

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 169 of 2012

1. Meenu Ram Turi S/o Bajaruram , R/o Village Pondi Khurd , P.S. Darima ,
Distt. Sarguja C.G.

---- Appellant

(in Jail)

Versus

1. State Of Chhattisgarh Through P.S. Darima , Sarguja (Ambikapur) C.G.

---- Respondent

For Appellant:

Shri R.N. Mukherjee, Advocate.

For Respondent:

Shri Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice C.B. Bajpai

Judgment on Board by P. Diwaker, J

20.11.2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 9.12.2011 passed by the Sessions Judge, Sarguja (CG) in S.T. No.122/10 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for Life & fine of Rs.2,000/-, in default to undergo additional RI for 06 months.
2. In the present case name of the deceased is Shyamlal Gaherwar, brother-in-law of accused/appellant. It is alleged that on 1.2.2010 at about 12.00 in the noon some quarrel took place between the accused/appellant and the deceased over land dispute and in that process the accused/appellant gave numbers of hands & fists blows on various parts of the body of deceased. Thereafter the deceased was brought home and given domestic treatment but he could not survive and succumbed to the injuries on 4.2.2010. Hirabai, wife of deceased, lodged FIR (Ex.P-7) on 4.2.2010 itself based on which

offence under Section 302 of IPC was registered against the accused/appellant. Merg intimation was also recorded vide Ex.P-8. The Investigating Officer left for scene of occurrence and after summoning the witnesses, prepared inquest over the dead body of deceased vide Ex.P-3. Dead body was sent for post mortem to the Primary Health Centre, Darima where Dr. B.L.Kaushal (PW-3) conducted post mortem examination vide Ex.P-3 and noticed following injuries:-

- Contusion with swelling on right eye, upper & lower eyelid.
- Abrasion on both the elbows of the size $\frac{1}{2}$ x 1" with black colour scab.
- Abrasion on the knee joint of right leg of 1 x $\frac{1}{2}$ ".

Mode of death was asphyxia caused by lung injury and the death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed against him.

3. In order to hold the accused/appellant guilty, the prosecution had examined as many as 11 witnesses. Statement of 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. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced him as mentioned in para-1 of this judgment.
5. Learned counsel for the accused/appellant submits that even if the entire case of the prosecution is taken as it is, the appellant cannot be convicted under Section 302 of the IPC and at best, he can be convicted under Section 304 Part-II of the IPC because admittedly no weapon has been used by the appellant while assaulting the deceased and the deceased was beaten by hands & fists only. He further submits that the appellant is in jail since

7.2.2010 and therefore after converting his conviction under Section 302 Part-II of the IPC, he may be sentenced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that incident was witnessed by Hirubai (PW-6), Indar Turi (PW-7) & Mohar Sai Turi (PW-9) and the manner in which the deceased was done to death, conviction of accused/appellant is in accordance with law.
7. We have heard learned counsel for the parties and perused the material available on record.
8. Taramani (PW-1) & Nansai (PW-2) have been though declared hostile by the prosecution but they have stated that on the date of incident there was quarrel between the accused/appellant and the deceased.
9. Dr. B.L. Kaushal (PW-3) has conducted post-mortem on the body of deceased and noticed the injuries as described above. As per his opinion, mode of death was asphyxia caused by lung injuries and the death was homicidal in nature.
10. Pawan (PW-4) has not supported the prosecution case and has been declared hostile. Shubhak Ram (PW-5) while supporting the prosecution case has stated that on the date of incident there was quarrel between the accused/appellant and the deceased.
11. PW-6 Hirubai is the widow of deceased and an eye-witness to the incident. She has stated that accused/appellant was residing adjacent to her house. On the date of incident her husband had gone to the house of accused/appellant to discuss about the marriage of her daughter. After about one hour, on hearing sound of quarrel between her husband and accused/

appellant, she reached near the house of accused/appellant and in her presence accused/appellant had assaulted 2-3 times on the chest & face of her husband with fists as a result of which her husband had fallen down. She has further stated that while assaulting her husband, accused/ appellant was saying that he has not been given share in the land. Incident was also witnessed by Inder (PW-7), Moharsai (PW-9) and Moharmaniya, wife of accused. She tried to intervene but she too was threatened by accused/appellant. After the incident, she took her husband to her house and informed about the incident to her neighbours. Her husband had disclosed to her that accused/appellant was demanding share in the land and when he told him that share has already been given to him, he started beating him. This witness has further stated that after two days of the incident, her husband succumbed to injuries suffered by him. In the cross-examination this witness remained very firm and the defence has not been able to elicit anything in her cross-examination to discredit her testimony.

12. Indrapuri (PW-7) is the another eyewitness to the incident. While supporting the prosecution case, this witness has stated that the deceased had come to the house of accused/appellant and there they had some hot talks and thereafter they started quarrelling with each other and she thought that being in drunken condition, they are kidding. She has further stated that she and other persons present on the spot tried to intervene whereupon accused/appellant slapped his wife Moharmani as a result she got scared and therefore left the spot. Though this witness has been declared hostile but she stuck to her version that she had witnessed the incident.
13. Ramnath Turi (PW-8) has not supported the prosecution case and turned hostile.
14. Mohar Sai (PW-9) is also an eye-witness to the incident and while supporting the prosecution case, he has stated that accused/appellant was quarrelling

with the deceased and he had assaulted the deceased with hands & fists.

15. N. Khalkho (PW-10) is the investigating officer who has duly proved the prosecution case. J.P. Badhai (PW-11) is the police officer who has filed the charge sheet in the matter.
16. Minute scrutiny of the evidence makes it clear that on 1.2.2010 on trivial issue the accused/appellant had beaten the deceased with hands & fists and after the incident, the deceased was brought home by his wife and provided domestic treatment. However, on 4.2.2010 he succumbed to the injuries caused by accused/appellant. Incident was witnessed by Hirubai (PW-6), Indar Turi (PW-7) & Mohar Sai Turi (PW-9) and these witnesses have categorically stated it is the accused/ appellant who had assaulted on various parts of the body of deceased by hands & fists. Their evidence finds corroboration from the medical evidence also wherein it has been stated that mode of death was asphyxia caused by lung injury. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve the statements of eyewitnesses who have described the incident in a lucid manner. Thus, on the basis of evidence adduced by the prosecution, complicity of accused/appellant in commission of the offence stands proved beyond all reasonable doubt.
17. Now the question for consideration before this Court is whether act of the accused/appellant would fall within any of the Exceptions to Section 300 of the IPC i.e. culpable homicide not amounting to murder.
18. Evidence on record goes to show that on the date of incident, the deceased had gone to the house of accused/appellant to discuss about marriage of his daughter where the accused/appellant demanded share in the land from the deceased but he refused to give which annoyed the accused/appellant and he had assaulted the deceased by fists & hands causing injuries on various

parts of his body resulting into his death after two days of the incident. It is thus apparent that the incident took place all of a sudden and he had no intention to cause such bodily injury to the deceased as was likely to result in his death but had definite knowledge that injury being inflicted by him on the deceased was likely to cause his death. This being the position, act of accused/ appellant is covered by Exception-IV to Section 300 of the IPC i.e. culpable homicide not amounting to murder, and he is liable to be convicted under Section 304-II of the IPC and not under Section 302 of the IPC as has been done by the trial Court. From the record it appears that the accused/ appellant is in jail since 7.2.2010, as such has already undergone more than 5½ years of jail sentence and therefore in the considered opinion of this Court, the ends of justice would be served if he is sentenced to the period already undergone by him.

19. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-II of the IPC and he is sentenced to the period already undergone by him. He is reported to be in jail, therefore, he be set at liberty forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-