Chainram, neighbour of the appellant and the deceased, has stated that on the previous night the appellant was quarreling with the deceased and upon hearing the commotion he tried to intervene in the matter and asked the appellant to go and sleep. He has further stated that he heard the noise like someone beating the other. On the next day, he was informed by the appellant that the deceased has expired. In cross-examination, he has stated that he has not seen the actual occurrence and on the basis of commotion heard by him he is stating that it is the appellant who must have committed murder of the deceased. PW-5 Puranjan is a witness of inquest Ex.P/8, he has turned hostile and has not supported the prosecution case. PW-6 Jeevanlal Jaiswal, a witness of inquest Ex.P/8 and seizure has though turned hostile but has admitted his signature on the documents. PW-8 Shankar Singh is a witness of seizure Ex.P/11 whereby undergarments of the deceased were seized. PW-9 Smt. Sadhna Mishra, Patwari, prepared the spot map Ex.P/12. PW-10 BP Mishra, Investigating Officer, has duly supported the prosecution case. PW-11 Dr. Sajan Kumar Agrawal conducted postmortem on the body of the deceased on 23.3.2010 vide Ex.P/25 wherein he noticed the following

injuries:

- (i) lacerated wound 4 x ½ cm over left side of forehead.
- (ii) lacerated wound 3 x ½ cm below injury No.(i) and left side of forehead.
- (iii) lacerated wound 1 x ½ cm below injury No.(ii) left side of forehead.
- (iv) multiple abrasions on right cheek and right side of forehead.
- (v) abrasion 5 x 3 cm lateral to left eye.
- (vi) abrasion 2 x ½ cm over right elbow post aspect.
- (vii) abrasion 2 x ½ cm over right palm.
- (viii) two small abrasion over left elbow post aspect.

In his opinion, the cause of death was coma and shock due to injury over brain and lungs and that the death was homicidal in nature.

PW-12 Awadh Bihari Vishwakarma, Police Constable, helped in the investigation.

09. Close scrutiny of the evidence makes it clear that on the night intervening 22nd & 23rd March, 2010 there was quarrel between the accused/appellant and his father/deceased over some trivial issue and the appellant assaulted the deceased with hands, fists, chappal and also dashed his head against the ground repeatedly as a result of which he died. Medical evidence also lends support to the prosecution case. PW-4 Chainram has categorically stated that on the night of the incident he heard the accused/appellant and the deceased quarreling, he intervened in the matter and asked the appellant to go and sleep and not to quarrel, and in the next morning he saw dead body of the deceased with injuries on his head. Thus, on the basis of evidence adduced by the prosecution, complicity of the appellant in crime in question is proved beyond reasonable doubt.

10. Now the next question for consideration is whether act of the

accused/appellant is culpable homicide not amounting to murder?

11. It is an admitted fact that the deceased along with the appellant was residing in the house of his relative for the last two years, which was not liked by the appellant. On the date of incident, there was some quarrel between the two over this issue and out of anger, the appellant beat the deceased with hands, fists and chappal and also hit his head against the floor over and over again resulting in his death. It is thus apparent that the incident had taken place without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel. However, considering the nature of injury and the manner in which the appellant assaulted the deceased, a person about 52 years, it is also clear that the appellant assaulted the deceased with intention of causing such bodily injury as was likely to cause his death and as such, his act would be culpable homicide not amounting to murder, making him liable to be convicted under Section 304 Part-I of IPC and not under Section 302 of IPC as has been held by the trial Court.

12. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years. He is reported to be in jail since 23.3.2010, therefore no further order is required.

Sd/

(Pritinker Diwaker)
JUDGE

Sd/

(I.S. Uboweja)
JUDGE