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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.379 of 2002

1. Chandrabhan Singh, son of Sujan Singh, aged 60 years, Occupation Service (Retired Teacher),
2. Ramdev, son of Chhoturam, aged 36 years, Occupation Agriculture, Both residents of Village Duppi, P.S. Rajpur, District Surguja, Chhattisgarh
3. Moharlal, son of Shivcharan, aged about 22 years, Occupation Agriculture, resident of Village Bharda, P.S. Pratappur, District Surguja, Chhattisgarh

Present Address:

R/o Village Duppi, P.S. Rajpur, District Surguja, Chhattisgarh

4. Ramsundar, son of Gouturam, age 25 years, Occupation Agriculture, resident of Village Duppi, P.S. Rajpur, District Surguja, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh, through P.S. Rajpur, District Surguja, Chhattisgarh

---- Respondent

and

Criminal Appeal No.455 of 2002

Dinesh Singh, son of Chandrabhan Singh, age 37 years, Occupation Agriculture, resident of Village Duppi, P.S. Rajpur, District Surguja, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh, through P.S. Rajpur, District Surguja, Chhattisgarh

---- Respondent

For Appellants	:	Shri Surendra Singh, Senior Advocate with Shri Neeraj Mehta, Advocate
For State/Respondent	:	Shri Vinod Deshmukh, Deputy Government Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Deepak Gupta, Chief Justice

21.9.2016

1. Since both the appeals arise out of a common judgment, they are disposed of by the following common judgment.

2. These appeals by the accused are directed against the judgment dated 27.3.2002 delivered by the First Additional Sessions Judge, Ambikapur in Sessions Trial No.346 of 1999, whereby accused Dinesh Singh, Appellant in Criminal Appeal No.455 of 2002 has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code (IPC) and has been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default, to further undergo rigorous imprisonment for 1 year. Appellant Dinesh Singh and four other accused Chandrabhan Singh, Ramdev, Moharlal and Ramsundar, Appellants in Criminal Appeal No.379 of 2002 have been convicted for an offence punishable under Section 201 IPC and have been sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.1,000/- each, in default, to undergo further rigorous imprisonment for 6 months. All the five Appellants have also been convicted for an offence punishable under Section 120-B IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.1,000/- each, in default, to undergo further rigorous imprisonment for 6 months.

3. The prosecution story in nutshell is that deceased Jaiprakash alias Guddu was employed as a tractor driver by accused Dinesh. He used to reside in the house of accused Dinesh. According to the prosecution, on 19.7.1999, the day of occurrence, accused Dinesh Singh along with PW-4, Nansu alias Pardesh had gone to the fields to transplant paddy. They returned to the house at 11 a.m. When they returned to the house, they found that Jaiprakash alias Guddu was urinating in the courtyard of the house belonging to Dinesh. Dinesh objected to the same. He immediately fired Jaiprakash from his job as driver. On this, Jaiprakash demanded that his dues be paid and then he would leave the place. Thereafter, an altercation took place and accused Dinesh gave fist blows on the person of Jaiprakash. As a

result of the injuries sustained, Jaiprakash died on the spot itself.

4. Thereafter, Dinesh tried to cover up the murder by informing all the co-villagers that Jaiprakash was suffering from Malaria. It is alleged that some doctor was called and Jaiprakash died after the doctor gave injections to him.
5. It is also the case of the prosecution, which fact is not disputed that accused Dinesh sent two persons to the house of the father of deceased Jaiprakash, namely, PW-9, Kaleshwar, who informed him that his son Jaiprakash had died due to some illness. Thereafter, on the next day, i.e., 20.7.1999, Kaleshwar came to the house of Dinesh. There he found that the body of Jaiprakash was kept in the courtyard on a cot. The body was covered with a blanket and when he pulled off the blanket he found that the body was naked. On examination, he found some black mark on the neck region. Since the body was naked, and there was a black mark, he was suspicious with regard to the manner in which his son had died. He, therefore, told Dinesh that he wanted to lodge a report with police. On this, it is alleged that Dinesh told the father of the deceased that you remove the body because it is smelling. But he refused to do so on the ground that he wanted to first lodge the report with the police and thereafter get the post mortem done.
6. Thereafter, PW-9, Kaleshwar went to Police Station, Pratappur to lodge the report. Unfortunately, no report was lodged at Police Station Pratappur on the ground that the village in which the occurrence had taken place fell within the jurisdiction of Police Station Rajpur and not Police Station Pratappur. Thereafter, according to PW-9, Kaleshwar, when he went from Pratappur to Rajpur via Ambikapur, he had to stay the night at Ambikapur. Thereafter, when he reached Rajpur on the second day, i.e., 22.7.1999, he lodged the report. This report is

Ex.P-15 (Merg Intimation) and in this report all that is stated is that two young boys had come to the house of Kaleshwar and informed him that his son Jaiprakash had died because of some illness. He then went to the house of Dinesh to see the body of his son. When he reached there, he found that the body was lying on a cot in a naked condition and only a blanket was covered over the dead body. Therefore, he was suspicious that there was something amiss and, therefore, he lodged the report. The police then after lodging the First Information Report investigated the matter and the body of the deceased was sent for post mortem which was conducted by PW-6, Dr. Pritam Ram. This post mortem (Ex.P-10) revealed that the deceased had not died due to any illness, but due to certain injuries. One of the injuries was on his clavicular region. On dissection of the body, it was found that right clavicle had been fractured. The second and more important injury was that 3rd and 4th ribs were fractured on the left side of the chest. On dissection of the body, it was found that one of the fractured ribs had penetrated into the left lung and punctured it which led to excessive bleeding. The doctor opined that Jaiprakash died due to asphyxia. It was also the case of the prosecution that Dinesh along with four other accused tried to hide the evidence regarding the offence of murder by burying the body and, therefore, also committed the offence punishable under Section 201 IPC. The accused/Appellants were accordingly charged for having committed the offence as aforesaid. They have been convicted and sentenced as above. Hence the present appeals.

7. We have heard Shri Surendra Singh, Learned Senior Advocate appearing for the Appellants/accused and Shri Vinod Deshmukh, Learned Deputy Government Advocate appearing on behalf of the State/Respondent.

8. Shri Surendra Singh, Learned Senior Advocate appearing for the Appellants/accused has made threefold submission. His first submission is that there is not an iota of evidence to come to conclusion that it is accused Dinesh who caused the injuries on the person of deceased Jaiprakash. The second submission is that assuming that the injuries were caused by Dinesh, then also no offence under Section 302 IPC is made out and at best an offence under Section 325 IPC is made out. His third submission is that there is no attempt of concealing any evidence and, therefore, no offence under Section 201 IPC is made out.

9. As far as the first submission is concerned, it is true that there is no direct evidence to show that Dinesh caused the injuries on the person of the deceased because the one alleged eyewitness PW-4, Nansu alias Pardesh turned hostile and did not support the prosecution version. There is no other ocular evidence to support the case of the prosecution. However, we are not inclined to accept the argument of Learned Senior Counsel for the Appellants because of the following reasons: (1) the occurrence took place within the courtyard of the house of accused Dinesh, (2) Dinesh told the villagers and other persons that Jaiprakash was suffering from Malaria and had been treated by a doctor, (3) He set up a false story with regard to the manner in which Jaiprakash died. If we make reference to the statement of Dr. Pritam Ram, PW-6 and the post mortem report, Ex.P-10, we find that the following injuries were found on the person of the deceased:

“Injury:

- (1) Swollen on left clavicular region after dissection right clavicle was fractured,

- (2) Anti mortem contusion on left side of chest after dissection dark clotted blood present and 3rd and 4th

rib was fractured,

(3) Contusion on right side of axillary line at level of right side of breast after dissection dark blood present.”

The opinion of the doctor is as follows:

“Cause of death – Asphyxia due to Traumatic injury and punctured wound on left lung.

Nature of Death – Homicidal

Time passed death – more than 72 hrs.”

- 10.** In his cross-examination, Dr. Pritam Ram, PW-6 has clarified that some portion of the broken bones had punctured the left lung. In cross-examination, he has also clarified that the lung was punctured from the fractured piece of the third rib. He has also stated that this could have happened if a strong fist blow was given on the region. There are basically two injuries on the person of the deceased. One was on the clavicle region and one was the fracture of the 3rd and 4th ribs. Even as per the prosecution story, which is based on the alleged eyewitness PW-4, Nansu alias Pardesh, the allegation is that accused Dinesh gave fist blows to the deceased causing these injuries. The question is even if we accept the prosecution story to be totally true, whether the offence of murder is made out or not. As far as culpable homicide amounting to murder is concerned, we have no hesitation in coming to the conclusion that no offence of murder has been committed. Section 299 IPC defines culpable homicide as follows:

“299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

- 11.** It appears that the Trial Court was of the opinion that since death had

occurred then the offence must be under Section 302 IPC. Every case of death does not mean that the accused has to be convicted for the offence of culpable homicide. If the intention is only to cause grievous injury, but death results due to some other extraneous circumstances then the accused cannot be held guilty of culpable homicide. The legislature has made a distinction between various offences and to fall within the parameters of Section 302 IPC or Section 304 IPC, the homicide must be one which falls within the ambit of Section 299 IPC. If the ingredients of Section 299 IPC are not made out then the accused cannot be convicted either under Section 302 IPC or under Section 304 IPC. Culpable homicide as defined under Section 302 IPC covers both murder as well as culpable homicide not amounting to murder. If ingredients of Section 300 IPC are satisfied and the case is not covered by any of the exceptions of Section 300 IPC then it would be a case of murder where the accused can be convicted under Section 302 IPC. However, the case falls under the Exceptions to Section 300 IPC or does not fall within the ambit of 302 IPC *per se* then the accused can be convicted under Section 304 Part I or Part II IPC. Even in every case of death where the injury results in death does not mean that there has to be culpable homicide. This will depend on facts of each case.

- 12.** Therefore, any person who causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Therefore, the essential ingredients are intention or knowledge. The intention should be either to cause death or to cause such bodily injury as is likely to cause death. As far as the knowledge is concerned, if any person knows that his act may lead to death then the offence could be the culpable homicide amounting to murder.

- 13.** As far as the present case is concerned, the prosecution story, even if believed, cannot lead to conviction under Section 302 IPC. The injuries are on the shoulder and on the rib region. The ribs were fractured and so was the clavicle bone. The death had occurred not due to these injuries but as a result of the puncturing of the left lung by a portion of the 3rd fractured rib. The accused could neither have the knowledge nor the intention that by giving a blow on the chest one of the ribs would get fractured and a portion of the fractured rib would go into the lung of the injured person and cause his death. We are of the view that since the offence does not fall under the parameters of Section 299 IPC, which deals with culpable homicide, it cannot even be said to be culpable homicide not amounting to murder.
- 14.** Even for an offence under Section 304 Part II IPC which is the lesser offence under Section 304 IPC, an accused can only be convicted if he has knowledge that the act which he is committing is likely to cause death or he is intentionally causing such bodily injury as is likely to cause death. This cannot be assumed from the facts of the present case and the nature of the injuries suffered by Jaiprakash. Accused Dinesh did not use any deadly weapon. He used only his fists. A few blows were given. Unfortunately, one of the pieces of the fractured ribs penetrated into the left lung. This could not have been either imagined or intended by accused Dinesh. Therefore, we are of the opinion that accused Dinesh only had intention or knowledge to cause grievous hurt to Jaiprakash and accordingly he is convicted for an offence punishable under Section 325 IPC.
- 15.** As far as the facts of the present case are concerned, we have no hesitation in holding that accused Dinesh neither had any intention to cause death nor he had knowledge that the injury which he was going to cause will result in death. Shri Vinod Deshmukh, Learned Deputy

Government Advocate for the State/Respondent has placed much reliance on fact that accused Dinesh set up a false story. But that would not convert the offence of the accused. His behaviour may not be proper, but that would only mean that his offence will lead to his conviction under Section 201 IPC. We agree with Shri Deshmukh, Learned Deputy Government Advocate that accused Dinesh tried to cover up the offence which he had committed by telling all the villagers and also to the father and brother of the deceased that the deceased had died as a result of a natural disease. This suggestion made by accused Dinesh to the villagers and to the witnesses is totally false and belied by the statement of the doctor. Therefore, we have no hesitation in convicting Dinesh for an offence under Section 201 IPC.

- 16.** As far as the other four accused/Appellants are concerned, the allegation against them is that they along with accused Dinesh conspired to hide the evidence of murder by burying the body. No case under Section 201 IPC is made out against the four other accused/Appellants fact because of the following reasons: (1) Accused Dinesh himself had kept the body in his house on a cot covered by a blanket, (2) This body was naked which means that accused Dinesh was not trying to hide the body from any person, (3) Dinesh himself had sent a messenger to the father of the deceased asking him to come his house to collect the body of the deceased. Therefore, there was no intention to hide the body. What had happened that the body remained lying in the house of Dinesh and by the time the father of the deceased came there almost 24 hours had elapsed. Nobody will like that a dead body is kept in his courtyard for a long time. He requested the father and the brother of the deceased to take away the body and keep it somewhere else. The father and the brother of the deceased may have been justified in refusing to take away the body or in cremating it because they had suspicion about the

manner in which their son/brother had died. However, after that, when Dinesh along with other four co-accused/Appellants buried the body, they did not have the intention of covering the offence and making the evidence with regard to the offence of murder disappear. If they had to do so, they could have either buried the body or secured the body at a place from where nobody could recover it or they would have cremated it. In case the intention of accused Dinesh was to hide evidence with regard to the offence then he would have buried the body or cremated it without informing the father of the deceased or other persons.

17. In view of the above discussion, we partly allow Criminal Appeal No.455 of 2002 preferred by accused Dinesh and convert his conviction to one under Section 325 IPC. He is also convicted for having committed the offence punishable under Section 201 IPC. For the offence under Section 325 IPC, he is sentenced to the maximum period of 7 years' rigorous imprisonment and to pay fine of Rs.1,000/-, in default, to undergo further rigorous imprisonment for 3 months. As far as the offence under Section 201 IPC is concerned, he is sentenced to undergo rigorous imprisonment for 1 year. Both these sentences shall run concurrently.
18. As far as Criminal Appeal No.379 of 2002 is concerned, the same is allowed and the Appellants are acquitted of the charges levelled against them. Their bail bonds shall remain operative for a further period of six months in terms of Section 437A Cr.P.C.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE