

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 63 of 2011

- Dharam Singh Gond S/o Rajuram Gond, aged about 25 years, R/o Pandaripani, Keregaon, P.S.-Arjuni, Distt.-Dhamtari, C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Police Station Arjuni, District Dhamtari (CG)

---- Respondent

For appellant : Shri Kalyan Kalamkar, Advocate
For Respondent/State : Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board by Justice Pritinker Diwaker

15/10/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 3.2.2010 passed by the Additional Sessions Judge (FTC), Distt. Dhamtari in S.T.No.51/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.500/-, in default thereof to undergo additional RI for one month.

02. As per the prosecution case, on 1.11.2009 the accused/appellant beat deceased Ramlal by hand and fist on account of some old dispute between them as a result of which Ramlal died. FIR (Ex.P/1) was lodged on 1.11.2009 by PW-1 Siyaram, son of the deceased, based on which offence under Section 302 of IPC was registered against the

accused/appellant. Inquest over the body of the deceased was prepared vide Ex.P/3 and thereafter the body was sent for postmortem. PW-10 Dr. Vinod Kumar Pandey conducted postmortem on the body of the deceased vide Ex.P/14, noticed lacerated wound over occipital region of scalp, contusions as well as fracture of ribs and opined that the cause of death was asphyxia due to compression and chest injury (traumatic) and it was homicidal in nature. After investigation charge sheet was filed against the accused/appellant and accordingly charge under Section 302 of IPC was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which though 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 even if the entire prosecution case is taken as it is, at best the accused/appellant can be held guilty under Section 304 Part-I of IPC because the incident occurred all of a sudden, without any premeditation, in the heat of passion as the accused/appellant assaulted the deceased only with hand and fist, which unfortunately resulted in his death. He submits that the appellant is in jail since November, 2009 and therefore, after

converting his conviction into Section 304 Part-I of IPC, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

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

08. PW-1 Siyaram, son of the deceased, and PW-3 Surjabai, aunt in relation of the accused/appellant, are eyewitnesses to the incident. They have categorically stated that on the date of incident they saw the accused/appellant beating the deceased by hand and fist as a result of which he fell down and died. Both these witnesses remained very firm in their cross-examination and nothing could be elicited from them by the defence to render their evidence doubtful or unreliable. They have further stated that before the villagers the accused/appellant had confessed that it is he who killed the deceased. This apart, PW-2 Kalabai (wife of the deceased), PW-4 Jailal (brother of the deceased), PW-5 Devprasad and PW-6 Vikram Markam, are the witnesses before whom the accused/appellant had confessed that it is he who killed the deceased. These witnesses have fully supported the prosecution case and their evidence inspires confidence of the Court.

09. PW-10 Dr. Vinod Kumar Pandey conducted postmortem on the body of the deceased on 2.11.2009 vide Ex.P/14 and noticed following injuries:

- (i) antimortem lacerated wound, 2 ½" x ½" over occipital region of scalp,
- (ii) antimortem contusions, 2" x 1" and 2" x ½" on chest,
- (iii) sternoclavicular joint fracture of sternum bone,
- (iv) fracture of right 2 ribs and left 3 ribs,
- (v) bleeding from mouth, nose, both eyes semiclosed, pupils dilated, rigor mortis on both upper lower limbs.

On internal examination he found that membrane of skull, intestines, heart, liver, spleen etc. were congested; larynx, windpipe and thorax were full of blood; and both the lungs were ruptured.

In his opinion, the cause of death was asphyxia due to compression and chest injury (traumatic) and it was homicidal in nature.

10. Close scrutiny of the evidence makes it clear that there was dispute between the family of the accused/appellant and that of the deceased. As per prosecution case on 1.11.2009 the accused/appellant beat deceased by hand and fist as a result of which he died on the spot. Eyewitnesses to the incident i.e. PW-1 Siyaram and PW-3 Surjabai have categorically stated that they saw the accused/appellant beating the deceased. PW-1 has stated that when he reached the place of incident, on seeing him the accused/appellant fled from there and by that time his father had died. PW-3 has stated that while she was going for grazing the cattle to the field in the noon, she saw the accused/appellant beating the deceased and when she asked the accused/appellant as to why he was beating the deceased, he also threatened her to go away from there and on her return at 5 pm, she found the deceased lying dead near the house of Sukhman. Apart from

the eyewitnesses account, there is evidence that on being enquired, the accused/appellant confessed his guilt before the villagers i.e. PW-2 Kalabai, PW-4 Jailal, PW-5 Devprasad and PW-6 Vikram Markam. The evidence of aforesaid witnesses remains un rebutted. This Court finds no reason to doubt the veracity of these witnesses. Moreover, medical evidence also lends due support to the prosecution case, according to which corresponding injuries were noticed by the autopsy surgeon on the body of the deceased. Thus, in view of the direct ocular and medical evidence on record, it stands proved beyond all reasonable doubt that it is the accused/appellant who killed the deceased.

11. Now the next question for consideration is whether in the facts and circumstances of the case, act of the accused/appellant is covered by any of the exceptions to Section 300 of IPC?

12. As already discussed above, on account of there being an old dispute between the accused/appellant and the deceased, the appellant had a grudge against the deceased, therefore, he beat the deceased by hand and fist and thereby caused his death. It appears from the facts and circumstances of the case as also the evidence of the prosecution witnesses that on the date of incident when the accused/appellant and the deceased met accidentally, the appellant seeing the deceased got furious and beat him in the heat of passion by hand and fist only. There is no evidence on record to show that the appellant continued to assault the deceased even after he fell down and as such, while assaulting the deceased the appellant did not act in an unusual or cruel manner. It is thus apparent that the incident had taken place without any premeditation, in a sudden fight in the heat of

passion and as such, the act of the accused/appellant is covered by Exception 4 to Section 300 of IPC i.e. culpable homicide not amounting to murder. However, considering the nature and gravity of injury and the manner in which the appellant assaulted the deceased leading to his instantaneous death, it is also clear that the appellant assaulted the deceased with intention of causing such bodily injury as was likely to cause his death and therefore, he is liable to be convicted under Section 304 Part-I of IPC and not under Section 302 of IPC as has been held by the trial Court.

13. 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 under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years. He is reported to be in jail, therefore no further order is required.

Sd/

(Pritinker Diwaker)
JUDGE

Sd/

(I.S. Uboweja)
JUDGE