

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 53 of 2011

1. Ramvriksha S/o Aanand, aged about 21 years, Caste-Lohar, R/o Village-Davara, Chowki-Davara, P.S.-Rajpur, Distt. Surguja (CG)

---- Appellant

In Jail

Versus

1. State Of C.G. Through: S.H.O., P.S. Rajpur, Distt.-Surguja (CG)

---- Respondent

For appellant : Shri Manoj Mishra, Advocate
For Respondent/State : Shri Ajit Singh, P.L.

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

Judgment On Board by Justice Pritinker Diwaker

02/09/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 29th October, 2010 passed by the Sessions Judge, Surguja (Ambikapur) in S.T.No.233/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.2000/-, in default thereof to undergo additional RI for six months.

02. As per the prosecution case on 11.3.2009 deceased Sutin Bargah had gone to the house of the accused/appellant, however, at that time, the accused/appellant was not there. It is alleged that sister of the accused/appellant Tetobai called the accused/appellant who came there carrying a wooden log in his hand and after abusing Sutin and

asking him as to why he is sitting in his house caused two blows from the said wooden log on his stomach and also sat on his stomach. On 15.3.2009 unnumbered FIR (Ex.P/8) was recorded at the instance of the deceased, based on which numbered FIR (Ex.P/9) was registered against the accused/appellant under Sections 294, 506 and 323 of IPC. From the record it appears that on 13.3.2009 the deceased was admitted in hospital in injured condition but he got himself discharged on 14.3.2009 and ultimately died on 19.3.2009 at his home. Merg intimation (Ex.P/14) was recorded on 21.3.2009. In the meanwhile, on 13.3.2009 medical examination of deceased Sutin was conducted by PW-1 Dr.J.K. Relwani vide Ex.P/2A. After his death, postmortem was conducted by PW-3 Dr. Rajesh Bhajgawali vide Ex.P/6 and he noticed as many as 7 abrasions on front of skull center, sagittal suture region, ear, shoulder, jaw and both elbows. In his opinion, the cause of death was asphyxia due to regurgitation of medicine like liquid GIT tract into trachea, rupture acending colon with oozing stool into blood in abdominal cavity leading to peritonitis not compatible with life and rupture of right kidney which was also not compatible with life. The nature of death was opined to be homicide. After investigation charge sheet was filed against the accused/appellant and accordingly charges under Sections 294, 506 Part-II and 302 of IPC were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 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, 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, at best the accused/appellant can be held guilty under Section 304 Part-I or II of IPC. He submits that the accused/appellant had no intention of causing death of the deceased, he gave only two blows on the stomach by a wooden log which unfortunately resulted in his death. He further submits that the appellant is in jail since 24.3.2009 and therefore, after converting his conviction into Section 304 Part-I or II, 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 looking to the manner in which the accused/appellant assaulted the deceased, he has rightly been convicted under Section 302 of IPC by the trial Court.

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

08. In the FIR (Ex.P/8) it has been stated by the deceased Sutin that he along with his wife had gone to the house of the accused/appellant for a formal visit, at that time the accused/appellant was not there, on being called by his sister he came there carrying a wooden log in his hand and started abusing him and then he gave two blows on his stomach with the said wooden log and also jumped on his stomach as

a result of which he started feeling pain. As per MLC (Ex.P/2A) PW-1 Dr.J.K. Relwani noticed contusion marks over the abdomen horizontally and on umbilicus of the deceased measuring 10 cm x 2 cm and 6 cm x 2 cm.

09. PW-3 Dr. Rajesh Bhajgawali conducted postmortem on the body of the deceased on 20.3.2009 vide Ex.P/6 and noticed following injuries:

- (i) abrasion front of skull in center, 1.5 x 1 cm
- (ii) abrasion near sagittal suture region, 1.5 x 1 cm
- (iii) abrasion above right ear, 2 x 2 cm
- (iv) abrasion over right shoulder, 1.5 x 1.5 cm
- (v) abrasion over right jaw, 1 x 1 cm
- (vi) abrasion over right elbow, 1 x 1 cm
- (v) abrasion over left elbow, 1 x 1 cm

In his opinion, the cause of death was asphyxia due to regurgitation of medicine like liquid GIT tract into trachea, rupture ascending colon with oozing stool into blood in abdominal cavity leading to peritonitis not compatible with life and rupture of right kidney which was also not compatible with life. The nature of death was homicidal.

He has further stated that he had examined the wooden log sent to him by the police and vide Ex.P/7 opined that the injuries suffered by the deceased could be caused by the said object.

10. PW-4 Smt. Kailasho Bai, wife of the deceased, who is an eyewitness to the incident, while supporting the prosecution case has stated that when they were sitting in the house of the accused/appellant, he came there carrying a wooden log in his hand

and caused injuries to her husband. She has further stated that after making assault when her husband fell down in a ditch, the accused/appellant mounted on him and thrashed his stomach. In paras-2 & 14 she has stated that while the accused/appellant was assaulting her husband, on being asked not to assault the accused/appellant said that he would open the red door and kill.

11. PW-5 Ram Kishore Bhagat recorded FIR (Ex.P/9) on the basis of unnumbered FIR (Ex.P/8). PW-7 A.Toppo, investigating officer, has duly supported the prosecution case. PW-8 Dr. Faizul Hasan Firdoushi who had medically examined the deceased on 13.3.2009 when he was hospitalized in injured condition, has stated that his condition was serious, however, on 14.3.2009 relatives of the deceased took him from the hospital after giving an undertaking that they are taking him on their own risk.

12. Close scrutiny of the evidence makes it clear that on 11.3.2009 it is the accused/appellant who assaulted the deceased by a wooden log on his stomach and also jumped on his stomach. FIR (Ex.P/8) was lodged by the deceased on 15.3.2009 based on which offence under Sections 294, 506 and 323 of IPC was registered against the appellant. In the said FIR, the deceased has categorically stated as to the manner in which he was assaulted by the appellant. PW-4 Smt. Kailasho Bai, wife of the deceased, who is an eyewitness to the incident has duly supported the prosecution case. The version of the prosecution further stands fortified from the medical evidence, according to which corresponding injuries were noticed on the person of the deceased. Thus, on the basis of evidence adduced by the

prosecution, complicity of the accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

13. 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 IPC i.e. culpable homicide not amounting to murder?

14. The evidence on record goes to show that after being assaulted, the deceased was hospitalized on 13.3.2009 but his relatives got him discharged on 14.3.2009 on their own risk against the advice of the treating doctor (PW-8 Dr. Faizul Hasan Firdoushi) who had told them that the patient was required to undergo operation, and ultimately he died on 19.3.2013. As per postmortem report, the cause of death was asphyxia due to regurgitation of medicine like liquid GIT tract into trachea, rupture ascending colon with oozing stool into blood in abdominal cavity leading to peritonitis not compatible with life and rupture of right kidney which was also not compatible with life. As already discussed above, the appellant assaulted the deceased with a wooden log on his stomach and thereafter, also hit on his stomach, but considering the medical evidence it is clear that the impact of the injury caused by the appellant was not as such which could endanger his life and the possibility of survival of the deceased if he had taken proper treatment could not be ruled out. Thus, keeping in view the background facts, the nature of evidence, the weapon of offence, the part of the body where assault was made and the gravity of the injury, it is evident that though the accused/appellant had no intention to cause such bodily injury to the deceased as was likely to result in his death but had the knowledge that the injury being inflicted by him on the deceased

was likely to cause his death. This being the position, the act of the accused/appellant is covered by exception 4 to 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 and not under Section 302 of IPC as has been held by the trial Court. From the record it appears that the accused/appellant is in jail since 24.3.2009, as such has already undergone more than 6 years of jail sentence and therefore, in the facts and circumstances of the case, in the considered opinion of this Court, the ends of justice would be served if he is sentenced to the period already suffered by him.

15. In the result, the appeal is allowed in part. While acquitting the accused/appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-II of IPC and 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/

(I.S. Uboweja)

Judge