

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 566 of 2008

- Jaipal Uraon, Aged about 20 years, S/o Shri Sukh Lal Uraon, r/o Village-Pondikala, P.S.Darima,distt.-Sarguja (Cg)

---- Appellant

Versus

- State Of Chhattisgarh, through the Station House Officer-P.S. Gandhi Nagar, District Sarguja (CG)

---- Respondent

For Appellant	: Shri Ranbir Singh Marhas, Advocate
For Respondent /State	: Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board

Per Pritinker Diwaker, J.

28/03/2017

This appeal has been preferred against the judgment and order dated 29.02.2008 passed by First Additional Sessions Judge, Ambikapur, district Sarguja in Sessions Trial No. 318/2007 convicting the accused/appellant for the offence punishable under Sections 302 , 323 (on two counts) IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000 u/s. 302 and to undergo RI for one year respectively with default stipulations.

2. As per prosecution case, on 15.03.2006, (eve of holi) at about 9.30 p.m. one Kesto Rai and his wife Shefali were quarreling. Upon hearing the said quarrel, Sanjeev Rai (PW-1) and his nephew Arvind

Shah (deceased) intervened in the matter. It is said that there the accused/appellant gave a solitary blow with iron rod on the head of the deceased as a result of which he started bleeding. He was immediately taken to hospital and his medical examination (Ex.P-7) was conducted by Dr. Sanjeev Pathak (PW-6). In the incident, Ravi Shankar Mallik (PW-2) and Pradeep (PW-3) also suffered injuries and they were medically examined vide Ex.P-10 and P-15 by B.S.Sengar (PW-9) and Dr. A. Bhagat (PW-13) respectively. On the report lodged by Sanjeev Rai (PW-1), eye witness to the incident, FIR Ex.P-1 was registered against the appellant on 16.03.2006 under Section 307 IPC. During treatment Arvind Shah died on 21.03.2006 at M.M.I. Hospital, Raipur. Merg intimation Ex.P-9 was recorded on 15.04.2006. Inquest on the dead body of the deceased was prepared vide Ex.P-8 on 22.03.2006 and body was sent for postmortem examination on 22.03.2006 which was conducted by Dr. V.K.Dhruv (PW-15) vide Ex.P-17 who opined that cause of death was due to cardio respiratory failure as a result of head injury and its complication and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Sections 302 and 323 (on two counts) IPC and accordingly charge was framed.

3. In support of its case, the prosecution has examined 19 witnesses. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C. in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. By the judgment impugned the Court below has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the

judgment. Hence this appeal.

5. Contention of Shri Marhas, counsel for the appellant is that

i) the appellant has been falsely implicated in the crime in question.

ii) the statement of eyewitnesses Sanjeev Rai (PW-1) Ravishankar Mallik (PW-2), Pradeep (PW-3) and Rajendra Shrivastava (PW-4) are contradictory to each other and it will not be safe for this Court to rely on their statements.

iii) there are material contradictions in the statement of the eyewitnesses.

iv) even if the entire prosecution case is taken as it is, appellant cannot be convicted under Section 302 IPC as he had no intention to take part in the quarrel, the incident occurred all of a sudden when the appellant intervened in the matter and caused injury to the deceased.

v) a solitary blow has been given by the appellant and this shows that he had no intention to commit the murder of the deceased.

vi) at best his case would fall under Section 304-II IPC and not under Section 302 IPC.

vii) the appellant has already remained in jail for more than 2 1/2 years, incident had taken place about 11 years back and therefore his sentence be reduced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that there is no reason to disbelieve the statement of Sanjeev Rai (PW-1) Ravishankar Mallik (PW-2), Pradeep (PW-3) and Rajendra Shrivastava (PW-4). It has been argued

that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Sanjeev Rai (PW-1) has stated that on the date of incident, at about 9.30 p.m. his neighbour Kesto Rai and his wife Shefali were quarreling and upon hearing the said quarrel he along with Pradeep (PW-3) , Ravi and Ranjit went there and intervened in the matter. He has stated that accused/appellant Jaipal who was also residing near his house came there carrying iron rod in his hand and gave a solitary blow on the head of Arvind Shah. He has stated that thereafter he caused injury to Pradeep on his shoulder. The accused was chased and caught, police was called and taken to the police station. He has stated that earlier also there was dispute between the appellant and the deceased. In cross-examination he remained firm and nothing could be elicited from him. Ravishankar Mallik (PW-2), Pradeep (PW-3) and Kristo Rai (PW-5) are the other eyewitnesses to the incident and they have also made similar statement as has been made by Sanjeev Rai (PW-1), categorically stating as to the manner in which the appellant gave a solitary blow on the head of the deceased. Rajendra Shrivastva (PW-4) is a witness to inquest and spot map. Dr. Sanjeev Pathak (PW-6) did M.L.C. of the deceased when he was first brought to the hospital vide Ex. P-5 and noticed injury on the head and found fracture. Akhilesh Kumar (PW-7) is the patwari who prepared spot map Ex.P-3. B.S.Sengar (PW-9) did M.L.C. of Pradeep Rai (PW-3) and noticed one abrasion and two contusions. K.M.S.Khan (PW-12) is the Investigating Officer who helped in the investigation. Dr. Azad Bhagat (PW-13) did

M.L.C. of Ravi Shankar Mallik (PW-2) and noticed injury on his left hand. D.K.Sinha (PW-14) helped in the investigation. Dr.Vikas Kumar Dhruv (PW-15) is the autopsy surgeon who conducted postmortem examination on the body of the deceased vide Ex.P-17 and opined that cause of death was due to cardio respiratory failure as a result of head injury and its complication and death was homicidal in nature. Gora Ram Bhagat (PW-17) is the police Constable who helped in the investigation. Dr. Rajesh Jain (PW-18) has treated the deceased when he was hospitalized. Teekam Singh (PW-19) is the constable who helped in the investigation.

9. Close scrutiny of the evidence makes it clear that on 15.03.2006, when Kristo Rai and his wifie Shefali were quarreling, deceased along with Sanjeev Rai (PW-1) Ravi shankar Mallik (PW-2), Pradeep (PW-3) intervened and at that time the appellant gave a solitary blow with iron rod on the head of the deceased, he was taken to the hospital and during treatment after about 6 days of the incident, he died.

10. Considering the entire evidence as adduced by the prosecution, it is also apparent that the appellant had no prior intention to kill the deceased and it appears that in a heat of passion, upon sudden quarrel the incident had taken place in which accused/appellant gave a solitary blow on the head of the deceased and after six days, he died. Further, taking into consideration the evidence of Sanjeev Rai (PW-1) Ravi shankar Mallik (PW-2), Pradeep (PW-3), his case would fall under Exception 4 of Section 300 IPC.

11. The next question which arises for consideration is whether the act of the accused/appellant would fall under Section 304 (Part-I) or 304

(Part-II) IPC.

12. Section 304 IPC provides punishment for culpable homicide not amounting to murder. It draws a distinction between the penalty to be inflicted in cases, where, an intention to kill being present, the act would have amounted to murder, but for its having fallen within one of the Exceptions in Section 300, and cases in which the crime is culpable homicide not amounting to murder, that means, where there is knowledge that death will be a likely result, but the intention to cause death, or bodily injury likely to cause death, is absent. The first part of Section 304 applies where there is intention, whereas the second part applies where there is knowledge but the important thing is that before holding the accused guilty under any part of Section 304, it has to be observed that a death must have been caused by him under any of the circumstances mentioned in the five Exceptions to Section 300, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation. Knowledge of consequences which may result in doing an act is quite different than the intention which denotes that a particular consequence should ensue. For attracting the former part of Section 304, an element of intention is a factor whereas for attracting the later part, an element of knowledge is a factor. The intention is the purposeful doing of a thing to achieve a particular result, whereas the knowledge is an awareness which attributes to be well informed that a particular result may happen by doing a thing. Here in this case, record shows that on the date of incident, some quarrel took place between one Kesto Rai and his wife and on hearing the said

quarrel, deceased along with one Sanjeev Rai (PW-1) tried to intervene in the matter, when the accused/appellant gave a solitary blow with iron rod on his head resulting his death after six days of the incident. The incident occurred on a spur of moment in heat of passion thus in the considered view of this Court the accused/appellant is liable to be convicted under Section 304 Part-II IPC and not under Section 302 IPC as has been done by the Court below.

13. Now the question that arises for consideration before us is as to what would be the appropriate sentence to be imposed on the appellant. The incident had taken place about 11 years, at that time the appellant was a young boy and now must be a middle aged man and has already remained in jail for about 2 1/2 years, ends of justice would serve if the appellant is sentenced to RI for seven years. Accused/appellant is further directed to pay fine of Rs. 2,000/- and in default of fine to further undergo RI for six months. Accused/appellant is reported to be in jail. No further order is required.

14. In the result, the appeal is partly allowed.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge