

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 65 of 2011**

- Indradev @ Indra S/o Hemnath Sahu, aged about 42 years, R/o Sakin Kuliya, Thana Gurur, District Durg (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through - Thana Gurur, District Durg

---- Respondent

For Appellant.	:	Shri Deepak Gupta, Advocate
For Respondent.	:	Shri Ashish Surana, PL.

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

Judgment On Board**By Pritinker Diwaker, J****23/02/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 31.03.2010 passed by the Additional Sessions Judge (F.T.C.), Balod, District Durg in S.T. No.36/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.500/-, in default of fine to further undergo additional imprisonment for two months.

02. In the present case, name of the deceased is Heeraman, younger brother of the accused/appellant. It is alleged that on 19.07.2009 deceased after consuming liquor returned to his house and started hurling abuses at one Bhuneshwar and also the accused/appellant. It is said that thereafter the accused/appellant

pulled deceased by scarf (piece of cloth) and while the appellant was pulling the deceased holding scarf which was around his neck and trying to take him to the police station, the deceased expired. FIR Ex.P/1 was lodged by wife of deceased Sunita Bai (PW/1) on 19.07.2009 at 11:30 pm alleging in it that the accused/appellant felled deceased down and while he was trying to drag deceased holding his scarf around his neck, tied knot of the said cloth by one hand and pressed his neck by another hand as a result of which deceased died. Immediately thereafter merg Ex.P/2 was recorded. Inquest over the body of the deceased was prepared vide Ex.P/8. On 20.07.2009 body of deceased was sent for postmortem to Community Health Center, Gurur where Dr. R.S. Bhardwaj (PW/14) conducted autopsy on the body of deceased vide Ex.P/24 and found following injuries/symptoms:-

- (i) Face congested, lips were bluish, mouth was open but teeth clenched.
- (ii) Tongue was not visible, eye were partially open, conjunctive congested.
- (iii) There was transverse ligature mark around the neck below thyroid cartilage, margins of which brown and ecchymosed.
- (iv) One circular abrasion over left side of forehead, 2 cm above over left eyebrow, 1 cm x 1 cm skin partially brown.
- (v) Two oblique rectangular abrasions over middle part of medial side of left leg

The autopsy surgeon opined that the cause of death was asphyxia and venous congestion due to ligature strangulation and the death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Sections 302 IPC and charge was also framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 16 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 has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that two eye-witnesses to the incident Sunita Bai (PW/1) and Nepal Singh Sahu (PW/2) have not fully supported the prosecution case, likewise Yamuna (PW/9)-daughter of the accused/appellant has also not fully supported the prosecution case;

(ii) that from the evidence it is apparent that the accused/appellant had no intention to kill the deceased and deceased died while the appellant was trying to pull him by holding scarf which was around his neck and considering this aspect of the case, at best the accused/appellant can be convicted under Section 304 Part-II and not under Section 302 IPC as has been done by the trial Court.

(iii) The accused/appellant is in jail since 20.07.2009 and therefore after converting the conviction of the accused/appellant into Section 304 Part-II, his sentence may be reduced to the period already undergone by him.

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 infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Sunita Bai (PW/1) - wife of the deceased and lodger of FIR (Ex.P/1) and merg (Ex.P/2) has stated that on the date of incident her husband returned from Dhamtari, had altercation with the accused/appellant and some quarrel ensued between them. She has further stated that the accused/appellant took deceased along with him nearby lane and when she reached the place of occurrence she saw her husband lying on the road. On seeing this, she went to call her mother-in-law and when she came back to the place of incident after about 5 minutes, she found her husband dead. She has also stated that she narrated the incident to village Sarpanch and Kotwar & on the same day at night she lodged the FIR in police station. She also states that both of them were quarreling, the accused/appellant was beating her husband by his hands and when she tried to intervene, she was asked by the accused/appellant not to interfere. This witness in her cross-examination has stated that partition in the family had already been taken place but there was some dispute between her husband deceased and the accused/appellant with respect to repairing of roof. She admits that on the date of incident her husband returned from Dhamtari after consuming liquor and was abusing the accused/appellant. She has also stated that she had not seen any one

tying knot of scarf around the neck of deceased.

09. Nepal Singh Sahu (PW/2) the eye-witness to the incident has made almost similar statement as has been made by Sunita Bai (PW/1). He has stated that he saw the accused/appellant and deceased quarreling. The accused/appellant was trying to take deceased along with him holding his neck saying that he would take him to the police station and to call the Sarpanch and Kotwar of the village. He has further stated that at that time he was nearby his house and the accused/appellant was dragging deceased. This witness has seen the deceased lying on the road, thereafter the accused/appellant fled from the spot. He has also stated that he never informed the police that it is the accused/appellant who killed the deceased. In cross-examination this witness admits that quite often the accused/appellant and deceased used to quarrel and on the date of incident, after consuming liquor deceased was abusing the accused/appellant. Geeta Bai (PW/3) - wife of the accused/appellant has stated that she was not aware as to how the deceased died but she admits that both of them were quarreling. Pradduman Lal Patel (PW/4) is witness of inquest (Ex.P/8), seizure of scarf (Ex.P/9) and memorandum thereof (Ex.P/10). Sanjay (PW/7) - witness of inquest Ex.P/8 has stated that quite often deceased used to consume liquor. Yamuna (PW/9)-daughter of deceased has stated that deceased was abusing the accused/appellant and there was a quarrel between them. Bhuneshwar (PW/10) has stated that deceased after consuming liquor came to his house and was abusing. Chinta Ram Sahu (PW/11) witness of spot map (Ex.P/3), seizure of scarf (Ex.P/9) and

memorandum (Ex.P/10) has turned hostile. Urwa Bai (PW/12) is mother of the accused/appellant and deceased has turned hostile. Keshav Ram (PW/13) has turned hostile. Dr. R.S. Bhardwaj (PW/14) is the autopsy surgeon who conducted postmortem on the body of the deceased vide Ex.P/24 and opined that the cause of death of deceased was asphyxia and venous congestion due to ligature strangulation and death was homicidal in nature. Anil Kumar Ganjir (PW/15) is Patwari who prepared spot map vide Ex.P/19. M.D. Tiwari (PW/16) is Investigating Officer who has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 19.07.2009 the deceased after consuming liquor returned to his house and started abusing Bhuneshwar and also the accused/appellant. It has come in the evidence that the accused/appellant had asked deceased not to abuse him and while he was dragging deceased holding scarf which was around his neck to the police station and to the village Sarpanch and Kotwar, during this process the deceased expired. Further, it has been opined by Dr. R.S. Bhardwaj (PW/14) that the cause of death was asphyxia and venous congestion due to ligature strangulation. The fact of dragging deceased by the appellant has duly been corroborated by the evidence of Sunita Bai (PW/1), Nepal Singh Sahu (PW/2) and Balak Ram (PW/9).

11. If the evidence of the witnesses and the other material available on record is taken into consideration, prima-facie it appears that deceased died while he was being dragged by the accused/appellant holding scarf which was around his neck. In the FIR (Ex.P/1) lodged

by Suita Bai (PW/1) she has stated that the accused/appellant tied knot of scarf around the neck of deceased and dragged him, but in para 8 of her cross-examination, this witness does not say so. Nepal Singh Sahu (PW/2) in his cross-examination also does not say anything about knotting by the appellant. However, diving little deeper in to the material on record, it comes to the forefront that on the ill-fated day while the deceased was abusing the accused/appellant, the accused/appellant came there and had certain altercation with him saying that he would take him to police station. This attitude of the deceased enraged the accused/appellant and being enslaved by anger he dragged him holding his scarf wrapped around his neck which ultimately proved fatal leading to his death. The evidence which has been adduced by the prosecution would show that deceased was only dragged by the accused/appellant and during this act, deceased died. Thus from all the surrounding circumstances, it cannot be said that the accused/appellant was the aggressor, rather it is the deceased himself who first abused the accused/appellant. Thus keeping in view the overall facts and circumstances of the case giving rise to the unfortunate incident, the manner in which the accused/appellant caused injuries to the deceased which ultimately led to his instantaneous death as also the oral and medical evidence on record, it is amply clear that the accused/appellant had not nurtured any intention much less the premeditation of causing such bodily injury which ultimately would result in his death. That being the position, the act of the accused/appellant is squarely covered with Exception 4 to Section 300 IPC.

11. In the aforesaid view of the matter, conviction of the accused/appellant under Section 302 IPC as has been done by the Court below is not sustainable in the eye of law and his act would at the most make him liable for conviction under Section 304 Part-II IPC.

12. As regards his sentence, it has been informed that the accused/appellant had already remained in jail for about 06 years and 06 months. Thus, considering the fact that the incident took place in the years 2009 and the total detention period of the accused/appellant, in our considered view the ends of justice would be served if under the aforesaid Section the appellant is sentenced to the period already suffered by him.

12. In the result, the appeal is partly allowed. Conviction of the accused/appellant under Section 302 IPC is hereby set aside and he is instead convicted under Section 304 Part-II IPC and sentenced to the period already undergone by him. As the accused/appellant is in jail, he be set at liberty forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(I.S. Uboweja)
JUDGE