



28

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 03 of 2005

1. Anakh Ram Nagwanshi S/o Preet Ram nagwanshi, Caste – Nagwanshi, aged 35 years, Occupation – Agriculture, R/o Village Kadaro, P.S. Bagbahar, Distt. Jashpur (C.G.).

---- Appellant

Versus

1. State of Chhattisgarh Through Station House Officer, P.S. Bagbahar, District Jashpur (C.G.)

---- Respondent

For Appellant - Shri Sanjay Agrawal, Advocate.
For Respondent/State - Shri Adhiraj Surana, Dy, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board

Per P. Diwaker, J.

09/08/2016

This appeal arises out of the judgment of conviction and order of sentence dated 15.10.2016 passed by the Sessions Judge, Jashpur, in S.T. No.27/2004 convicting the accused/appellant under Sections 302 and 326 IPC & sentencing him to undergo imprisonment for life and R.I. for three years respectively.

02. As per prosecution case, deceased Haldhar Ram Nagvanshi was the uncle of appellant. It is alleged that on 18.09.2003 accused/appellant entered house of the deceased and started abusing him and when deceased asked appellant not to use abusive language, he caused injuries to him and also to his daughter Urmila aged about 10 months, who was in his lap. Unnumbered FIR (Ex.P/1) was lodged

on 18.09.2003 by wife of deceased Rampati Bai (PW/1), eye witness to the incident. Injured Haldhar Ram was medically examined by Dr. Laxman Banotha (PW/10) on 18.09.2003 vide Ex.P/20 and found following injuries:-

- (i) Incised wound of 6cm x 1.5cm x 3cm x bone deep. Deep muscles cut, spine of vertebra exposed. (Over back region at upper and middle half and middle of spine red colour bleeding present).
- (ii) Incised wound of 5 x 1.5 x 1.5 cm x bone deep, crack of right-forearm middle. Red colour bleeding present.
- (iii) Incised wound of 3 x ½ x ½ cm on left ear lobule.
- (iv) Lacerated wound of ½ x ½ cm fracture angle of right mandible.
- (v) Abrasion 6 x ¼ cm on back (Nose and Ear).

Injured Urmila was also medically examined by Dr. Laxman Banotha (PW/10) vide Ex.P/21 on 18.09.2003 and found incised wound of 3.5 x 1/2 x 1 cm upto bone deep on left leg, red colour bleeding present on left leg upper half region. Thereafter, on 20.09.2003, on the basis of MLC and earlier report, numbered FIR (Ex.P/20) was registered against the appellant under Sections 506 and 324 IPC. Injured Haldhar Ram was taken to Community Health Center, Patthalgaon on 18.09.2003 from where he was referred to Medical College but instead going to Medical College he remained in his house, and on 14.11.2003 i.e. after about 56 days of the incident injured Haldhar Ram succumbed to his injuries. Merg intimation (Ex.P/9) was recorded on 14.11.2003. Inquest on the body of deceased was conducted vide Ex.P/16 and dead body was sent for postmortem to Community Health Center, Patthalgaon. Postmortem

examination on the body of deceased was conducted on 15.11.2003 by Dr. P. Sudhar who gave his report Ex.P//4 and found following injuries:-

- (i) Sign of old wound over back side of dorsothoracic region transversely placed with stitched mark.
- (ii) A infected bed sore wound of 10cm x 10cm x bone deep with bleeding in skin around it.
- (iii) Bed sore on both heel.

Doctor has opined that the cause of death was due to post injuries complication. It has not been opined by the Doctor that the death of deceased was homicidal in nature.

03. On completion of investigation, charge sheet was filed against the accused/appellant under Sections 506(B), 324, 326 and 302 IPC, however, while framing the charges the trial Judge has framed the charges against him under Sections 302 and 326 IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits that :

- (i) the deceased was taken to Community Health Center, Patthalgaon

and on the same day he was referred to Medical College but instead going to medical college, he chooses to remain in his house and unfortunately he died after 56 days of the incident due to post injuries complication.

(ii) even if the prosecution case is taken as it is, at best the accused/appellant is liable to be convicted under Section 326 IPC and not under Section 302 IPC as has been done by the trial Court.

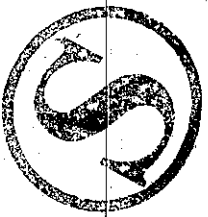
(iii) the accused/appellant has already remained in jail for about 5 years & 3 months and, therefore, after converting his conviction into Section 326 IPC, his sentence may be reduced to the period already undergone by him.

(iv) He also placed reliance in the matter of B.N. Kavatakar and anr. Vs. State of Karnataka reported in 1994 (Supp(1) SSCC 304 in which Hon'ble the Apex Court has held that injuries caused by lethal weapons and death consequential to septicemia secondary to injuries caused five days ago and peritonitis, the offence covered by Section 326/34 and not Section 302/34 IPC.

07. 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 the same.

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

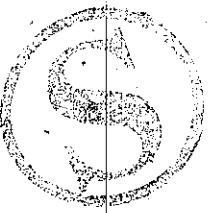
09. Rampati Bai (PW/1) is the wife of deceased. She has stated that on the date of incident at about 6.00 am, the accused/appellant entered her house carrying axe in his hand and after hurling abuses caused injuries to her husband on his neck, back and abdomen. He also



assaulted her daughter who was in the lap of her husband. She has further stated that her husband became unconscious and accused/appellant fled away from the spot. This witness also went on to state that after hearing her screams, Kartik Ram, Jaharsai and Chandrabhan came to her house and thereafter her husband was taken to hospital. She has further stated that her husband died after about one month of the incident.

6
10. Kartikram (PW/2) is a witness to spot map (Ex.P/2) and seizure (Ex.P/3). Dr. P. Suthar (PW/3) conducted postmortem examination on the body of deceased and gave his report Ex.P/4 opining the cause of death due to post injuries complication. Hajari Lal Yadav (PW/4)- Patwari prepared spot map vide Ex.P/5. Samaru (PW/5) – Kotwar is a witness to seizure (Ex.P/8). Pradhan (PW/6) is the person at whose instance merg (Ex.P/9) was recorded. Laxman Ram (PW/7) - Assistant Sub Inspector recorded un-numbered FIR (Ex.P/1). Dwarika Prasad Shukla (PW/8) – Head Constable registered Merg (Ex.P/9). R.R. Toppo (PW/9) – Investigating Officer did the investigation and has duly supported the prosecution case. Dr. Laxman Banotha (PW/10) did medical examination of deceased Haldhar vide Ex.P/20 and injured Urmila vide Ex.P/21.

6
11. Close scrutiny of the evidence makes it clear that on 18.09.2003 at 6.00 am, accused/appellant reached the house of deceased and caused injuries to him over his neck, back and abdomen. He had also assaulted his 10 months' daughter Urmila on her left leg. On the same day, the deceased was taken to Community Health Center, Patthalgaon from where he was referred to Medical College, Patthalgaon but instead going to Medical College he remained in his house and unfortunately he died after 56 days of the incident i.e. on 14.11.2003. Evidence of Rampati



Bai (PW/1)-wife of deceased and eye-witness to the incident establish the fact that appellant caused injuries to her husband by axe over neck, back and abdomen and her 10 months' daughter over her left leg. Even in cross-examination, she reiterated the same thing and has duly supported the prosecution case. Considering the evidence of PW/1 which finds corroboration from medical report (Ex.P/20) and postmortem report (Ex.P/4) of deceased Haldhar and medical report (Ex.P/21) of Urmila, there is no reason for this Court to disbelieve her statement. Thus, it can safely be inferred that it is the accused/appellant who caused injuries to deceased Haldhar and his daughter Urmila.

12. Next question that comes up for our consideration is as to whether the appellant is liable to be convicted under Section 302 IPC for committing murder of deceased Haldhar or is liable to be convicted under Section 326 IPC for causing grievous injuries by dangerous weapon to the deceased and his daughter Urmila ?

13. The Doctor conducting postmortem on the dead body of deceased has opined that the death was as a result of post injuries complication. As we have indicated above, the deceased died after 56 days of the occurrence in the house. On an overall scrutiny of the facts and circumstances of the case coupled with opinion of the Doctor conducting postmortem and the nature of injuries, we are of the view that the offence would be one punishable under Section 326 IPC (on 2 counts) for causing injuries to deceased Haldhar and his daughter Urmila and not under Section 302 IPC as has been done by trial Court.

14. As regards the sentence, considering the fact that the appellant has already remained in jail for about 5 years and 3 months and is

reported to be on bail, this Court is of the considered view that the ends of justice would be served if his sentence is reduced to the period already undergone by him.

15. In the result, the appeal is partly allowed. Conviction and sentence of the appellant under Section 302 IPC are set aside. Instead appellant is convicted under Section 326 IPC (on two counts) and he is sentenced to the period already undergone by him. The appellant is on bail, his bail bonds stands discharged and he need not surrender.

Sd/-

(Pritinker Diwaker)

JUDGE

Vijay

Sd/-

(C.B. Bajpai)

Judge