

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 605 of 2014

- Sukhchand S/o Rai Singh Rawat Aged About 40 Years R/o Village Devgawa, Ps Makadi, Distt. Kondagaon C.G.

**---- Appellant
Accused
In Jail**

Versus

- State Of Chhattisgarh Through D.M. Kondagawa, Distt. Kondagawa C.G.

---- Respondent

For appellant : Shri V. Pandey, Advocate.
For Respondent : Shri Chandresh Shrivastava, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board by Justice P. Diwaker

07/01/2016

This appeal arises out of the judgment of conviction and order of sentence dated 15.4.2014 passed by the Additional Sessions Judge, Kondagaon, Distt. Kondagaon in S.T.No.328/12 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- with default stipulation.

02. Brief facts of the case are that on 5.4.2009 when deceased Budhantibai, mother of the accused/appellant, was sitting in her courtyard, the accused/appellant after consuming liquor came there and had altercation with his father PW-2 Rai Singh. It is alleged that at that moment, the deceased scolded the appellant that he was not

doing any work and yet arguing with his father. Upon hearing this, the accused/appellant got enraged, picked up a spade and assaulted with it on the head of his mother as a result of which she died instantaneously. FIR (Ex.P/12) was lodged by Rai Singh (PW-2), on the basis of which offence under Section 302 of IPC was registered against the appellant. Inquest over the body of the deceased was performed vide Ex.P/13. Thereafter, the dead body was sent for postmortem examination which was conducted by PW-8 Dr. Sagar Kashyap vide Ex.P/16 wherein he noticed fracture of skull bone of the left side and in his opinion, the cause of death was hemorrhagic shock due to injury on the temporal region of the head. 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 him 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, the accused/appellant can, at best, be held guilty under Section 304 Part-I or II of IPC. He submits that the

appellant had no intention to cause death of the deceased and the incident had taken place in the heat of passion, upon a sudden quarrel when the deceased instigated him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that brutality of the offence can be seen where the accused/appellant gave a blow of spade on the vital part i.e. head of the deceased, who is his mother, with such a force that the temporal bone of her skull got fractured leading to her instantaneous death and therefore, he is not entitled for any sympathy. He further submits that father of the appellant PW-2 Rai Singh, eyewitness to the incident, has duly supported the prosecution case.

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

08. PW-1 Dr. Smt. Kumund Kanwar after examining the weapon of offence spade gave query report Ex.P/1 that the injury sustained by the deceased could be caused by the said weapon. PW-2 Rai Singh, father of the appellant, has stated that on the date of incident after assaulting the deceased on her head, the accused/appellant fled from the spot. Though in his cross-examination he has stated that he saw the accused/appellant running away from the spot but if his overall evidence is seen, it is apparent that he is an eyewitness to the incident and saw the accused/appellant assaulting the deceased. PW-3 Jugdai, sister of the accused/appellant; PW-4 Jagram and PW-5 Binguram, witness to memorandum of the appellant Ex.P/3 and seizure Ex.P/6, have turned hostile. PW-6 NR Mandavi registered the merg intimation

(Ex.P/11) and FIR (Ex.P/12). PW-7 Pourush Purre, the investigating officer has duly supported the prosecution case. PW-8 Dr. Sagar Kashyap conducted postmortem on the body of the deceased and noticed fracture of skull bone of the left side and in his opinion, the cause of death was hemorrhagic shock due to injury on the temporal region of the head.

09. Close scrutiny of the evidence makes it clear that on 5.4.2009 when deceased Budhantibai, mother of the accused/appellant, was sitting in her courtyard, the accused/appellant came there drunk and had altercation with his father PW-2 Rai Singh. When the deceased scolded him for arguing with his father, the appellant gave a fatal spade blow on her head as a result of which she died spontaneously. The incident was witnessed by father of the appellant PW-2 Rai Singh. The statement of PW-2 is fully reliable and we find no reason to doubt his testimony. Medical evidence also lends support to the version of PW-2, according to which corresponding injuries were found on the body of the deceased. Thus, in view of the ocular and medical evidence on record, complicity of the accused/appellant in commission of the offence stands proved beyond reasonable doubt.

10. As regards the argument that in the facts and circumstances of the case, the appellant is liable to be convicted under Section 304 Part-I or II of IPC, considering the manner in which the appellant assaulted his mother, aged about 60 years, with a deadly weapon spade on her vital part, over a trivial issue which resulted in her instantaneous death, it cannot be said that while assaulting the deceased in such a manner the accused/appellant had no intention to kill her or no knowledge that

the injuries being inflicted by him would result in her death. Being so, his conviction under Section 302 of IPC, as awarded by the trial Court, is based on proper appreciation of the evidence warranting no interference by this Court.

11. In the result, the appeal fails and is, accordingly, dismissed.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(C.B. Bajpai)
Judge