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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.123 of 2008

Judgment Reserved on : 17.8.2016

Judgment Delivered on : 31.8.2016

Ajay Kashyap, son of Krishna Prasad Kashyap, aged about 19 years, R/o Lahapatara, Police Station Lakhanpur, District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh, through Police Station Lakhanpur, District Surguja, Chhattisgarh

--- Respondent

For Appellant	:	Dr. Rajesh Pandey and Shri Rakesh Pandey, Advocates
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

C.A.V. Judgment

Per Deepak Gupta, Chief Justice

1. This appeal by the accused/Appellant is directed against judgment dated 4.10.2007 passed in Sessions Trial No.194 of 2006 by First Additional Sessions Judge, Ambikapur, District Surguja, whereby the accused/Appellant has been convicted for offence under Section 302 of the Indian Penal Code for having committed murder of Suresh Kumar and sentenced to undergo imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment for 6 months.
2. The prosecution case is that Suresh Kumar used to talk to the sister of accused/Appellant Ajay Kashyap. This enraged the Appellant and he got very angry. It is alleged that on 11.4.2006, at about 10:00 p.m., when Suresh Kumar was outside the house of his maternal uncle in Village Lahapatara, Police Station Lakhanpur,

District Surguja, the Appellant came to the house and started abusing Suresh Kumar and threatened to kill him because he used to talk to the sister of the Appellant. The Appellant thereafter grabbed a *Patiya*, which is a piece of wood used to interconnect the feet of a *Charpai* (Cot) and gave blows on the head of Suresh Kumar with the *Patiya*.

3. It is not disputed that on the next day, i.e., 12.4.2006, at about 1:00 p.m., Suresh Kumar himself went to the police station and lodged a complaint to this effect. On his complaint, First Information Report, Ex.P-22 was lodged, wherein the Appellant was charged with offence punishable under Sections 294, 323 and 506 of the Indian Penal Code. It is not disputed that Suresh Kumar was then taken for medical examination. In the medical examination conducted by Dr. P.S. Kerketta (PW-5), it was found that there was one lacerated wound over the right temporal region, 3 inches x 1 inch and it was skin deep (Ex.P-7). This was the only visible injury found and Suresh Kumar was complaining of pain in his scalp. The doctor advised x-ray of the scalp. X-ray was conducted and it is not disputed that in the x-ray (Ex.P-12), no fracture was found. This is apparent from the statement of Dr. M.K. Jain (PW-10), who did not find any fracture as per the x-ray (Ex.P-12). It appears that Suresh Kumar kept complaining of pain and in fact, he was admitted in Apollo Hospital, but was discharged on his own risk on 19.4.2006. Unfortunately, later, on 19.4.2006 itself, he expired and thereafter, merger intimation, Ex.P-9 was sent to the police. It was revealed only after conducting the post mortem (Ex.P-26) that there was a fracture in the scalp of deceased Suresh Kumar.
4. As far as the occurrence is concerned, there can be no dispute regarding the same. Deceased Suresh Kumar himself had lodged

the FIR. He had named the Appellant in the FIR and had clearly indicated that it is the Appellant who had assaulted him. The statement of deceased Suresh Kumar is fully supported by PW-1, Sudama, who had stated that he had seen the Appellant hitting the deceased with a piece of wood. PW-4, Rampravesh, father of the deceased has also stated that the deceased had told him before his death that Appellant Ajay had hit him with a *Patiya* of a *Charpai* (Cot).

5. From the facts narrated above, it is apparent that there was some verbal altercation between the Appellant and the deceased. The Appellant did not like the deceased talking to his sister and when the altercation took place, the Appellant picked-up a *Patiya* somewhere from the place of occurrence and gave a blow on the head of the deceased. One other fact which has to be considered is that the deceased was given only one blow on the head. This blow was not given with a sharp edged instrument/weapon. The sole question that arises for consideration is whether the Appellant could be convicted under Section 302 IPC.
6. It is apparent that the Appellant had no intention to cause death of the deceased. There was no premeditation. The entire incident happened on the spur of moment. The weapon of offence was a *Patiya*, which is a piece of wood. It is not normally used as a weapon to kill any person. However, the fact remains that the Appellant had given a blow on the head of the deceased. It has come in the evidence that the cut injury caused on the head of the deceased was only skin deep. When the doctor examined the deceased on the following day, he found no serious injury. He referred the deceased for x-ray. On 13.4.2006, when the x-ray was done, no fracture was revealed. It appears that the fracture was of

such a nature that it was not visible either on physical examination or even in the x-ray. It is only at the time of post mortem that the fracture was revealed. Another factor which cannot be lost sight of that the deceased was alive for 8 days. He himself had lodged the FIR and he was walking around, which means that earlier it was not thought that the injury was serious. We are clearly of the view that this is an offence which falls within the ambit of Section 304 Part II IPC since the intention was not there to cause death, but the fact that a party which had a heavy piece of wood and the blow was given on the head is sufficient to presume that the Appellant had knowledge that the act which he had done was likely to cause death.

7. In view of the above discussion, the conviction awarded to the Appellant under Section 302 IPC as also the sentence imposed thereunder are set aside, but the Appellant is now convicted under the second part of Section 304 IPC. As far as imposition of sentence for the conviction under the second part of Section 304 IPC is concerned, we are of the view that certain factors will have to be taken into consideration.
8. At the time of occurrence, the Appellant was a young boy aged about 19 years. He got angry because the deceased used to talk to his sister. At the same time, the fact remains that the Appellant had used a heavy piece of wood to give blow on the head of the deceased. Keeping all these factors into consideration, the Appellant is sentenced with 5 years' rigorous imprisonment. He is also sentenced to pay fine of Rs.20,000/-. In case of non-deposit of the fine of Rs.20,000/-, he shall undergo further rigorous imprisonment for 6 months. The period of incarceration already undergone by the Appellant and the amount of fine already

deposited by him, if any, shall be adjusted with the sentence of imprisonment and fine imposed upon him by this Court today. In case of deposit of fine of Rs.20,000/-, the whole sum shall be paid to the legal heirs of the deceased in equal proportion.

9. The appeal is allowed in part in the aforesaid terms. The bail bonds of the Appellant are cancelled. He shall immediately surrender or shall immediately be taken into custody for undergoing remaining part of jail sentence, if any.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE