

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 310 of 2010

(Arising out of judgment/order dated 5.4.2010 in ST No.94/2009 of the learned Additional Sessions Judge, FTC, Rajnandgaon)

- Sukhdeo S/o Somnath, aged about 45 years, Agriculturist R/o Village Eragaon, P.S. Manpur, District Rajnandgaon (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Office, Police Station Manpur, District Rajnandgaon

---- Respondent

For Appellant	:	Shri P.K. Verma, Sr. Advocate assisted Shri V. Verma, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement

P. Diwaker, J

07/11/2017

1. Accused/appellant preferred the captioned criminal appeal against his conviction recorded by learned Additional Sessions Judge (FTC), Rajnandgaon on 5.4.2010 under Section 302 of the Indian Penal Code (for short 'the IPC') for which he is sentenced to life imprisonment.
2. Facts giving rise to this appeal are that on 20.8.2009 complainant Gautam Bai (PW-2) while returning from the grocery shop was hurling abuses at her daughter Saresh. Renuka and Poonam, daughter of appellant, who were coming from opposite direction, though that Gautam Bai was abusing them and accordingly they went to their house and informed the

accused/appellant of the incident on which he came on the spot with club and assaulted on the left side of the stomach of deceased as a result of which he died. FIR (Ex.P-21) was lodged by Gautam Bai (PW-1) on 21.8.2009 against accused/appellant under Section 302 of IPC. Inquest on the body of deceased was prepared on 21.8.2009 vide Ex.P-6. Body was sent for post-mortem examination which was conducted by Dr. (Smt.) Seema Thakur (PW-9) vide Ex.P-10A and she noticed only one contusion on the upper side of left abdomen of 4"x2"x1" in size. The cause of death assigned by the autopsy surgeon was excessive bleeding from injury to vital organ and the death was homicidal in nature. Memorandum of the accused/appellant was recorded vide Ex.P-8 which led to the recovery of weapon of offence i.e. club, vide seizure memo of Ex.P-9. Statements of witnesses were recorded in the course of investigation.

3. On completion of investigation, charge sheet against the accused/appellant was filed under Section 302 of IPC and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/appellant examined 10 witnesses in all. Statement of accused was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties, the trial Court by the impugned judgment convicted and sentenced the accused/appellant in the manner as described above.
5. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
6. Mr. Verma, learned counsel appearing on behalf of appellant submits that Gautam Bai (PW-1) & Sakharam (PW-3) are related witnesses and

therefore they are not reliable. He further submits that the autopsy surgeon (PW-9), in her cross-examination, has admitted that injury noticed on the left side of abdomen of deceased was not sufficient to cause his death and that the deceased died due to rupture of liver but it was not the result of injury inflicted on him. In other words, he submits that the liver is located in the right upper quadrant of the abdominal cavity, beneath the diaphragm and overlies the gallbladder and no injury has been noticed on this part of the body of deceased and therefore it is clear that the death of the deceased had not resulted directly from the injury sustained by him and as such the appellant cannot be held responsible for the death of deceased. Therefore, if the entire prosecution case is taken as it is, the appellant could be convicted under Section 323 IPC and not under Section 302 of IPC as has been done by the trial Court.

7. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the same. He submits that there is no reason to reject statements of Gautam Bai (PW-1) & Sakharam (PW-3), who are reliable and worthy of credence and more particularly when their presence at the spot has been established beyond reasonable doubt. He further submits that intensity of the club blow given to the appellant was so severe that the internal vital organ i.e. liver, was ruptured resulting in the death of the deceased.
8. Gautam Bai (PW-1) is the wife of deceased and an eyewitness to the incident. According to this witness, at the eve of Pola festival his daughter Naro had gone to the shop for purchasing some articles. She had sent her another daughter Saresb to call Naro. She was abusing her daughter

by saying as to why she is wandering so late in the evening. At that time Renuka, daughter of Dron, and Poonam, daughter of accused/appellant, were coming from the opposite direction, they thought that it is they who were being abused and therefore they went to their house, informed the appellant of the incident, who came on the spot carrying club in his hand and assaulted her and her husband by hands, fists and club as a result of which her husband died. This witness has been cross-examined at length by the defence but nothing substantial could be elicited so as to render her evidence doubtful in any manner.

9. Chatur Singh (PW-2) is the witness of inquest (Ex.P-6) and seizure memo Ex.P-7.
10. Sakharam (PW-3), father of the deceased, is another eyewitness of the incident. According to this witness, on hearing commotion he came out from his house and saw that accused/appellant was quarrelling with Gautam Bai. He has further stated that as soon his son Shankar (deceased) came out of the house, accused Sukhdev gave a lathi blow on his ribs which led to his death. He is also a witness to inquest Ex.P-6.
11. Jehar Singh (PW-5) is another witness of inquest Ex.P-6. Chhagan (PW-6) is the hearsay witness who came to know about the incident from the wife of deceased. Sukham Singh (PW-7) did not support the prosecution case and turned hostile. F.J. Tigga (PW-8) is the investigating officer who has duly supported the prosecution case.
12. Dr. (Smt.) Seema Thakur (PW-9) is the person who conducted post-mortem over the body of deceased and opined the cause of death as excessive bleeding from the injury to vital organ and in her opinion, the

death may be homicidal. In the cross-examination this witness has admitted that no external injury was present at the right side of the abdomen and that a blow on ribs may result in fracture of ribs. She has further admitted that injury noticed on the upper part of the body of deceased was not sufficient to cause his death. She has further admitted that rupture of liver could be due to excessive consumption of liver or sufferance from cirrhosis disease. She has admitted that a blow on liver with requisite force may result in its rupture. She has further admitted that cause of death of the deceased was rupture of liver which has not been caused on account of injury caused to him. She has admitted in categorical terms that deceased did not die of the injury sustained by him.

13. Rohit (PW-10) did not support the prosecution case and turned hostile.
14. Close scrutiny of the evidence on record makes it clear that on 20.8.2009 the accused/appellant had attacked and assaulted the deceased by club causing contusion on the left side of his abdomen. The act of assault was witnessed by Gautam Bai (PW-1), wife of deceased, & Sakharam (PW-3), father of deceased, who have categorically deposed that it is accused/appellant who assaulted the deceased by club. Testimony of these witnesses not only finds corroboration from the contents of promptly lodged FIR (Ex.P-2) wherein accused/appellant was shown as the assailant, but also from the medical evidence according to which one contusion was noticed on the upper side of left abdomen. Evidence of these witnesses in the Court is also consistent with the statements made by them before the Police. Though these witnesses were subjected to detailed cross-examination, the defence had failed to impeach their credibility as truthful witnesses.
15. So far as the submission of learned Senior Counsel that PW-1 & PW-3 are

related witnesses and therefore are not reliable is concerned, in the opinion of this Court, this argument of the defence holds no water. PW-1 & PW-3 are the natural eyewitness and their relation with the deceased is not sufficient to discard their testimony. There is no rule that related witness cannot be relied upon. Evidence of PW-1 & PW-3 finds corroboration not only from the contents of FIR (Ex.P-1) but also from the medical evidence. They remained unshaken in their cross-examination by the defence and there is no reason to disbelieve their deposition. Moreover, there is no reason why these witnesses would falsely implicate an innocent leaving the real culprit. Therefore, we do not find any error in the findings recorded by the trial Court that Gautam Bai (PW-1) & Sakharam (PW-3) were present at the spot and had actually seen the occurrence. Reference at this stage can be made to **Shyam Babu v. State of UP** reported in (2012) SCC 651, wherein it was observed that;-

"22. This Court has repeatedly held that the version of an eyewitness cannot be discarded by the court merely on the ground that such eyewitness happened to be a relative or friend of the deceased. It is also stated that where the presence of the eyewitnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the court to discard the statement of such related or friendly witnesses. To put it clear, there is no bar in law on examining family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. If the statement of witnesses, who are relatives or known to the parties affected is credible, reliable, trustworthy and corroborated by other witnesses, there would hardly be any reason for the court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party or

friend, etc."

Thus, we are of the view that on the basis of aforesaid evidence of Gautam Bai (PW-1) & Sakharam (PW-3), complicity of accused/appellant in commission of the offence stands proved beyond reasonable doubt.

16. Next question that comes up for our consideration is what is the nature of the offence that appellant had committed?
17. From the post-mortem report (Ex.10A) it is clear that though there was a contusion at the left side of the abdomen of the deceased but there was no corresponding internal injury. The post mortem report also did not speak about any external injury resulting in the fracture of ribs leading to rupture of liver. According to autopsy surgeon (PW-9), there was no injury mark at the right side of the body of deceased and the injury noticed on the body of deceased was not sufficient to cause his death. The liver is located in the right upper quadrant of the abdominal cavity, beneath the diaphragm and overlies the gallbladder. Further, the autopsy surgeon (PW-9) has admitted in her cross-examination that rupture of liver could be due to excessive consumption of liquor by a person or he was suffering from the disease of cirrhosis. There is evidence on record that the deceased used to drink liquor.

From the above it is apparent that the injury inflicted upon the deceased by the appellant would not result in rupture of liver leading to his death for the reason that location of liver in the human body is at the upper right hand portion of the abdominal cavity and admittedly, there was no external mark of injury in that region. Thus, the death of the deceased was not directly attributable to the injury caused to him by the appellant and it can be safely held that the same took place on account of any supervening or extraneous reason other than the injury inflicted by the appellant, may be on account of regular consumption of liquor by the

deceased, as suggested by the autopsy surgeon during the course of cross-examination that generally the liver of an alcohol addict gets ruptured. Evidence on record indicates that the deceased was drunkard. In other words, the immediate cause of death was rupture of liver not caused due to the injury sustained by deceased and had there been no rupture of liver, it might be there was a chance of survival of the deceased.

18. Thus, on overall scrutiny of the facts and circumstances of the case coupled with the opinion of the autopsy surgeon, we are of the view that the offence would be one punishable under Section 323 read with Section 34 IPC and not under Section 302/34 of IPC as has been done by the trial Court.
19. As regards the sentence, considering the fact that accused/appellant had already undergone detention of about 11 months and the case is pending for a pretty long time for which he had already suffered both financial hardship and mental agony and also considering the fact that he had been released on bail as far back as on 17.6.2010, we feel that the ends of justice will be met in the facts of the case if the sentence is reduced to the period already undergone.
20. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 IPC, he is convicted under Section 323 of IPC for voluntarily causing hurt to the deceased and sentenced to the period of detention already undergone by him. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Arvind Singh Chandel)
Judge