

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 109 of 2012

- Rajesh Das S/o Ram Khilawan Panika, aged about 35 years, R/O Village Shayar, Out Post Kedma, Police Station - Udaipur, Distt. Surguja C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through - Out Post Kedma Police Station Udaipur, Distt. Surguja C.G.

---- Respondent

For appellant : Ku. Vijay Laxmi Soni, Advocate.

For Respondent/State : Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice I.S. Uboweja

Judgment On Board By Justice Pritinker Diwaker

26/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 23.11.2011 passed by the Sessions Judge, Surguja (Ambikapur) in S.T.No.19/11, convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and fine of Rs.2000/- with default stipulation.

02. As per the prosecution case, on 21.11.2010 the accused/appellant saw his wife Asha (PW-2) in an objectionable position with his brother Gullu Das (deceased) and it is said that he caused number of club injuries to Gullu Das as a result of which he died. Unnumbered Merg Ex.P/2 was recorded on 22.11.2010 at the instance of PW-1 Shankar

Das, Village Kotwar, which was subsequently numbered vide Ex.P/2A. Immediately thereafter unnumbered FIR (Ex.P/1) and numbered FIR (Ex.P/1A) were registered against the accused/appellant under Section 302 of IPC. Inquest over the body of the deceased was prepared vide Ex.P/8 and thereafter, the dead body was sent for postmortem which was conducted by PW-7 Dr. BM Kamre vide Ex.P/14A who noticed multiple lacerated wounds in both legs, forehead and left temporal region, fracture of tibia and fibula as well as multiple contusions over chest and abdomen. In his opinion the cause of death was internal hemorrhage and coma due to head injury and that the death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of IPC and accordingly, charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses. Statement of the accused 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 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 as it is, at best the appellant is liable to be convicted under Section 304 Part-I or II of IPC because the incident

had taken place on a sudden and grave provocation, in the heat of passion when the appellant saw his wife in objectionable position with the deceased and as such, there was no premeditation or intention on the part of the appellant to kill the deceased. She further submits that the appellant is in jail for the last more than 5 ½ years and therefore, after converting his conviction under Section 304 Part-I or II, he may be sentenced to the period already suffered by him.

She has placed reliance on the judgment of the Apex Court in the matters of ***Saroj @ Suraj Panchal and another Vs. State of West Bengal, 2014 Cri.L.J. 3134.***

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in it. He submits that considering the number and nature of injuries and the manner in which it was caused, conviction of the appellant needs no alteration.

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

08. PW-1 Shankardas, Village Kotwar, is lodger of merged intimation and FIR. He has stated that one village boy came to his house in the morning and informed that the accused/appellant has killed his brother and thereafter he went to the house of the deceased where he was residing with his brother/appellant and appellant's family. He has stated that at that time the appellant was there, on being asked whether he (appellant) has killed the deceased, the appellant confessed that he has killed him. He has further stated that when he asked the appellant

as to why he killed the deceased, he informed him that the deceased was having illicit relation with his wife, he had seen him in objectionable position with his wife and therefore, killed him. In cross-examination this witness remained very firm and reiterated the fact that on being asked, the accused/appellant confessed his guilt.

09. PW-2 Asha, wife of the appellant, has not supported the prosecution case and has been declared hostile. In cross-examination she has stated that while she was alone in the house the deceased was trying to outrage her modesty, which was protested by her, during scuffle she fell down on the floor, at that time her husband reached there and therefore, she ran away from there so that her husband could not nurture any adversity regarding her and stayed in the house of one Lalit Lohar. On the next morning she went to the house of her mother-in-law and there she came to know about murder of the deceased by her husband/appellant.

10. PW-3 Amir Singh Paikra, Patwari, prepared the spot map Ex.P/4. PW-4 Jailal is a hearsay witness, he has not supported the prosecution case and has been declared hostile. PW-5 Chandrabasu Yadav is a witness to inquest Ex.P/8, seizure Ex.P/9 of plain and bloodstained soil from the place of occurrence, memorandum of the appellant Ex.P/10 and seizure of club Ex.P/11. He has supported the prosecution case in relation to above document, however, in relation to seizure memo Ex.P/13 whereby clothes of the deceased were seized, he turned hostile. PW-6 Ramnath Yadav recorded unnumbered and numbered merg Ex.P/2 and P/2A, unnumbered Dehati Nalishi Ex.P/1 and numbered FIR (Ex.P/1A). PW-7 Dr. BM Kamre conducted postmortem

on the body of the deceased on 22.11.2010 vide Ex.P/14A and noticed following injuries:

- (i) multiple lacerated wounds in both legs tibular region 3 x 2, 2 x 2, 1 x ½, 2 x 1 and blood stain present, fracture of left tibia fibula bone,
- (ii) multiple contusions in chest and abdomen 5 x 1 ½, 3 x 2, 2 x 2,
- (iii) lacerated wound in forehead both side 3 x 2, 2 x 1 and abrasion,
- (iv) lacerated wound in head left temporal region 3 x 2, semen like stain present in penis, rigor mortis present.

On internal examination he also found fracture of 6th rib of left side of the chest. In his opinion, cause of death was internal hemorrhage and coma due to head injury and that the death was homicidal in nature.

He had also examined the weapon of offence club sent to him by the police and vide Ex.P/15A opined that the injuries found on the body of the deceased could be caused by the said weapon.

11. As per FSL report Ex.P/21, blood was found on the club, clothes of the appellant and that of the deceased.

12. Close scrutiny of the evidence makes it clear that it is the accused/appellant who killed his brother Gullu Das on 21.11.2010 by assaulting him with a club when he found his wife Asha (PW-2) in an objectionable position with the deceased. PW-1 Shankar Das, Village Kotwar, who lodged Merg and FIR, has stated that on being informed by one village boy about commission of murder of the deceased by the appellant when he went to the house of the deceased, the appellant was there and on enquiry, the appellant confessed that it is he who killed the deceased as he was having illicit relation with his wife and he

had seen the deceased in objectionable position with his wife. Though various suggestions have been put to this witness in the cross-examination to the effect that no such extrajudicial confession was made by the appellant to him, but he categorically denying the same reiterated that the accused/appellant had confessed his guilt before him and also disclosed the reason behind commission of the offence. Though PW-2 Asha, wife of the appellant, has turned hostile but she too has admitted that on the date of incident the appellant and the deceased had a scuffle in the house. Likewise, PW-4 Jailal, hostile witness, has also admitted quarrel between the appellant and the deceased on the date of incident. On the memorandum of the appellant Ex.P/10, one bloodstained club was seized vide Ex.P/11. Clothes of the appellant were also seized vide Ex.P/12. PW-5 Chandrabasu Yadav, witness to the said memorandum and seizure, has duly supported the prosecution case. This apart, as per FSL report Ex.P/21 blood was also found on the aforesaid articles. In his statement under Section 313 of Cr.P.C. the appellant has even denied seizure of club and his clothes and merely pleaded ignorance about presence of blood on the seized articles. According to the autopsy surgeon he notice multiple lacerated wounds in both legs, forehead and left temporal region, fracture of tibia and fibula as well as multiple contusions over chest and abdomen. The doctor after examination of the club seized at the instance of the appellant has opined that the injuries suffered by the deceased could be caused by the said club. Thus, considering the overall evidence on record i.e. extrajudicial confession of the appellant before PW-1, plea of *alibi* taken by the appellant in his statement under Section 313 of Cr.P.C. turning out to

be totally false as per evidence of PW-2 and PW-4, seizure of weapon of offence club at his instance, FSL report being positive against the appellant, failure of the appellant to explain the incriminating circumstances in his statement u/s 313 Cr.P.C. and the medical evidence duly supporting the prosecution case, complicity of the appellant in commission of the offence stands proved beyond reasonable doubt.

13. Now the next question for consideration is whether act of the accused/appellant is culpable homicide not amounting to murder and if yes, whether he is liable to be convicted under Section 304 Part-I or II of IPC?

14. From the evidence as discussed above, it is clear that the appellant assaulted the deceased on a sudden provocation in the heat of passion when he saw him in compromising position with his wife and lost power of self-control. Thus it is apparent that the incident had taken place without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and in the facts and circumstances of the case, the act of the accused/appellant is covered with Exception 1 to Section 300 of IPC. Further, from the postmortem report it is evident that the deceased suffered multiple lacerated wounds on both legs, forehead, temporal region, 6th rib of left side of the chest was fractured and cause of death was internal hemorrhage and coma due to head injury. Thus, considering the nature and extent of injury and the manner in which the appellant assaulted the deceased repeatedly leading to his instantaneous death, it is also clear that the appellant assaulted the deceased with intention of causing such bodily injury as

was likely to cause his death and as such, his act would be culpable homicide not amounting to murder, making him liable to be convicted under Section 304 Part-I of IPC and not under Section 302 of IPC as has been held by the trial Court.

15. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years. The judgment impugned stands modified to the above extent. He is reported to be in jail since 22.11.2010, therefore no further order regarding his surrender etc. is required.

Sd/
(Pritinker Diwaker)
JUDGE

Sd/
(I.S. Uboweja)
JUDGE