

① (5)

Division Bench
BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

Cr. A. No. 699 OF 2012 (DB)

APPELLANT
(in Jail)

:: Budruram, S/o. Murharam, Caste
Bhatra, aged about 26 years, R/o.
Village Jamgaon Patelpara, Police
Station Bhanpuri, District Bastar
(C.G.)

R No. 699/12
Presented by Shri. Pushpa Devi
Dated. 16/8/12

Versus

RESPONDENT

:: State of Chhattisgarh through
Station House Officer, Police
Station Bhanpuri, District Bastar
(C.G.)

MEMO OF APPEAL UNDER SECTION 374(2) OF THE
CODE OF CRIMINAL PROCEDURE



HIGH COURT OF CHHATTISGARH, BILASPUR

**DB : Hon'ble Shri Justice T.P. Sharma &
Hon'ble Shri Justice C.B.Bajpai**

Criminal Appeal No.699 of 2012

Appellant

Budruram

Versus

Respondent

State of Chhattisgarh

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure

Appearance:

Ms. Pushpa Dwivedi, Advocate for the appellant.

Mr. Mahesh Mishra, Panel Lawyer for the State/respondent.

JUDGMENT

(22-01-2015)

Per C.B.Bajpai, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 06-6-2012 passed by Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.106/2009 whereby and whereunder after holding the appellant guilty for causing homicidal death of deceased Dashamuram amounting to murder, convicted the appellant under Section 302 of the Indian Penal Code (in short 'the IPC') and sentenced imprisonment for life and fine of Rs.5000/-.

2. Conviction is impugned on the ground that without there being any iota of evidence court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 31-07-2009, at about 08.20 a.m. complainant Vishnuram (PW-6), younger brother of deceased Dashamuram reached to Police Station Bhanpuri and lodged the First Information Report which was registered as crime No. 92/09. In the said report Vishnuram (PW-6)



told that on 30-07-2009 at about 9.00 p.m., the appellant demanded Rs.200/- from him, but as he was unable to meet the demand, he refused the same. When the complainant/Vishnuram (PW-6) was returning from the house of his brother, the appellant was standing before his house, he asked the complainant (PW-6) to return Rs.400/- he gave him earlier and assaulted by hand. Thereafter, the complainant went to the house of elder brother Dashamuram (deceased) and informed the incident to deceased Dashamuram and asked him to accompany upto the house of the appellant and he stated that he will make him understand. When both of them went near the house of the appellant, the appellant abused and told that the complainant came along with his brother to beat him and then the appellant assaulted the deceased thrice by stick, thereby Dashamuram fell down, blood came from his head. The complainant fled from the spot and informed neighbors and along with them took injured Dashamuram home. On account of late night, he reached to the police station next day and lodged the report. Police after lodging the FIR (Ex.-P/13), started investigation. During the investigation, by the letter Ex.-P/19, injured was sent for treatment and report regarding the injuries, Doctor K.S.Paikara (PW-3), Civil Hospital, Bhanpuri, examined the injured and noticed one lacerated wound of 1.5 x 2 inches over left part of forehead above left eyelid, one lacerated wound of 3.5 x 1/4 inches over left side of head, just upper part of the left ear one swelling of 3 x 2.5 inches. The MLC doctor opined that the injuries were caused by hard and edged, hard and blunt object. He gave his report vide Ex.-P/5 and referred the injured to Maharani Hospital, Jagdalpur for further management and treatment. During the treatment, the injured died on 31-07-2009 at about 5.00 p.m. at Maharani Hospital Jagdalpur. Initially the case was registered under Sections 294, 323 and 506 of the IPC and after the death of the deceased, police registered the case under Section 302 of the IPC. After giving notice to witnesses vide Ex.-P/15, the inquest over the dead



body was conducted vide Ex.-P/14. Dead body of deceased Dashamuram was sent for postmortem vide application Ex.-P/18. Doctor Sandeep Singh (PW-10) conducted the autopsy and noticed lacerated wound at left side of the forehead of 5 x 2 x 1 cms., one more lacerated wound on left side upper part of the head 8 x 1 x 1 cms. both injuries were caused by hard and blunt object and were antemortem in nature and of between 1 to 3 days prior to the time of postmortem. On internal examination, Doctor Sandeep Singh (PW-10) noticed clotted blood at both parietal region, inverted V shape fracture and parietal bone slightly depressed, clotted blood present inside the brain. As per opinion, cause of death is coma, intracranial/intrameningeal bleeding and the death was homicidal in nature. He gave his report vide Ex.-P/16. During the investigation, the sealed packet containing the clothes of the deceased were seized vide Ex.-P/2. Patwari prepared the spot map vide Ex.-P/3 and Ex.-P/4. The appellant was taken into custody, he made disclosure statement regarding the wooden stick by Ex.-P/8, the same was seized vide seizure memo Ex.-P/9. Blood stained cloth of Vishnuram seized vide Ex.-P/10 from the spot. Blood stained soil and plain soil and one piece of lungi were seized vide Ex.-P/11. The appellant was duly arrested vide Ex.-P/12. Bhanpuri police prepared the spot map vide Ex.-P/20. Arrest information was given to brother of the appellant vide Ex.-P/22. Police sent the material seized for which the Doctor opined for its chemical analysis regarding the confirmation of blood to Forensic Science Laboratory, Raipur. The articles were sent through draft (Ex.-P/23). Receipt regarding the articles is Ex.-P/24.

4. Statements of the witnesses were recorded under Section 161 of the Code. After completion of the investigation, charge sheet was filed before the Additional Chief Judicial Magistrate, Jagdalpur, who, in turn, committed the case to the Court of Sessions, Bastar at Jagdalpur, the learned Sessions Judge received the case and conducted the trial.



5. In order to prove the guilt of the appellant, the prosecution examined as many as 12 witnesses. The accused was examined under Section 313 of the Code where he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. He also examined Chepatu (DW-1) and his wife Somari (DW-2) in his defence. As per these defence witnesses, Dashamu and Budaru both were scuffling. Vishnu assaulted by stick which injured deceased Dashamu.

6. After providing opportunity of hearing to the parties, learned Sessions Judge convicted and sentenced the appellant as aforementioned.

7. We have heard learned counsel for the parties and perused the judgment impugned and record of court below.

8. Learned counsel for the appellant vehemently argued that it was not the appellant who assaulted Dashamuram, but at the time of incident, Dashamuram and the appellant were scuffling with each other. Vishnuram (PW-6) was also present and he assaulted by stick and Dashamuram was injured by this assault. He further submitted that Vishnuram (PW-6) is the only witness who is not supported by any other independent witness; it is not safe to rely over the interested witness. The statement of Vishnuram (PW-6) does not inspire confidence, it would not be safe to hold the conviction on the basis of the statement of Vishnuram (PW-6). Hence, the appellant may be acquitted from the charges. In alternate, learned counsel for the appellant submits that only 2 injuries were noticed by the autopsy surgeon that too by hard and blunt object. The incident happened in front of the house of the appellant where the deceased and Vishnuram (PW-6) both came for making quarrel with the appellant and there the appellant and the deceased quarreled with each other. The incident happened without premeditation, in a sudden fight, in a heat of passion, upon sudden quarrel; there was no intention for murder of the



deceased and the appellant had not taken any undue advantage or acted in a cruel or unusual manner, therefore, the act of the appellant may fall under the ambit of Exception 4 of the Section 300 of the IPC. Therefore, the offence under Section 302 of the IPC is not proved against the appellant, hence, his act may be assessed in the light of above facts and circumstances.

9. On the other hand, learned counsel for the State opposed the argument advanced on behalf of the appellant and supported the judgment of conviction and order of sentence awarded by the trial Court and submitted that the deceased was unarmed, he only went there to make the appellant understand but without any cause, in anger, the appellant assaulted more than one blow over body of the deceased for which the trial Court rightly convicted and held him guilty. Therefore, there is no scope for interference in the judgment of conviction and order of sentence passed against the appellant and the appeal may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the parties.

11. In the present case, homicidal death has not been substantially disputed on behalf of the appellant, on the other hand, it is also established from the evidence of Raghunath (PW-4), Sukhdev (PW-5), Vishnuram (PW-6), Dr. K.S. Paikara (PW-3), FIR (Ex.-P/13), statement of Dr. Sandeep Singh (PW-10), postmortem report (Ex.-P/16) that the death of the deceased was homicidal in nature.

12. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of Vishnuram (PW-6). As per the evidence, presence of the deceased and Vishnuram (PW-6) in front of the house of the appellant has not been substantially disputed. On the other hand, a defence has been taken that on account of demand for return of some



money the appellant slapped Vishnuram (PW-6) and thereafter in the second part of the incident, when the deceased and Vishnuram (PW-6) both went in front of the house of the appellant, there the incident happened. In the FIR (Ex.-P/13), the complainant stated the manner as to how the incident happened, the same was corroborated by Vishnuram (PW-6). Hence, it is proved beyond doubt that at the time of incident, Vishnuram (PW-6) and the deceased both went in front of the house of the appellant to make him understand and thereafter the incident happened. Autopsy surgeon noticed only two injuries in the head and opined that were caused by hard and blunt object. The incident happened in the shadow of demand of money allegedly given earlier to Vishnuram (PW-6) by the appellant. There was no previous enmity between the parties. Vishnuram (PW-6) admitted at para 9 of his cross-examination that the appellant and Dashamu both quarreled with each other in a duel.

13. The defence taken by the appellant that it was Vishnuram (PW-6) who inflicted blow to Dashamuram seems to be unacceptable; the defence witnesses also corroborate the presence of the deceased and Vishnuram (PW-6) in front of the house of appellant Budaruram. But, the FIR lodged by Vishnuram (PW-6) squarely reveals that Vishnuram (PW-6) was not having any stick or made any assault. The contents of the FIR goes to show that the stick was in the hand of the appellant. A different stand of defence was taken by the appellant in his statement under Section 313 of the Code that the incident happened in the house of the appellant and the appellant was sleeping at the time of incident and he was awakened by the deceased and Vishnuram (PW-6). The different defence taken eliminates the possibility of assault by Vishnuram (PW-6) since it is nowhere established that Vishnuram (PW-6) was having stick in his hand at the time of incident.

14. Upon minute examination of the evidence, adduced by the prosecution, it goes to show that the incident happened without premeditation, in a sudden fight, in a heat of passion, upon sudden quarrel and without being offender taken undue advantage or acted in a cruel or unusual manner. The appellant was armed, Vishnuram (PW-6) and the deceased were unarmed, the incident happened in front of the house of the appellant, the appellant was in a position to inflict as many assault as he wished but only two assaults were made by the appellant, goes to show that the case of the prosecution squarely falls under the scope of Exception 4 of the Section 300 of the IPC. The appellant assaulted blows over the vital part of the body thereby it goes to show that there was intention to cause injury sufficient for likely to cause death. But, the evidence adduced is not sufficient to establish that the appellant has committed culpable homicide amounting to murder.

15. Keeping in view the fact that the appellant was armed and inflicted more than one blow causing two lacerated wounds with internal fracture over vital part of body of deceased Dashamuram which ultimately resulted into death of the deceased, it is quite apparent that the appellant had intention to cause such bodily injury to the deceased as was likely to result in his death and as such, in the absence of element of knowledge the offence committed by the appellant is punishable under Section 304 Part I of the IPC.

16. On close scrutiny of the evidence, in the considered view of the this Court, the act of the appellant squarely falls within the ambit of Section 304 Part I of the IPC. Therefore, while convicting the appellant under Section 302 of the IPC the trial Court has not considered this aspect and thereby has committed illegality.

17. Consequently, the appeal filed by the appellant is partly allowed. Conviction of the appellant under Section 302 of the IPC is altered to Section

304 Part I of the IPC and the appellant is hereby sentenced to undergo rigorous imprisonment for 8 years. The appellant is in jail since 03-08-2009. The appellant shall be entitled to get benefit of set off for the period already undergone by him. The sentence of fine awarded by the trial Court to the appellant is hereby affirmed.

Sd/-
T.P. Sharma
Judge

Sd/-
Chandra Bhushan Bajpai
Judge

Aadil