

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1117 of 2013**

1. Mithlesh Sahu aged about 19 years, S/o Keshram Sahu, R/o Village Rahud, PS Runchirai, Civil and Revenue District Durg, CG

---- Appellant**Versus**

1. State of Chhattisgarh through PS Runchirai, District Durg, CG

---- Respondent

For Appellant	:	Shri B.P. Singh, Advocate
For Respondent/State	:	Smt. Madhunisha Singh, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****17/08/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 26.02.2013 passed by Additional Sessions Judge Durg in Sessions Trial No. 99/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1,000/-, plus default stipulation.

2. Case of the prosecution in brief is that on 02.03.2011 when deceased Keshram Sahu - the father of the accused/appellant was sitting near the Radha Krishna temple, accused/appellant came there, started quarreling with him over the apportionment of land as well as money and also subjected him to beating by frequently

hitting him against the ground. Thereafter, the deceased was taken to hospital where he died on 03.03.2011. On the basis of intimation received from the hospital, initially an un-numbered *merg* Ex. P-10 was recorded on 03.03.2011 itself followed by the numbered one Ex. P-16 which was recorded on 15.03.2011. Inquest Ex. P-4 was made on 04.03.2011 and thereafter the dead-body was sent for postmortem examination which was conducted by Dr. N.C. Roy PW-14 who gave his report Ex. P-13. After investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 16 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant had no intention to cause the death of his father but while quarreling and beating the deceased the only intention on his part was to cause just the simple injuries persuading him to make partition of the land properly.

(ii) That even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Section 302 and at best his act may fall under Section 304 (Part-II) IPC.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that after being beaten the deceased came to his house and on being asked by his wife Chameli Bai (PW-1) as to who had made his condition like that, he disclosed to her that asking for apportionment of land and money, the accused/appellant abused and subjected him to beating. State counsel further submits that there are three eyewitnesses (PW-5, PW-6 and PW-15) to the incident also and being so the conviction of the accused/appellant under Section 302 IPC is just and proper.

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

8. Smt. Chameli Bai (PW-1) – wife of the deceased has stated in her evidence that quite often the accused/appellant used to abuse his father (the deceased herein) and on the date of incident also he did the same. She has stated on the date of incident after hearing the abusive words being hurled by the accused/appellant she came out of the house and saw her husband walking homewards but slowly and on being asked as to who had made his condition like that, he informed her that it was the accused/appellant who insisted upon apportionment of land and money and also subjected him to beating with kicks and fists. Chhannulal Sahu (PW-2), Kumari Bai (PW-3), Manish Kumar Sahu (PW-7), Premlal Sahu (PW-8) and Dakor Singh Sahu (PW-9) have not supported the case of the prosecution and have been declared hostile. Kunjlal Sahu (PW-4) – another son of the deceased and eyewitness to the incident has

stated that when he returned from workplace, he saw the accused/appellant beating his father and on his intervention the accused/appellant fled away. According to this witness, his father had suffered injuries on his temple, head and chest and on being asked he told him that accused/appellant had beaten him outside the house. Thereafter, this witness is stated to have taken his father to the hospital where he died on the next day. Ku. Dhaneshwari (PW-5) aged about 11 years at the relevant time is the niece of the accused/appellant. She has stated that after returning from school she was playing and then on hearing the abuses when she came out, she saw the accused/appellant beating her grand-father (deceased) with hands and fists. Smt. Chandrika Bai (PW-6) - the daughter-in-law of the deceased and another eyewitness to the incident has also supported the case of the prosecution stating that she had seen the accused beating the deceased, on account of which his condition became serious and was taken to hospital where he died during treatment. Niranjan Singh Devhare (PW-10) is the Patwari who prepared spot map Ex. P-9. Naresh Kumar Sahu (PW-11) and Bodhram Sahu (PW-12) are the witnesses to inquest Ex. P-3. Leela Ram Ratre (PW-13) is the witness who assisted in the investigation. Dr. N.C. Roy (PW-14) is the witness who conducted the postmortem examination on the body of the deceased and gave his report Ex. P-13 opining the cause of death as various external and internal injuries. Laxmi Sahu (PW-15) - yet another eyewitness to the incident has stated that on the date of incident the accused/appellant had beaten the deceased. According to her, on earlier occasions also, he used to do that. H.S. Netam (PW-16) is the investigating officer who has duly supported the case of the prosecution.

9. This Court has gone through the record minutely. Having done so it becomes apparent that on the date of incident when the deceased was sitting near the Radha Krishna Temple, accused/appellant came there, asked him persistently for apportionment of land and money. While pressing his demand he also subjected the deceased to beating by using fists and kicks and hitting him frequently against the ground. There are number of witnesses who saw this horrendous incident of beating perpetrated by a son (accused) to his father (deceased). Wife of the deceased namely Chameli Bai (PW-1) has also stated that on seeing her husband walking homewards but slowly she asked him as to who made his condition as such, he informed her that it was none else but the accused/appellant only who abused and beat him making a persistent demand for apportionment of land and money. This father-son fued did not happen on the date of incident alone but previously also such things were not uncommon. After being beaten by the accused-son the condition of the deceased-father started worsening and for that he was shifted to the hospital where he breathed his last on the second day while taking treatment. All this makes it clear that it is the accused/appellant who is responsible for the death of his father and being so his complicity in the crime in question is fully established.

10. Now the next question to be dealt with is whether the act of the accused/appellant in beating his father with fists and kicks resulting in his death on the second day while taking treatment in the hospital, would make him liable for conviction under Section 302 or under any other section of the Indian Penal Code. Here the

accused and the deceased are none else but the son and father. Record shows that even on earlier occasions the accused abused and beat the deceased insisting for apportionment of land and money and the same thing happened on the fateful day also. Further, the accused did not use any weapon in executing the crime which could have spelt out his intention in so doing. Whatever has happened cannot be said something unusual for the accused because even prior to the incident he resorted to such persistence in the demand for apportionment of land and money coupled with abuses and beating, but unfortunately this time the deceased in his eighties could not withstand the brunt of beating. Probably, the old age could also be a contributing factor culminating in his death. Ingredients of pre-meditation or prior intention required to establish the accusation of murder are not lurking in the record to be the causative factors on the part of the accused to eliminate his own father. His act therefore can at best be said to be a culpable homicide not amounting to murder and being so he can be held guilty under Section 304 (Part-II) and not under Section 302 IPC.

11. Resultantly, the appeal is allowed in part. Conviction under Section 302 is hereby set aside and in stead the accused/appellant is convicted under Section 304 (Part-II) IPC. As regards sentence, keeping in mind the fact that the accused/appellant has already remained in jail for about 06 year and 05 month, this Court deems it just and proper to sentence him to the period already undergone. Done thus. Accused/appellant is however directed to deposit a sum of Rs. 20,000/- before the Court below within a period of six months from today to be paid to the wife of the deceased as compensation in view of the provisions of Section 357 of the Code of Criminal

Procedure. If the amount so fixed is not deposited within the stipulated period, the accused/appellant shall be inside for an extra period of two years.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge

Jyotishi