

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 719 of 2011

- Panchram, S/o Nanki Gada (Gandharva) aged about 40 years, R/o village Bharati, Chowki Pachpedi, PS Masturi, Distt. Bilaspur (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Police Station, Masturi, District Bilaspur (CG)

---- Respondent

For Appellant : Smt. Meera Jaiswal, Advocate
For Respondent/State : Shri Ajit Singh, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker, &

Hon'ble Shri Justice I.S. Uboweja, JJ

Judgment On Board by Pritinker Diwaker, J

27/07/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 29.7.2011 passed by V Additional Sessions Judge, Bilaspur in S.T.No.177/10 convicting the accused/appellant under Sections 294, 324 and 302 of IPC and sentencing him to undergo R.I. for three months, to pay a fine of Rs.100/-; R.I. for three years, to pay a fine of Rs.100/- and life imprisonment, to pay a fine of Rs.100/- with default stipulations respectively.

02. As per the prosecution case, on 12.5.2010 First Information Report (Ex.P/12) was lodged by deceased Laxman alleging in it that on that

day when he was going to take bath, the accused/appellant reached there and started abusing him. It is alleged that thereafter the accused/appellant assaulted with a wooden plank on his head, back and hand. When his daughter Santoshi (PW-1) intervened in the matter, the accused/appellant also caused injuries on her head and hand. Based on this FIR, offences under Sections 294, 506 and 323 of IPC were registered against the accused/appellant. Injured Laxman was taken to hospital, however, on the next day he succumbed to his injuries. After receiving information from the hospital, merger intimation Ex.P/15 was recorded. Postmortem on the body of the deceased was conducted on 13.5.2010 by PW-10 Dr. Anil Kumar vide Ex.P/13 wherein he noticed multiple abrasions over forearm and other parts of the body as also linear fracture of skull. In his opinion, the cause of death was coma as a result of subdural haematoma due to head injury and the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant and charges under Sections 294, 506, 307 & 302 of IPC were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 17 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.

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 that the statement of PW-1 Santoshi being an interested witness is not reliable as she has exaggerated her version. She submits that even if the entire prosecution case is taken as it is, the accused/appellant cannot be convicted under Section 302 of IPC and at the most, he is liable to be convicted under Section 304 Part-II of IPC because the incident occurred all of a sudden in the heat of passion without there being any premeditation on the part of the accused/appellant. She further submits that the appellant is in jail since 19.5.2010 and therefore, 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.

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

08. PW-1 Santoshi, daughter of the deceased and an eyewitness to the incident, has stated that after death of her husband she was residing with her father Laxman (deceased) and on the date of incident, the accused/appellant first abused her and then caused injuries to her by a wooden plank lying there. When her father Laxman intervened, he too was assaulted by the accused/appellant on his head. In her case diary statement she has stated that first her father Laxman was assaulted and then the accused/appellant also inflicted

injuries on her. If her entire evidence is read, it is apparent that on the date of incident the accused/appellant assaulted this witness as well as her father. In cross-examination, she remained very firm and the defence has failed to elicit anything from her which could discredit her evidence. In the cross-examination, she has reiterated as to the manner in which she and her father were assaulted by the accused/appellant.

09. PW-2 Indrakumar is a witness of memorandum of the accused/appellant Ex.P/1, seizure Ex.P/2 & P/3 and arrest memo of the accused/appellant Ex.P/4. Though he has turned hostile but has admitted his signature on the documents.

10. PW-3 Dr. V.P. Kurre did medical examination of PW-1 Santoshi vide Ex.P/6 and noticed following injuries:

(i) bruise and abrasion, 4 x 3 ½ inch, bruise 1 ½ x 1 ½ inch, abrasion in middle of bruise, over right suprascapular region of back.

(ii) lacerated wound, 2 ¼ inch x 1 cm x bone deep over occipital region of scalp.

In his opinion, injury No.(i) was caused by rough and hard object whereas injury No.(ii) was by hard and blunt object. He had also advised for X-ray of skull bone and right scapula.

He also examined deceased Laxman when he was brought to him in injured condition vide Ex.P/7 and noticed following injuries on his person:

(i) lacerated wound, 2 ½ inch x ¼ cm x bone deep over left parietal

region of scalp.

(ii) bleeding from left nostril present.

He opined that both these injuries could be caused by hard and blunt object and advised for X-ray of skull bone and nasal bone.

11. PW-4 Ramkumar has turned hostile. PW-5 Chhanak Ram is a witness to seizure (Ex.P/2) of certain articles from the place of occurrence. PW-6 Kanhaiyya, eyewitness to the incident, has turned hostile. PW-7 Dwarika Prasad, witness of memorandum and seizure, though has turned hostile but admitted his signature on the documents. PW-8 Jamuna Prasad Shukla registered numbered FIR (Ex.P/11) whereas PW-9 Baldau Prasad Mishra registered FIR (Ex.P/12) lodged by the deceased. PW-10 Dr. Anil Kumar conducted postmortem on the body of the deceased on 13.5.2010 vide Ex.P/13 and noticed multiple abrasion over forearm and other parts of the body and linear fracture of skull bone. He opined that the cause of death was coma as a result of subdural haematoma due to head injury and that the death was homicidal in nature. PW-11 J.K. Rathore did initial part of investigation. PW-12 Ashok Kumar has turned hostile and did not support the prosecution case. PW-13 K.R. Karsal, the investigating officer, has duly supported the prosecution case. PW-14 Bhopal Mani Singh, Patwari, prepared spot map Ex.P/8. PW-15 Md. Maqbool Khan and PW-17 Maheshwar Gandharv, helped in the initial investigation. PW-16 Rajesh is a witness of inquest Ex.P/17.

12. Close scrutiny of the evidence makes it clear that on 12.5.2010 the accused/appellant caused injuries to deceased Laxman as well as his

daughter PW-1 Santoshi. FIR was lodged by the deceased himself on the same day, however, he expired on the next day while undergoing treatment in hospital. PW-1 Santoshi, an eyewitness to the incident, has categorically stated as to the manner in which she and her father Laxman were beaten by the accused/appellant. The version of PW-1 further finds corroboration from the medical evidence according to which corresponding injuries by hard and blunt object were noticed on the persons of deceased as well as PW-1. Thus on the basis of evidence adduced by the prosecution, complicity of the accused/appellant in commission of the offence stands established beyond any doubt.

13. Now the question for consideration of this Court is whether act of the accused/appellant amounts to murder or is covered by any of the exceptions specified in Section 300 i.e. culpable homicide not amounting to murder?

14. From the evidence it is clear that just before the incident of *marpeet*, some altercation had taken place between the accused/appellant and the deceased and being enraged, the appellant picked up a wooden plank lying there and assaulted the deceased with it. Thus, keeping in view the facts and circumstances of the case, the fact that the appellant assaulted the deceased only once with a wooden plank lying nearby, it is evident that the incident had taken place without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and the appellant had no intention to cause his death. However, considering the nature and extent of injury caused on the vital part head which ultimately resulted into his death, it

can safely be said that though the appellant had no intention to cause such bodily injury to the deceased as was likely to cause his death but had the knowledge that the injury being inflicted by him on the deceased was likely to result into his death. This being the position, his act is covered by exception 4 of Section 300 of IPC i.e. culpable homicide not amounting to murder and he is liable to be convicted under Section 304 Part-II of IPC. As regards the sentence, the appellant is in jail since 19.5.2010 and as such, has completed more than more than five years in jail and therefore, in the facts and circumstances of the case, ends of justice would be served if he is sentenced to the period already undergone by him under Section 304 Part-II of IPC. As regards conviction of the accused/appellant under Sections 294 and 324 of IPC, the same being based on proper appreciation of the evidence on record calls for no interference.

15. In the result, the appeal is allowed in part. While maintaining conviction and sentence of the accused/appellant under Sections 294 and 324 of IPC, his conviction under Section 302 of IPC is altered to Section 304 Part-II of IPC and he is sentenced to the period already undergone by him. He is reported to be in jail, therefore, he be released forthwith if not required to be detained in connection with any other offence.

Sd/

(Pritinker Diwaker)
JUDGE

Sd/

(I.S. Uboweja)
JUDGE