

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 841 of 2010

- Bot @ Boota Singh, S/o Amar Singh Kanwar, age 33 years, R/o Kachar, Thana-Kartala, Distt. Korba (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through P.S. Kartala, Distt. Korba (CG)

---- Respondent

For appellant : Shri Sanjay Agrawal, Advocate.
For Respondent/State : Shri Rahul Tamaskar, P.L.

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

Judgment On Board by Pritinker Diwaker, J

24/07/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 10.09.2010 passed by II Additional Sessions Judge (FTC), Korba in S.T.No.17/10 convicting the accused/appellant under Sections 302, 450 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.25/- and R.I. for seven years, to pay a fine of Rs.25/- with default stipulations respectively.

02. As per the prosecution case, there was money dispute between the accused/appellant and son of the deceased namely Nandlal. It is alleged that on 12.9.2009 at about 6 pm the accused/appellant entered the house of the deceased Ghasiyaram, made certain enquiry, returned back to his house and immediately thereafter again came

back carrying spade in his hand and then caused three injuries on the body of the deceased including one head injury. The incident was witnessed by wife of the deceased PW-1 Balindobai. It is alleged that PW-1 tried to intervene in the matter but she too was threatened by the accused/appellant. Immediately after the incident, Injured Ghasiyaram was shifted to hospital. FIR (Ex.P/1) was lodged on 13.9.2009 at 11.15 am against the accused/appellant under Sections 450 and 307 of IPC. Injured Ghasiyaram was medically examined on 13.9.2009 at 11.45 am by PW-11 Vivek Pratap Singh vide MLC (Ex.P/9) who noticed three injuries on the body of Ghasiyaram and opined the same to be grievous in nature. During treatment on 13.9.2009 at about 7.25 pm Ghasiyaram succumbed to the injuries. After merg enquiry, numbered merg Ex.P/10 was recorded. Postmortem on the body of the deceased was conducted on 14.9.2009 by PW-4 Dr. Sharad Anant vide Ex.P/4 wherein he noticed one lacerated wound and one incised wound over left leg, incised wound over head, brain matter had come out, and opined that the cause of death was head injury leading to intra-cranial hemorrhage and trauma to brain matters. After investigation charge sheet was filed against the accused/appellant under Sections 450 and 302 of IPC and charges were framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 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. In defence, the accused/appellant examined one Mahettar Singh as DW-1.

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 as under:

(i) that in fact the deceased had met with an accident resulting in his death and this fact is evident from the unnumbered merger intimation which was recorded on 13.9.2009 wherein it has been reported by the police that the deceased was hospitalized after accident. Further, while information was sent by the doctor vide Ex.P/14 to the police, case of the deceased was mentioned as accidental case.

(ii) that statement of sole eyewitness PW-1 Balindobai, wife of the deceased is not reliable because the incident had taken place in the late evening and as such, the question of identification of the accused/appellant does not arise. This apart, there was old enmity between the family of the deceased and that of the accused/appellant and therefore, PW-1 being an interested witness has falsely implicated the accused/applicant.

(iii) there is no FSL report on record and therefore, in absence of FSL report seizure allegedly made pursuant to the memorandum of the accused/appellant loses its evidentiary value.

(iv) even if the entire prosecution case is taken as it is, considering the fact that only one injury was caused by the appellant to the deceased, his conviction is liable to be altered to Section 304 Part-II of IPC i.e. culpable homicide not amounting to murder and as the appellant is in

jail since 14.9.2009, after converting his conviction into Section 304 Part-II of IPC, he may be sentenced to the period already undergone.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no illegality in the same. He submits that while sending the deceased in injured condition for medical examination it was mentioned in the document Ex.P/11 that on account of old enmity the victim has been beaten by the accused/appellant with spade. He further submits that looking to the weapon of offence used, which is a sharp edged weapon, the vital part of the body i.e. head where assault was made and the force with which assault was made, conviction of the accused/appellant under Section 302 of IPC is proper and warrants no alteration.

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

08. PW-1 Palindobai, wife of the deceased and an eyewitness to the incident, has stated that on the date of incident when she and her husband were in the house, the accused/appellant reached there, created some nuisance, thereafter went back to his house and again came back carrying spade in his hand, took out her husband from the room and caused 4-5 spade injuries on the body of her husband. The appellant had also broken the leg of her husband. She lodged FIR (Ex.P/1) and inquest (Ex.P/3) was conducted in her presence which bears her thumb impression. She has stated that the incident had

taken place at about 6 pm, at that time her two sons Ahira and Nandlal were not at home and they had gone to some other village. She has categorically denied the suggestion that on account of darkness she could not see the incident. She has stated that earthen lamp was burning and further clarified that her husband sustained injuries on account of beating given by the appellant. She has categorically denied the suggestion that she had informed the treating doctor that her husband suffered injuries in accident. In her lengthy cross-examination she remained very firm and nothing could be elicited by the defence to make her evidence untrustworthy or doubtful.

09. PW-11 Dr. Vivek Pratap Singh medically examined the deceased when he was brought to him in injured condition vide Ex.P/9 and noticed the following injuries:

- (i) lacerated wound, 2" x 1", which was 3" above the right ear on skull;
- (ii) lacerated wound, 4" x 4", which was 5" below the knee joint on right leg, fracture of tibia and fibula;
- (iii) cut skin and muscle on 1st, 2nd and 3rd finger of left foot.

He has opined that all the injuries were caused by hard and blunt object and were grievous in nature. He had also examined the weapon of offence spade and opined that the injuries suffered by the injured could be caused by the said weapon vide Ex.P/10.

10. PW-4 Dr. Sharad Anant conducted postmortem on the body of the deceased on 14.9.2009 vide Ex.P/4 and noticed following injuries on his person:

(i) lacerated wound 12 x 12 cm with commuted fracture of right tibia and fibula (mid 1/3) with bony fragment seen through wound reddish blue margin and clotted blood.

(ii) incised wound involving four toes in left foot.

(iii) incised wound 9 x ½ cm over mid parietal region with fracture of parietal bone of same size. Brain matter coming out through wound.

Wound No.(i) caused by hard and blunt object and Wound (ii) & (iii) were caused by hard and sharp object. He opined that the cause of death was head injury leading to intra-cranial hemorrhage and trauma to brain matters.

11. PW-5 Ahiraram, son of the deceased, is a witness of inquest Ex.P/3. He has stated that it is incorrect to say that on account of old enmity the accused/appellant has been falsely implicated. He has further stated that earlier also his father (deceased) was beaten by the accused/appellant. PW-6 Nandlal is another son of the deceased. He came to know about the incident through his mother PW-1 Palindobai. PW-7 Shivkumar is a villager who reached the place of occurrence after the incident had taken place. He was informed by the wife of the deceased PW-1 that the accused/appellant has assaulted her husband with spade. PW-8 Hardev Singh and PW-10 Chandar Singh are witnesses of memorandum of the accused/appellant Ex.P/6 and seizure Ex.P/7 & P/8. They have supported the prosecution case. PW-12 Laxmikant Gayakwad, investigating officer, has duly supported the prosecution case. PW-13 Dr. V.S. Rathore, Medical Officer, District Hospital, Korba, sent information Ex.P/14 to the concerned police

station after death of the deceased. He has stated that the deceased was admitted in the hospital by his relatives saying that the deceased has sustained injuries in accident.

12. DW-1 Mahettar Singh has stated that he was informed by PW-1 Palindobai that the deceased sustained injuries in motor accident. However, in cross-examination he has stated that he is not aware as to whether the deceased died in accident or due to beating.

13. Close scrutiny of the evidence makes it clear that there was some dispute relating to money transaction between the family of the deceased and that of the accused/appellant. According to the eyewitness PW-1 Palindobai, wife of the deceased, on 12.9.2009 the accused/appellant first entered the house of the deceased, made some enquiry, having created some nuisance went back to his house and after some time returned with spade and caused 4-5 injuries with it to the deceased. She has consistently stated as to the manner in which the accused/appellant assaulted her husband. Nothing could be elicited by the defence in her lengthy cross-examination to render her evidence unreliable or doubtful. This Court finds no reason to disbelieve the statement of this witness. This apart, on the memorandum of the accused/appellant Ex.P/6, the weapon of offence spade has been seized vide Ex.P/8 and both the memorandum and seizure witnesses have duly supported the prosecution case. Medical evidence also lends support to the prosecution version, according to which the deceased sustained three injuries (one incised and two lacerated), including one head injury, and those injuries could be caused by the spade seized from the appellant.

14. There is no substance in the argument of the appellant that as there was dark in the night, PW-1 could not have seen the incident. In para-6 of her deposition, she has specifically denied the suggestion that on account of darkness she could not witness the incident. She has further stated that at that time earthen lamp was burning in her house and in the light of that lamp she had seen the incident. Moreover, the parties were known to each other since before, the accused/appellant before committing murder of the deceased had earlier entered the house of PW-1 and the deceased, after creating some nuisance went back and then again came after some time. Therefore, the question of proper identification of the appellant being perpetrator of the crime cannot be disputed.

15. We further find no substance in the argument of the appellant that the deceased died due to accident. If in some of the documents prepared by the hospital authorities, some incorrect facts have been mentioned, the same will not prevail over the ocular and other evidence which have been duly proved by the prosecution. Even otherwise, though in the document Ex.P/14 while sending information to the police it is mentioned by PW-13 Dr. V.S. Rathore that the case of the deceased is an accidental case, but during cross-examination this witness has admitted that the aforesaid fact was mentioned at the instance of relatives of the deceased who were present in the hospital during treatment. When the deceased was sent for medical examination vide Ex.P/11, in the said document it has been specifically mentioned that on account of old enmity the victim was beaten by the accused/appellant with spade. Furthermore, in the FIR (Ex.P/1) lodged

by PW-1, based on which offence under Sections 450 and 307 of IPC were registered against the accused/appellant, it is specifically mentioned that the accused/appellant assaulted the deceased with spade.

16. We also find no substance in the argument of counsel for the appellant that in the facts and circumstances of the case, act of the accused/appellant does not amount to murder but is culpable homicide not amounting to murder. In order to bring a case under Exception 4 of Section 300 of IPC it must be shown that the accused acted without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. In the present case, the accused/appellant entered the house of the deceased, made certain enquiry, thereafter went back to his house and then returned with spade and opened assault on the deceased. Taking into consideration the manner in which the accused/appellant inflicted injuries on the deceased, a man of 60 years, with a deadly weapon spade on his vital part head with such a force that his brain matter came out, the brutality of the offence is evident and his intention to cause death of the deceased is writ large. Thus, the findings recorded by the trial Court holding the accused/appellant guilty under Section 302 of IPC are based on proper appreciation of the evidence on record and call for no interference.

17. As regards conviction under Section 450 of IPC, in view of the unrebutted evidence of PW-1 Balindobai which finds due corroboration from the other evidence on record, the same also deserves to be

maintained and is hereby maintained.

18. Resultantly, the appeal being without merit is liable to be dismissed and is, accordingly, dismissed. Since the accused/appellant is already in jail, no further order is required.

Sd/

(Pritinker Diwaker)

J U D G E

Sd/

(I.S. Uboweja)

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