

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 985 of 2004**

- Kallu @ Premnath

---- Petitioner**Versus**

- State Of Chhattisgarh

---- Respondent

For Appellant
For Respondent /State

Mr. Keshav Dewangan, Advocate
Mr. Arun Sao, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Judgment On Board By**Prashant Kumar Mishra, J.****7/3/2017**

1. Heard.
2. The appellant has been convicted for committing murder of deceased- Jayant John by causing two piercing abdominal injuries at about 23:30 hours on 08.06.2002.
3. The undisputed facts, as appearing from the material available on the record, are that the appellant and the deceased are neighbours. The deceased had a small cycle repairing shop with his residence in the rear portion. On the date of the incident,

the deceased had his dinner at 23:30 hours and had gone to his shop, where he used to retire in the night. At about 24:00 hours, the deceased knocked the door of his house, which was opened by PW-7 Sulochana, mother of the deceased. The deceased was bleeding and holding his abdomen; he stated that the appellant was creating ruckus near the shop and when he was trying to convince the appellant, he became annoyed and inflicted injuries on him by means of piped knife (*Gupti*). The omentum (intestine) was oozing out from the wound. The deceased was immediately shifted to Maharani Hospital at Jagdalpur, where he was operated by PW-9 Dr. Vivek Joshi. The deceased eventually died on 27.06.2002 on account of septic shock with septicaemia due to abdominal injury – peritoneum, as opined by Dr. R.B.P. Gupta (PW-3), who performed the postmortem examination and has proved the postmortem report- Ex.P/2. The FIR was lodged by PW-6 Dhanmati Bai, wife of the deceased.

4. In view of the oral dying declaration made by the deceased to witness namely PW-7 Sulochana and the medical evidence, the appellant has been convicted for committing offence under Section 302 of IPC.
5. Referring to the judgment rendered in the matter of **Sanjay Vs. State of Uttar Pradesh, (2016) 2 SCC 62**, learned counsel for the appellant, would submit that even if the entire prosecution case is accepted as it is, the appellant can only be convicted for an offence under Section 304 Part I and not under Section 302 of IPC, because, the immediate cause of death is septic shock

with septicaemia and not account of the injuries allegedly caused by the appellant.

6. Learned Dy. AG for the State would oppose the submission on the plea that since after the date of sustaining injury, the deceased was never declared fit, but he remained admitted in the hospital, it cannot be said that the deceased had not died on account of the injuries. He would submit that the injuries having been caused on vital part of the body and considering the other circumstances, the case would fall under Section 302 of IPC.
7. We have heard learned counsel for the parties at length and perused the record.
8. The only evidence in respect of the appellant's involvement in causing injuries is in the form of oral dying declaration made by the deceased to his mother PW-7 Sulochana. Although the deceased remained alive for about 18 days after the incident yet his case diary statement was not recorded, therefore, we have to examine as to whether the statement of Sulochana (PW-7) is sufficient enough to sustain the guilt of the appellant.
9. Sulochana (PW-7) has categorically deposed that on 08.06.2002 at about 24:00 hours, his son Jayant John (deceased) came to the house and informed her that the appellant has caused injuries, therefore, he should be shifted to the hospital immediately. This witness had seen the abdominal injuries, where-from, the deceased was bleeding. Immediately after

making the statement to his mother, the deceased became unconscious and he was rushly taken to the hospital. She had denied the suggestion that when she first saw the deceased, he was unconscious or that he did not inform her about the assailant. There is no discrepancy or material contradiction or omission in the statement of this witness, which would discredit her deposition. She being mother of the deceased, her presence in the house was very natural, therefore, her statement is fully reliable and trustworthy to hold that it was the appellant, who had caused the injuries to the deceased.

10. We shall now discuss the nature of injuries and post surgical treatment administered to the deceased to find out whether the case would fall under Section 302 of IPC or it would fall within any of the exception to Section 300 of IPC.

11. PW-8 Dr. V.K. Jha has proved the injury report -Ex.P/7, wherein, he had mentioned that the deceased has suffered the following two injuries :

(i) one incised wound in right inguinal region
admeasuring 1" x ½ " x 1" (depth) with blood clot;

(ii) one incised wound in left hypogastrium region
admeasuring 1" x ½ " x 1" (depth);

Loops of intestine have come outside the abdominal cavity.

The nature of the injuries was not mentioned in the

report but it was left to be opined after surgical check up.

12. PW-9 Dr. Vivek Joshi operated the deceased on 09.06.2002. The document concerning the surgical treatment available in the paper book records that the deceased was operated through exploratory laparotomy method. During operation, the abdominal cavity was found full of fluid and 3 rents were found at small bowel. About one feet of bowel was found coming out of the incised wound at left iliac fossa along with 6 inches of omentum. The protruding bowel and omentum were found healthy. All the rents at small bowel were closed in two layers and the others holes were also closed. The remaining treatment papers would disclose that the deceased remained in the hospital from the date of admission till his death and was under strict medication yet he suffered septicaemia, even though the noting made by the Doctor on 17.06.2002 i.e. after about 9 days of the incident, mentions that the stitches were removed and the wound was found healthy. The doctors did not notice any serious ailment or development of septic or septicaemia throughout the course of treatment.

13. It appears the deceased developed internal septicaemia, which was not clinically visible nor the deceased complained of any serious complications during his post operative admission in the hospital.

14. Having seen the entire papers concerning the treatment provided to the deceased, we are compelled to conclude that

the deceased did not die as a direct result of the injuries sustained by him, but his death was due to septic shock with septicaemia.

15. In the matter of **Ganga Dass VS. State of Haryana, 1994 Supp (1) SCC 534**, the accused gave iron pipe single blow on the head of the deceased and the deceased died eighteen days after the occurrence due to septicaemia and other complications. The Supreme Court altered the conviction under Section 302 of IPC to under Section 304 Part-II of IPC and sentenced the accused to undergo RI for 06 years.
16. In the matter of **Rajangam Vs. State (Tamil Nadu), 1993 CRI.L.J. 3680**, the accused stabbed the deceased on the abdomen by means of knife and also inflicted injury on the knee. The deceased died after 08 days of the incident due to growth of gangrene around the operated part. The conviction of the accused under Section 302 of IPC was altered to Section 304 Part-II of IPC and was sentenced to undergo RI for 5 years.
17. In the matter of **Sanjay (supra)**, the death occurred after 62 days of the incident due to occurrence of septicaemia and it was indirectly due to the injuries sustained by the deceased. The Supreme Court held that the death not being direct result of the injuries sustained by the deceased, an inference cannot be drawn that the intended injury was sufficient in the ordinary course of the nature to cause death so as to attract Section 300 Thirdly IPC and eventually, the conviction under Section 302 of IPC was converted into Section 304 Part I of IPC and the

accused was awarded sentence of RI for 10 years.

18. The common thread arising from the above referred judgments is that when death is not as a direct result of injuries sustained by the deceased, but there was an intervening factor like development of gangrene or septicaemia or any other complications, which resulted in death in the course of treatment or after discharge from hospital, it cannot be presumed that the accused had an intention to commit culpable homicide.

19. In the case in hand also, the treatment papers would demonstrate that after suffering two abdominal injuries at the hand of the appellant, the deceased was successfully operated and the wounds were found healthy when the stitches were removed after 09 days of the incident. However, gangrenous growth occurred inside the abdomen which resulted in septicaemia and the deceased eventually died out of the septic shock on 27.06.2002 i.e. about 18 days after the incident.

20. PW-8 Dr. V.K. Jha (PW-8), who has proved the injury report Ex.P/7 had not opined about the nature of injuries but left it to be decided after surgical intervention. However, the Doctors conducting the surgery have not specifically mentioned in the medical papers concerning the operation that the injuries were serious yet considering the part of the body which was chosen to inflict the subject injury by means of piped knife (*Gupti*), the lethal weapon, the injuries cannot be said to be simple in nature. Therefore, the accused/appellant was aware that he is

causing a serious injury which might result in death of the deceased, but he has no intention to kill the deceased.

21. In the facts and circumstances of the case, we are of the considered view that the act committed by the appellant would not fall within clause *thirdly* of Section 300 of IPC and the appellant would be guilty of committing offence under Section 304 Part-I of IPC and not under Section 302 of IPC.

22. Accordingly, for the foregoing, we allow this appeal in part, convert the appellant's conviction under Section 302 to Section 304 Part I of IPC. The appellant was arrested on 11.06.2002 and remained in jail through out the trial and was released by this Court on 17.11.2008. Thus, he has already remained in jail for about 6 ½ years. Therefore, the sentence already undergone by the appellant is sufficient sentence for the offence under Section 304 Part I of IPC.

23. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Anil Kumar Shukla)

