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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 3326 of 1999

Kailash Gond S/o Bhula Gond, Aged about 35
years, Cultivator, R/o. Village Hansda, P.S.
Berala, District Durg (M.P.)

---- Appellant

Versus

State of Madhya Pradesh

---- Respondent

C A V JUDGEMENT

Sd/-
P. Sam Koshy
Judge

11.05.2015

Hon'ble Shri Justice Navin Sinha

For consideration

Sd/-
Chief Justice

14.05.2015

Post for pronouncement of the judgment on 15.05.2015.

Sd/-
Judge
15.05.2015

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Kailash Gond S/o Bhula Gond, Aged 35 years,
Cultivator, R/o. Village Hansda, P.S. Berala,
District Durg (M.P.)

---- Appellant

Versus

State of Madhya Pradesh

---- Respondent

For Appellant	:-	Ms. Nirupama Bajpai, Advocate
For Respondent/State	:-	Shri Ravindra Agrawal, P.L.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V JUDGEMENT

(15.05.2015)

Per P. Sam Koshy, Judge

1. The Appellant in the instant Appeal has challenged the judgment of conviction and order of sentence dated 15.09.1999 passed by the Additional Sessions Judge, Bematra, District Durg in S.T. No. 298 of 98 whereby the Appellant stood convicted for the offence u/s 302 of IPC and sentenced to undergo rigorous imprisonment for life with fine of Rs. 500/- with default stipulations.

2. On 02.07.1998 around 7.20 in the morning an FIR was lodged at Police Station, Berala, District Durg by Ranjeet Gond (PW-1) wherein the Appellant accused was named of having committed the offence punishable under Section 302 of IPC. According to the complainant Ranjeet (PW-1), on the fateful day i.e. 01.07.1998, when the complainant came home from his work, he found his father lying in a cot and he was

informed by his mother PW-4 that his father had just vomited blood. He immediately went to his father and on questioning, his father informed him that he was assaulted by the Appellant with a Lathi. Subsequently, in the evening around 9 O'clock his father died and the complainant informed the same to the Kotwar who in turn informed the Sarpanch of the village. On the next day morning i.e. 02.07.1998 the complainant could lodge the FIR Ex.P-1. The Police registered an FIR as Crime no. 94/98 making the Appellant accused for the offence punishable under Section 302 of IPC.

3. Later on, the matter was committed to the Sessions Court where it was registered as S.T. No. 298/98 and the Sessions Court after conclusion of the trial vide its order dated 15.09.1999 held that the charge levelled against the Appellant accused is proved and finding the Appellant guilty for the offence punishable under Section 302 of IPC convicted him for the said offence and sentenced him to undergo rigorous imprisonment for life with fine of Rs.500, in default, to further undergo rigorous imprisonment for two months.

4. Counsel for the Appellant submitted that the finding arrived at by the Court below was purely on the basis of circumstantial evidence and also the alleged dying declaration made by the deceased before PW-1 and PW-4. Counsel for the Appellant submitted that in fact the prosecution has not been able to establish its case beyond reasonable doubt for convicting the Appellant for the offence under Section 302 of IPC. He further submitted that there is no concrete proof or evidence led by the prosecution by which it could be established that it was the Appellant alone who assaulted the deceased nor is there any evidence by which the cause of death can be attributed to the assault, if any, made by the Appellant. Counsel for the Appellant further submitted that a plain

perusal of the deposition of PW-1 and PW-4 by itself would show that there are large number of discrepancies, contradictions and omissions in their depositions particularly in respect of the dying declaration and therefore the version of PW-1 and PW-4 gets doubtful. In addition to that, PW-1 and PW-4 are the interested witnesses in as much as PW-1 is the son and PW-4 is the wife of the deceased and therefore the benefit of doubt should go in favour of the Appellant.

5. The State counsel on the contrary opposing the submissions made by the counsel for the Appellant submitted that the Appellant had a land dispute with the deceased in respect of a land belonging to the accused Appellant which the deceased had purchased about 20-25 years earlier to the date of incident. It is alleged that the deceased had fraudulently got the sale deed executed in respect of the land belonging to the appellant and therefore there was a fight going on for the said land for quite sometime and either party was obstructing the cultivation of the said land. It was with the intention of cultivation, on 01.07.1998 the deceased had gone to the field where it is said that there was a fight between the Appellant and the deceased and the Appellant gave Lathi blows to the deceased causing grievous injuries. Later on, in the evening around 9 O'clock the deceased died. According to the counsel for the State, the Appellant is said to have assaulted the deceased and the deceased is said to have vomited blood. After sometime, when son of the deceased Ranjit (PW-1) came to the house, he was informed by the wife of the deceased i.e. mother of PW-1 that the deceased is not well and that a little earlier he had vomited blood. Upon being asked by PW-1, the deceased is said to have informed that he was assaulted by the Appellant with a Lathi causing injuries. State Counsel further submitted that the said

statement of the deceased to PW-1 and PW-4 is a clear oral dying declaration by which itself the offence committed by the Appellant stands established.

6. State counsel further referring to the deposition of PW-6 and PW-7 tried to establish the fact that there was a fight between appellant and deceased and therefore the circumstances lead us to reach a conclusion that in the course of fight between Appellant and deceased, the Appellant is said to have assaulted the deceased with Lathi on account of which the deceased received injuries which later on proved to be fatal. Thus, according to the counsel for the State, the Appellant has been rightly convicted for the offence under Section 302 of IPC and the impugned order passed by the Court below does not warrant any interference and the appeal deserves to be rejected.

7. After hearing the arguments of the parties and on perusal of the evidences which have come on record it would show that PW-1, the son of the deceased in his statement in very categorical term has deposed that on 01.07.1998 in the evening when he came from work he found his father sleeping on the cot and his mother said that his father had vomited blood a little earlier. When PW-1 asked his father as to what happened, the deceased informed him that he was assaulted by the Appellant with Lathi. PW-1 further stated of finding injuries on the leg, stomach, chest and back of the deceased. The evidence of PW-3 establishes the fact that on the date of incident in the evening PW-3 found the deceased sitting near his house and the Appellant was standing near the deceased with a Lathi in his hand. PW-4 like PW-1 also is the witness before whom an oral dying declaration was made by the deceased. Similarly, the deposition of PW-6 and PW-7 establishes the fact that there was a fight

between Appellant and deceased over the land.

8. A perusal of Ex.P-6 i.e. Postmortem report conducted by Dr. M. C. Patela (PW-8) shows the following injuries:

Rigar mortis +ve both lower limb & upper limb, Swelling +ve on the right wrist, joint lower end of right radius and ulna fractured.

- i) Lacerated wound 1 ½ cm X ½ cm left leg ext. aspect.
- ii) Abrasion 1 ½ cm X 1 cm right arm ext. Aspect.
- iii) Contusion 16 cm X 2 cm ext. aspect of right arm.
- iv) Contusion 11 cm X 4 cm left Temporo-parietal region of the head obliquely directed.

The doctor further held that the cause of death was because of coma due to head injuries and the time of death was 18 to 30 hours before the postmortem having been conducted at around 3.35 p.m. on 02.07.1998.

9. From the evidence which have come on record except for the statement of PW-6 and PW-7 that there was a fight/altercation on account of land dispute between the appellant and the deceased, in addition to the two oral dying declarations made before PW-1 and PW-4, there is not much which has been produced by the prosecution in the course of the evidence to substantiate the fact that it was the Appellant himself who had assaulted the deceased. A perusal of the deposition of PW-6 would show that immediately after the fight/altercation, the Appellant went to PW-6 and informed him about the fight/altercation and also showed the Lathi and Basula which he had snatched from the deceased. This fact goes to show that, when the Appellant had gone to PW-6, he was not aware about the gravity of the injuries sustained by the deceased and it was for this reason he had admitted that there was a fight

between him and the deceased and he had snatched lathi and Basula from the deceased or else the Appellant would definitely not have informed PW-6 about the altercation nor would the Appellant have informed PW-6 that he had snatched the Lathi and Basula belonging to the deceased. Except for the circumstances of the Appellant having altercation/fight with the deceased, there is no other independent witness or proof by which it could be established that it was the Appellant himself who had assaulted the deceased. The deposition of PW-1 in Paragraph 4 clearly establishes the fact that there was a long pending dispute over the land between the Appellant and the deceased and that the deceased was restrained by his family members from going to the said field yet ignoring the caution of the family members, the Appellant went to the disputed field for cultivation and there it appears that the fight took place with the Appellant. Similar statement also has been made by PW-4, the wife of the deceased.

10. Another aspect which needs consideration is the fact that the conduct of the Appellant itself establishes the fact that the Appellant never intended to kill the deceased. Further, the evidence of PW-3 also establishes the fact that the Appellant himself was standing at the place where the deceased was sitting and the Appellant had a Lathi in his hand. According to PW-3, it was he who had dropped the deceased at his house establishes the fact that the deceased at that point of time was not unconscious and that he was able to move and that is why the deceased could travel from the place of incident to his house on the bicycle of PW-3. The deceased could have easily informed PW-3 about the assault made by the Appellant accused.

11. From the overall evidences which have come on record it also

establishes that the deceased was able to sit and walk which supports the contention of the Appellant that if at all if it is to be accepted that it is the Appellant who had assaulted the deceased, it would establish the fact that the Appellant never had any intention of killing the deceased but it was only in the heat of passion because of the fact that the deceased in spite of being warned by PW-1 and PW-4 of not going to the field had gone to the field and in the course had a fight with the Appellant accused.

12. For the foregoing reasons, even if there is no direct evidence against the Appellant of having assaulted the deceased, the case of the prosecution to the extent of the Appellant having assaulted the deceased is established from the statement of PW-1 and PW-4 before whom there was an oral dying declaration made by the deceased and the other circumstance which completes the chain of the events is that the Appellant was found standing near the deceased with a Lathi in his hand when PW-3 reached the spot.

13. Further, the Appellant himself has accepted before PW-6 that there was a fight/altercation between him and the deceased on the fateful day and he had snatched Lathi and Basula from the deceased. With the aforesaid chain of events and with the oral dying declaration made by the deceased before PW-1 and PW-4 alone, it cannot be safely concluded that the Prosecution has been able to prove the charge under Section 302 of IPC against the Appellant beyond all reasonable doubt.

14. An overall perusal of the records would establish the fact that the conviction of the Appellant was purely on the basis of circumstantial evidence but the fact remains that there was a substantial gap of time between the time of incident and the death of deceased. Similarly, the evidence also reveals that the physical condition of the deceased at the

relevant point of time did not appear to be serious for the reason that the deceased went home on a bicycle of PW-3 which by itself proves the fact that he was able to sit and walk. From the evidence it also appears that the deceased was not given proper medical attention promptly which could have also been a ground for his death. The evidence further reveals that the family members of the deceased themselves had restrained the deceased from going to the field of the Appellant because of the long pending dispute over the land yet ignoring their warning the deceased himself went to the field giving rise to the fight/altercation which leads us to infer that it was the deceased who had started the fight and in the course, the Appellant might have snatched the agricultural equipment from the deceased and assaulted him. Further the evidence of the other witnesses also show that when they had passed by the place of incident, they saw the deceased sitting and the appellant standing nearby carrying Lathi in his hand. It establishes the fact that the Appellant never intended to kill the deceased but the deceased incidentally died after sometime which also forces us to infer that the Appellant had assaulted the deceased in a fit of anger. All the above narrated factors lead us to draw the conclusion that the Appellant might have known that the injury caused by him may cause death of the deceased but he had no intention to kill the deceased. This forces us to draw an inference that it was a case which would fall within the ambit of Section 304 Part-II of IPC in as much as it could be a case of culpable homicide not amounting to murder.

45. Accordingly, conviction of the Appellant for the offence under Section 302 of IPC having not been established beyond reasonable doubt the same is set aside. However, the Appellant is found guilty of having committed the offence punishable under Section 304 Part-II of IPC and

accordingly he is convicted for the offence under Section 304 Part-II of IPC and sentenced to undergo rigorous imprisonment for five years. The bail granted to the Appellant though stood cancelled vide order dated 09.09.2014 yet till date the Appellant does not appear to have been arrested and therefore the Appellant is directed to surrender forthwith before the Court below or he will be taken into custody by the Police Authorities for serving out the remaining period of sentence.

16. Appeal thus partly succeeds.

**Sd/-
Chief Justice**

**Sd/-
P. Sam Koshy
Judge**