

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 555 of 2012

- Santaram @ Santo @ Santram S/o Butu Ram Sethia Aged About 25 Years R/o Village- Raikot, P.S. Kodenar, Distt. Bastar C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through : S.H.O., P.S. Kodenar, Distt. Bastar(C.G.)

---- Respondent

For Appellant	:	Shri Varun Chakrabarty, Advocate.
For Respondent/State	:	Shri UKS Chandel, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board By Justice Pritinker Diwaker

23/05/2017

This appeal arises out of the judgment of conviction and order of sentence dated 30.8.2011 passed by the Sessions Judge, Bastar at Jagdalpur in ST No.46/2010 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, on 15.5.2009 at about 8 pm the accused/appellant had gone to the house of deceased Kosa, asked him to accompany him so that they can talk to Mehtar, the son of the deceased, and after taking the deceased towards the road, he told the deceased that his son Mehtar has graped his money and then started beating him by hands and fists. Thereafter, the appellant caused

injuries on his face by a stone of about 5 kg. After assaulting the deceased, the appellant also threatened him for life. The fight was intervened by PW-1 Mehatrin, daughter of the deceased and Somaru, nephew of the deceased, and thereafter, Kosa (deceased) was hospitalized, however, during treatment Kosa succumbed to his injuries on 20.5.2009. Merg intimation Ex.P/13 was recorded on 21.5.2009 after receiving information from the hospital. In the meanwhile on 16.5.2009 and 19.5.2009 unnumbered FIR (Ex.P/1) and numbered FIR (Ex.P/12) respectively were registered against the appellant under Sections 294, 323 and 506 of IPC at the instance of Mehatrin Bai. Inquest on the dead body was conducted on 20.5.2009 vide Ex.P/2 and thereafter the body was sent for postmortem which was conducted on the same day by PW-5 Dr. Sandeep Singh vide Ex.P/10 wherein the doctor noticed abrasions over right scapular region, left half of jaw, blood clot on right parietal region and right mandible bone was broken. In his opinion, the cause of death was coma due to head injury. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the accused/appellant.

03. So as to hold the accused guilty, the prosecution examined 11 witnesses in all. 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 the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that even if the entire prosecution case is taken as it is, considering the facts and circumstances of the giving rise to the incident, at best the appellant can be held guilty under Section 304 Part-I or II of IPC and not 302 of IPC as has been done by the trial Court as the appellant had no intention to commit murder of the deceased and the incident occurred all of a sudden in the heat of passion and it appears that his only intention was to cause some bodily injury to the deceased.

(ii) that the appellant has already remained in jail for the last seven years and therefore, after conversion of his conviction into one under Section 304 Part-I or II, he may be sentenced to the period already suffered by him.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court.

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

08. PW-1 Mehatrin Bai, daughter of the deceased, has stated that on the date of incident when her father was there in the house along with her mother, sister-in-law and herself, at about 8 pm the accused/appellant came there, took her father out by saying that he has to make a phone call to her brother, on which her father accompanied the appellant. She has stated that all of a sudden she

heard the cries of her father and when she came out of the house, she saw appellant pressing the neck of her father and throwing him on the floor. Though she asked the appellant not to beat her father, yet he continued to beat him and thereafter fled from the spot. She has further stated that the incident was also witnessed by her brother Somaru, Mehattar and Mannu. She has stated that the deceased was taken to hospital where he expired. In cross-examination she remained firm and reiterated as to the manner in which the deceased was done to death by the appellant.

09. PW-4 Samaru, other eyewitness to the incident, has stated that upon hearing the cries of his sister Mehattrin (PW-1) when he reached the place of occurrence, he saw the appellant standing there and the deceased lying on the ground. After seeing him, the appellant fled from the spot. He has further stated that when he reached the spot, he saw the appellant assaulting the deceased with stone. The stone which was seized at the instance of the appellant was about 5 kg and it was stained with blood.

10. PW-3 Mehattar, son of the deceased, reached the hospital after the incident had taken place. PW-5 Dr. Sandeep Singh conducted postmortem on the body of the deceased on 20.5.2009 vide Ex.P/10 and noticed abrasions over right scapular region, left half of jaw, blood clot on right parietal region and right mandible bone was broken. In his opinion, the cause of death was coma due to head injury. In cross-examination he has admitted the suggestion that the injuries found on the face and forehead could come due to fall on the stone. He expressed his inability to give any opinion with certainty whether the

death was homicidal or accidental in nature. PW-6 KS Rajput, registered Dehati Nalishi Ex.P/1. PW-7 Loknath Kudram, Patwari, prepared the spot map Ex.P/11. PW-8 Sukhram Panth registered numbered FIR (Ex.P/12). PW-9 Tulsiram Sahu, investigating officer, has duly supported the prosecution case. PW-10 Sadhu reached the place of occurrence after the incident had taken place. PW-11 Sudru, seizure witness, has turned hostile.

11. Close scrutiny of the evidence makes it clear that on 15.5.2009 at about 8 pm the accused/appellant had gone to the house of deceased Kosa, asked him to accompany him for having talk with son of the deceased on phone, then took him near the road and saying that his son has grabbed his (appellant's) money, started beating him by hands and fists and then also assaulted him with a stone of about 5 kg. The injured was then taken to hospital where he succumbed to his injuries. The incident was witnessed by PW-1 Mehatrin, daughter of the deceased and PW-4 Somaru, nephew of the deceased. Both these witnesses while supporting the prosecution case have categorically stated as to the manner in which the incident took place and the deceased was done to death by the appellant. Their evidence also finds due corroboration from the medical evidence according to which corresponding injuries were noticed on the body of the deceased. Though the doctor has not stated about the nature of the death whether it was homicidal or accidental, but in view of the unrebutted evidence of the eyewitnesses, it is quite clear that death of the deceased was the result of assault made by the appellant. In this view of the matter, complicity of the appellant in commission of the crime

stands established beyond all reasonable doubt.

12. Now the next question which arises for consideration of this Court is whether the act of the accused/appellant makes him liable for conviction under Section 302 of IPC or it was a case of culpable homicide not amounting to murder, making him liable for conviction under Section 304 Par-I or II of IPC.

13. PW-1 Mehatri has admitted in her cross-examination, in para-8, that the quarrel between the appellant and the deceased took place all of a sudden and prior to that, there was no dispute between them. Considering the overall facts and circumstances of the case, it appears that in relation to transaction of money between the appellant and son of the deceased, there was some hot talk between the appellant and the deceased on the date of incident and during that process, the appellant having lost control over his senses, first beat the deceased by hands and fists and thereafter assaulted him by means of a stone, which ultimately led to his death on 20.5.2009 in the hospital while undergoing treatment. Thus, considering the manner in which the incident took place, the appellant assaulted the deceased by throwing him down on the floor, pressing his neck and then by means of stone, despite being intervened by PW-1 & PW-4, as a result of which apart from other injuries, his right mandible bone was also broken, it is apparent that while inflicting such injuries on the deceased, the appellant had intention to kill him, but was not having knowledge that infliction of such bodily injuries would result in his death. Being so, he is guilty of committing culpable homicide not amounting to murder and for the reasons stated above, is liable for conviction under Section 304

Part-I of IPC and not 302 of IPC as has been held by the trial Court. As regards the sentence, in the overall facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if the appellant is sentenced to RI for 10 years under this section.

14. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-I of IPC and sentenced to undergo RI for ten years. He is reported to be in jail, therefore, no further order regarding his arrest etc. is required.

Sd/
(Pritinker Diwaker)
Vacation Judge

Sd/
(Sanjay K. Agrawal)
Vacation Judge