

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 445 of 2010**

1. Smt. Urmila Bai, w/o. Mana Nag, aged about 23 years, R/o Puraina, near Aama Kunwa Chowk, Police Station Purani Bhilai, Distt. Durg (CG)
2. Onamo Nag, son of Damodar Nag, aged about 70 years, caste Oriya, R/o Puraina, near Aama Kunwa Chowk, PS Purani Bhilai, Distt. Durg (CG)

---- Appellants

Versus

- State Of Chhattisgarh, through Police Station Purani Bhilai, Distt. Durg (CG)

---- Respondent

CRA No. 773 of 2011

- Mana Nag, Son of Onamo Nag, aged about 27 years, R/o. Purana, near Aama Kunwa Chowk, Police Station, Purani Bhilai, Distt. Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Purani Bhilai, Distt. Durg (CG)

---- Respondent

For appellants	:	Mrs. Fouzia Mirza, Advocate.
For Respondent/State	:	Mr. Sangarsh Pandey, Dy. Adv. General.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board by Justice Pritinker Diwaker**02/12/2015**

1. As these two appeals arise out of common judgment dated 31-3-2010 passed by the 9th Additional Sessions Judge, (FTC), Durg in S.T. No. 70/2009, they are being disposed of by this common judgment. By the impugned judgment of conviction and order of sentence, appellant/appellant Nana Nag has been convicted under Sections 302 and 201/34 of the IPC and sentenced to undergo imprisonment for life with fine of Rs. 3,000/- and to undergo RI for 4 years with fine of Rs. 1,000/- respectively with default stipulations. Both the substantive jail sentences are directed to run concurrently. Accused/appellants Onamo Nag and Urmila Nag have been convicted under Section 201/34 of the IPC and each of them sentenced to undergo RI for 4 years with fine of Rs. 1,000/- with default stipulation.

2. In the present case name of the deceased is Obe Nag. The accused No. 1 Mana Nag is brother of deceased whereas accused No. 3 Smt. Urmila Bai is wife of accused No. 1 Mana Nag.

3. As per prosecution case, deceased Obe Nag after consuming liquor used to create nuisance in his house and he had bad eye on accused No. 3 Urmila Bai. It is alleged that on 1-2-2009, deceased made an attempt to ravish accused No. 3 Urmila Bai. There was some quarrel between accused No. 1 Mana Nag and the deceased and then accused No. 1 Mana Nag caused injuries to the deceased by hand and fists and also by a wooden plank. Further case of the prosecution is that after committing murder of the deceased, all the accused persons buried his dead body in the room of the deceased. Upon receiving secret information after obtaining permission from competent authority, the dead body of the deceased was exhumed from his room on 6-2-2009. Dehati merg intimation Ex. P-18, merg intimation Ex. P-1 and Dehati nalishi Ex. P-19 were recorded on 6-2-2009 and on that day itself, FIR Ex. P- 2 was registered against the accused persons under Sections 302 and 201/34 of the IPC. Inquest on the dead body of the deceased was performed vide Ex. P-4 and body was sent for post mortem which was conducted on 8-2-2009 by P.W. 9 Dr. S.N. Manjhi vide Ex. P-17. As per autopsy surgeon death was homicidal in nature.

4. After investigation charge sheet was filed against all the three accused persons and charges were framed against them under Sections 302/34 and 201/34 of the IPC.

5. So as to hold the accused persons guilty, prosecution has examined 10 witnesses in all whereas one defence witness D.W. 1 R.K. Joshi was examined by the accused persons. In the statement under Section 313 of the Cr.P.C., accused Mana Nag has stated that on the date of incident when the deceased tried to ravish his wife accused No. 3 Urmila Bai, there was some scuffle between them. The deceased also made an attempt to cause injury to him. Due to scuffle, deceased fell down. Thereafter when accused Mana Nag was taking out his wife along with him, again there was some scuffle between both of them and then in his defence accused Mana Nag caused injury to the deceased resulting into his death. Accused Onamo Nag in his statement under Section 313, Cr.P.C. has stated that the deceased was in habit of creating nuisance after consuming liquor and on the date of incident, he was not present in the house. Accused Urmila in her statement under Section 313, Cr.P.C. has made almost similar statement as has been made by her husband Mana Nag

6. After hearing the parties, the trial court by judgment impugned has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the

judgment. Hence the present appeal.

7. Counsel for the appellants submits that even if the entire prosecution case is taken as it is, accused Mana Nag cannot be convicted under Section 302 of the IPC. It has been argued that when the deceased made an attempt to ravish the wife of accused Mana Nag namely accused Urmila Bai, there was some scuffle between them and during that scuffle accused Mana Nag appears to have caused injuries to the deceased which unfortunately resulted into his death. Learned counsel submits that the case of the appellants would fall under Exception (1) and Exception (4) of Section 300, IPC and at best accused Mana Nag is liable to be convicted under Section 304 Part 2, IPC. She submits that as accused Mana Nag has already remained in jail for about 6 years 9 months and 27 days, in the interest of justice, after converting the offence to Section 304 Part II, IPC he may be sentenced to the period already undergone by him.

8. In respect of accused Onamo Nag and Urmila Nag, it has been argued that accused Onamo Nag has already remained in jail for about 521 days. He is aged more than 75 years and accused Urmila Nag is a lady and has remained in jail for about 307 days. Therefore, no useful purpose would be served if they are sent to jail. Therefore, their sentence be reduced to the period already undergone by them.

9. On the other hand, opposing the submission of learned counsel for the appellants, learned State counsel submits that the impugned judgment is strictly in accordance with law and there is no infirmity in the same. He submits that the manner in which the deceased was murdered and buried by the accused/appellants, their act would fall only under Section 302, IPC and not under Section 304 Part II, IPC. Their sentence also does not require any interference.

10. We have heard learned counsel for the parties and perused the record.

11. P.W. 1 Dadan Singh, police constable has recorded Ex. P-1 merger intimation and registered FIR Ex. P-2. P.W. 2 Ghanshyam Sharma, Naib Tehsildar is a witness of inquest Ex. P-4. P.W. 3 Ashwani Kumar Verma prepared spot map Ex. P-5. P.W. 4 M. Laxman Rao is a witness of inquest Ex. P-4, memo and seizure. Though turned hostile but in cross-examination, he has supported the case of the prosecution. P.W. 5 Dhannu Nag is also a witness of inquest Ex. P-4 and spot map Ex. P-5 and has been declared hostile but has admitted his signature. P.W. 6 K. Kankeshwar is a witness of inquest and memorandum and has been declared hostile, however admitted his signature. P.W. 7 Siddheshwar Das is also a witness of inquest and turned hostile. P.W. 8 Gautam Yadav is also a witness of inquest and has admitted his signature. P.W. 9 Dr. S.N. Manjhi conducted post mortem on the body of the deceased and noticed following injuries :-

- i. Contused lacerated wound present on chin 4 x 2 cm transversely bone deep
- ii. Contused lacerated wound present on right orbital ridge 3 x 2 cm transversely bone deep.
- iii. Contused lacerated wound present on frontal region mid plane 3 x 2 cm transversely bone deep, underneath dark red colour ecchymosis due to injury present.
- iv. Scalp shows dark red colour ecchymosis on vertex both parieto temporal region, temporalis muscles are contused. Skull – frontal and parietal bone fractured into multiple small pieces and depressed inwards, whole frontal bone to left parietal eminence region just front of coronal surface extends on left side 10 x 7 cm sagittally . Orbital fossa not determined. Fracture of anterior cranial fossa left maxilla and mandible bones also fractured multiple sites, all around fractures, dark red colour ecchymosis present, brain lacerated with dark red clotted blood and softened, brownish pastry.
- v. Rail patterned contusion present on right shoulder 3 x 4 cm anteroposterior underneath dark red colour ecchymosis present.
- vi. Rail patterned contusion present on right elbow 2.5 x 3 cm transversely, underneath red (dark colour) ecchymosis present.

The autopsy surgeon opined that death was homicidal in nature. P.W. 10 K.L Tandan is the investigating officer and has supported the prosecution case.

12. D.W. 1 R.K. Joshi has filed charge sheet and has not stated anything specific in favour of the accused persons.

13. Accused Mana Nag in his statement under Section 313 of Cr.P.C. has stated that deceased was his elder brother and used to create nuisance after drinking liquor and also had bad eye on his wife Urmila Nag. On the date of incident also, when he caught hold of his wife, he took out her from his clutches, then the deceased tried to assault him by a wooden plank. To save his life he pushed off him and the deceased fell down on the ground. He has further stated that when he was leaving the place along with his wife, the deceased again attacked him. In defence, he snatched the wooden plank from the deceased and attacked on the deceased.

14. Accused Onamo Nag in his statement under Section 313 of the Cr.P.C. has stated that the deceased used to drink and quarrel and had bad eye on his daughter-in-law Urmila and when he objected, he was also beaten. He was not present at home on the date of incident.

15. Accused Urmila Nag in her statement under Section 313, Cr.P.C. has also

stated that the deceased used to drink and create nuisance and used to evetease her. On the date of incident also, he caught hold of her and tried to ravish her. On her call, her husband Mana Nag came inside the house and got her freed. The deceased attacked on him by a wooden plank. Her husband took her from there. She is innocent.

16. Close scrutiny of the evidence makes it clear that deceased Obe Nag after consuming liquor used to create nuisance in his house. Evidence also reflects that the deceased had bad eye on accused Urmila Bai i.e. his sister-in-law. On the date of incident, after consuming liquor when the deceased tried to ravish Urmila Bai, there was some scuffle between accused Mana Nag and the deceased. Accused Mana Nag took out his wife from clutches of the deceased and when the deceased assaulted accused Mana Nag by a wooden plank and chased him, accused Mana Nag pushed him as a result of which he fell down and thereafter when accused Mana Nag was taking his wife along with him, there was some scuffle between both of them and then in his defence accused Mana Nag caused injury to the deceased resulting into his death. The defence put forth by accused Mana Nag has been duly supported by his wife and upto some extent by his father Onamo Nag also. It is thus apparent that there was no intention on the part of the accused/appellants to commit murder of the deceased. There was no premeditation on his part and the incident had taken place all of a sudden in a heat of passion upon a sudden quarrel. That being the position, the act of the accused accused/appellant Mana Nag is covered by Exception 4 of Section 300, IPC i.e. culpable homicide not amounting to murder and he is liable to be convicted under Section 304 Part-II of the IPC and not under Section 302, IPC as has been done by the trial Court. The appellant Mana Nag has remained in jail for 416 days during trial and thereafter from the date of judgment i.e. 31-3-2010 till date total about 6 years 9 months and 27 days. The period for which accused/appellant Mana Nag remained in detention would suffice to meet the ends of justice.

17. So far as conviction of accused Onamo Nag and Urmila Nag is concerned, they have been convicted under Section 201/34, IPC. The same appears to be justified. As regards their sentence, accused Onamo Nag is aged about 76 year and has remained in jail for about 521. Likewise, appellant Urmila Nag is a lady and has remained in jail for about 307 days and no useful purpose would be served if they are again sent to jail.

18. In the result, the appeals are allowed in part. While acquitting the accused/appellant Mana Nag of the charge under Section 302 of IPC, he is held guilty under Section 304 Part II and 201/34 of IPC and sentenced to the period already undergone by him with the fine sentence of Rs. 3,000/- and Rs. 1,000/-

respectively. Conviction of appellants Onamo Nag and Urmila Nag under Section 201/34, IPC is affirmed and their substantive sentence is reduced to the period already undergone by them with fine sentence as awarded by the trial Court.

19. Appellant Mana Nag is reported to be in jail, therefore, he be set at liberty forthwith if not required to be detained in any other case. Appellants Onamo Nag and Urmila Nag are on bail. Their bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge