

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 492 of 2008

- Dheer Singh, S/o. Chaitram Aghariya, Aged about 27 years, R/o. Village Makhurpani, Police Station & Tahsil Katghora, District Korba CG

---- Appellant

Versus

- State Of Chhattisgarh, Through the District Magistrate Korba (CG)

---- Respondent

For Appellant	:	Shri S.R.J.Jaiswal, Advocate
For Respondent/State	:	Smt. Madhu Nisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board by Pritinker Diwaker, J.

04/10/2017

This appeal has been preferred against the judgment and order dated 12.03.2008 passed by Additional Sessions Judge, Katghora, district Korba in Sessions Trial No. 40/2007 convicting the accused/appellant for the offence punishable under Sections 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 500/- with default stipulations.

2. As per prosecution case, on 06.01.07, accused/appellant went to the house of deceased Tejbal and had a quarrel over taking away of the fencing wood and with an intention to cause death, gave a blow of *lathi* on the stomach of the deceased and after about half an hour of the incident he died. Merg intimation Ex.P-7 was recorded at 6.40 p.m. at

the instance of Suresh Chand (PW-4). Immediately thereafter at 6.45 p.m. FIR Ex.P-6 was registered against the appellant under Section 302 IPC. Inquest (Ex.P-5) on the body of deceased was prepared on 07.02.07 and body was sent for postmortem examination which was conducted by Dr. H.D.Dahire (PW-10) and he opined that the cause of death was shock due to hemorrhage and injury to rupture of liver and spleen. On the memorandum of accused/appellant one *lathi* was seized vide Ex. P-3 however there is no FSL report on record. After filing of charge sheet, the trial judge has framed charge against the appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 11 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. This apart one defence witness has also been examined.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is as under :

- i) that the accused/appellant had no intention to commit murder of the deceased.
- ii) that while appellant was taking away the fencing wood, some altercation took place between him and the deceased and it appears that on a spur of moment in a heat of passion, the

appellant gave a single blow on the stomach of the deceased as a result of which he died.

iii) even if the entire prosecution case is taken as it is, at best his case would fall under Section 304-II IPC and not under Section 302 IPC.

iv) that the appellant has already remained in jail for about 1 1/2 years, incident had taken place about 10 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 the conviction of the appellant is in accordance with law and there is no infirmity in the same.

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

8. Bilaso Bai (PW-1) is the daughter-in-law of the deceased. On the date of incident, after grazing the cow when he returned home, took his meals and was sleeping, accused appellant came to the courtyard and was trying to remove the fencing wood which was objected by the deceased. She has stated that the accused/appellant picked up the wood and with an intention to cause death, caused injury on the stomach of the deceased as a result of which after about half an hour of the incident he died. She has stated that the incident had also been witnessed by Dhaniram and Hemsingh (PW-3), She admits that the wood in question was being cut by the appellant from the jungle. Rajkumar (PW-5) son of the deceased and another eyewitness to the incident while supporting the prosecution case has stated that he saw the accused/appellant assaulting the deceased. He has stated that the accused gave one blow of *lathi* on the chest of the deceased. Sitaram

Yadav (PW-6) another son of the deceased in examination-in-chief has though supported the prosecution case but in cross-examination he has stated that he did not see the quarrel between the two and had reached the place of occurrence only after the incident. Smt. Pevati Bai (PW-8) daughter-in-law of the deceased and also eyewitness to the incident has supported the prosecution case. Ram Bali (PW-2) has stated that the oral dying declaration was made by the deceased before him. Dr. H. D. Dahire (PW-10) conducted postmortem examination on the body of deceased and opined that the cause of death was shock due to hemorrhage and injury to rupture of liver and spleen.

9. Close scrutiny of the evidence makes it clear that on 06.01.07, there was some quarrel between the appellant and deceased over taking away the wood used for fencing which was objected by the deceased and he was given a single blow resulting his death. The incident has been witnessed by Bilaso Bai (PW-1), Ram Bali (PW-2), Rajkumar (PW-5) and Smt. Pevati Bai (PW-8) and all of them have supported the prosecution case. Even the oral dying declaration was made by the deceased before Ram Bali (PW-2) and the medical report also supports the prosecution case. Thus the complicity of the appellant in the crime in question has been duly proved by the prosecution.

10. Now the only question is as to what offence has been committed by the accused/appellant. Admittedly the accused/appellant had gone to the house of deceased to take the wood which according to the appellant belong to him and it was objected by the deceased. The sudden quarrel started in a heat of passion, single blow on the stomach of the deceased was given to the appellant resulting his unfortunate death.

11. Considering the entire evidence as adduced by the prosecution, it is 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 stomach of the deceased and after about half an hour, he died. Further, taking into consideration the evidence of Bilaso Bai (PW-1), Ram Bali (PW-2), Rajkumar (PW-5) and Smt. Pevati Bai (PW-8) his case would fall under Exception 4 of Section 300 IPC.

12. 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. The question which 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 10 years back, the appellant has already remained in jail for about 1 1/2 years, ends of justice would serve if the appellant is sentenced to RI for five years. Accused/appellant is on bail. He be sent to jail to undergo the remaining part of the sentence imposed on him.

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

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge