

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.25/2011

Baijnath alias Bannu, son of Late Jaithuram, aged about 25 years, resident of village Patod, Police Station Kanker, District Kanker (CG)

Appellant
(In Jail)

Versus

State of Chhattisgarh, through the Police Station Kanker,
District North Bastar Kanker, CG

Respondent

For the Appellant	:	Mrs. Smita Jha, Advocate
For the Respondent/State	:	Mr. R.K. Pandey Panel Lawyer

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

Judgment On Board By P. Diwaker, J

13.07.2015

1. This appeal arises out of impugned judgment of conviction & order of sentence dated 15.09.2010 passed by the Sessions Judge, Kanker, District North Bastar Kanker in S.T. No.17/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him rigorous imprisonment for life and fine of Rs.500/-, in default to undergo additional R.I. for 01 month.
2. As per case of the prosecution, deceased Jethuram was habitual drunkard and at times used to sell household articles for arranging his liquor and thereafter used to consume excessive liquor. On the date of incident, accused/appellant, son of the deceased, found his father lying on the road in a drunken state and it is stated that due to anger, he beat him by hands & fists and also threw him on the road as a result of which he received injuries and died. After recording merged intimation (Ex.P-13) & Dehati Nalishi (Ex.P-14), FIR (Ex.P-16) was registered against the accused/appellant. Post-mortem on the body of deceased was conducted by Dr. Vasudev Kumethi (PW-5) who noticed following injuries on the body of deceased:-
 - Face swollen, both eyes closed, pupil dilated. Both upper eyelids were swollen and black in colour. Clotted blood seen in both sides of nose.
 - Abrasion on the right side of forehead of 2x1cm size

- Abrasion over right knee of 2x1cm size.
- Abrasion just below right knee of 1x1cm size.
- Abrasion over left knee of 1x1cm size.
- Rigor mortis present in both upper & lower limbs.

Cause of death was head injury, however, definite opinion regarding nature of death was not given. After investigation, charge sheet was filed against the accused/appellant and at the time of trial, the Court below framed charge against the accused/appellant under Section 302 of IPC.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.
4. Learned counsel for the appellant submits as under:
 - (i) that, Raghunath Markam (PW-1), Smt. Sagar (PW-2) & Kumari Laxmi (PW-3) have not supported the prosecution case and turned hostile;
 - (ii) that, conviction of the appellant has been made on the basis of statement of Kanhaiya Manikpuri (PW-8) & Prakash Shrivastava (PW-11) but considering inconsistencies in the statements of these two witnesses, it would not be safe for this Court to uphold conviction of the appellant under Section 302 of the IPC.
 - (iii) that, even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-II of the IPC and not under Section 302 of the IPC, as has been done by the Court below;
 - (iv) that the accused/appellant is in jail since 09.03.2009 and therefore, after converting his conviction into Section 304 Part-II of the IPC, he may be sentenced to the period already undergone by him.
5. 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 or infirmity in the judgment impugned warranting interference by this Court. He further submits that Kanhaiya Manikpuri (PW-8) & Prakash Shrivastava (PW-11) have fully supported the prosecution case.

6. Heard learned counsel for the parties and perused the material available on record.
7. Raghunath Markam (PW-1), younger brother of accused & son of the deceased, is though eye-witnesses of incident but has not supported the prosecution case and turned hostile. Smt. Sagar (PW-2) is widow of the deceased and though she has also not supported the prosecution case but stated that her husband was in the habit of consuming liquor everyday. Kumari Laxmi (PW-3) & Latkhor Poya (PW-4) have also been declared hostile by the prosecution.
8. Dr. Vasudev Kumethi (PW-5) conducted post-mortem on the body of the deceased and notice injuries as mentioned above. As per his opinion, cause of death of the deceased was head injury, but no definite opinion can be given regarding nature of death.
9. Premlal (PW-6) is the witness of inquest (Ex.P-8) and though this witness has been declared hostile but he has admitted his signature over inquest (Ex.P-8). Daduram Salam (PW-7) is the witness of seizure memos of Ex.P-11 & P-12, he has also been declared hostile by the prosecution but he has admitted his signature on aforesaid documents.
10. Kanhaiya Manikpuri (PW-8), an eyewitness to the incident, while supporting the prosecution case has stated that at the time of incident when he came out from his house, in the light of electricity pole, he saw that the accused/appellant lifted his father, who was lying on the road, and threw him on the road. He has further stated that while lifting & throwing the deceased on the road the accused/appellant was saying that the deceased used to sell household items for liquor due to which there is lot of unrest in the family. This witness has further stated that the deceased was habitual drunkard and he has seen him in drunken state. He has further stated that while taking the deceased to the

house, the accused/appellant was beating him continuously and even from his house noise of beating to the deceased was coming.

11. M.S. Kango (P-9) is the Sub-Inspector who helped in the initial investigation. S. David (PW-10) is the investigating officer and has duly proved the prosecution case.
12. Prakash Shrivastava (PW-11) is also an eyewitness to the incident. This witness has not supported the prosecution case in the examination-in-chief but in the cross-examination stated that his statement (Ex.P-23) was recorded by the police wherein he has informed that he saw the accused/appellant taking the deceased to home after beating him. He has further stated that the deceased was habitual drunkard and used to quarrel and create nuisance in his house after consuming liquor. He has further stated that while lifting his father, accused/appellant was asking the deceased not to consume liquor.
13. Minute scrutiny of the evidence makes it clear that in the night intervening 22-23/07/2009 the deceased had consumed excessive liquor and it is the accused/appellant who picked him up from the road and brought him to the house and in that process he caused several injuries to the deceased by hands & fists and also by throwing him on the road as a result of which he died. Kanhaiya Manikpuri (PW-8) & Prakash Shrivastava (PW-11) have categorically supported the prosecution case and there is no reason for this Court to disbelieve their statements. Medical evidence also lends support to the prosecution version. As such, involvement of the accused/appellant in commission of offence stands proved beyond all reasonable doubt.
14. Now the question arises for consideration before this Court is whether act of the accused/appellant amounts to murder or it falls within any of the Exceptions to Section 300 of the IPC?
15. From the evidence it appears that the deceased was habitual drunkard and used to quarrel and create nuisance in the house after consuming liquor. On the date of incident also he had consumed excessive liquor which annoyed the accused/appellant as a result he assaulted the deceased by hands & fists and also threw him on the road causing various injuries resulting into his death. It has also come in the evidence

that while assaulting the accused/appellant was asking the deceased not to consume liquor. Thus, the aforesaid circumstances reveal that all of sudden, in a spur of moment, the appellant had caused injuries to the deceased that too by hands & fists and as such, act of the appellant is covered by Exception-4 to Section 300 of the IPC i.e. culpable homicide not amounting to murder. However, while causing such injuries, it appears that though the accused/appellant had no intention to cause death of the deceased but having definite knowledge that by his aforesaid act, the deceased may die. That being the position, the accused/appellant is liable to be convicted under Section 304 Part-II of the IPC and not under Section 302 of IPC as has been done by the Court below.

16. As regards the sentence, the record reveals that the accused/appellant is in custody for about six years, therefore, considering the detention period of the appellant and the fact that the incident had taken place in a sudden fight in the heat of passion without there being any premeditation, we are of the opinion that ends of justice would be served if the appellant is sentenced to the period already undergone by him.
17. 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 for the offence punishable under Section 304 Part-II of the IPC and sentenced to the period already undergone by him. The appellant is in jail, therefore, he is directed to be released forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-