

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 627 of 2012**

1. Rajendra alias Raju Ghanshi S/o late Sureshvar Ghansi, aged about 32 years, occupation Labour Works, R/o Village Deewan Harradeepa, Police Station Sanna, District Jashpur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Jashpur, CG

---- Respondent

For Appellant: Smt. Laxmin Tondey, Advocate
 For Respondent/State: Shri Adhiraj Surana, Dy. GA

Hon'ble Shri Thottathil B. Radhakrishnan, CJ &
Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board by Pritinker Diwaker, J

09/09/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 03.05.2012 passed by Sessions Judge Jashpur, in Sessions Trial No. 59/2011 convicting the accused/appellant under Sections 302 and 201 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/- u/s 302 and RI for 10 years with fine of Rs. 1000/- u/s 449, plus default stipulations.

2. Name of the deceased in the present case is Sureshvar Ghansi - the father of the accused/appellant. According to the case of the prosecution, on 08.02.2011 at about 10 PM the accused/appellant entered the house of one Sheetal Ghansi (PW-2) to collect drinking water and caused club injury to the deceased on the suspicion that he was having illicit relation with his wife Parvati. Injured was immediately taken to hospital and thereafter the FIR

Ex. P-1 was lodged on 09.02.2011 at 8.30 AM by Garibo Bai (PW-1) – second wife of the deceased against the accused/appellant under Sections 452 and 323 IPC. Sukeshvar however succumbed to the injuries sustained by him during treatment. Based on the information received from the hospital un-numbered *merg* Ex. P-7 and numbered one being Ex. P-18 were recorded by PW-3. After inquest, the dead-body was sent for postmortem examination which was conducted by Dr. Anuranjan Toppo (PW-4) who gave his report Ex. P-10. After filing of charge sheet, the trial Court framed the charge against the accused/appellant under sections 452, 323 and 302 IPC. However, the Court below framed the charge under Sections 302 and 449 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 11 witnesses. Statement of the accused 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 in paragraph No.1 of this judgment.

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

(i) That looking to the evidence collected by the prosecution it is not a case of conviction under Section 302 and at best the act of the accused/appellant may fall under Section 304 (Part-I) IPC.

(ii) That as the accused/appellant has already remained in jail for about 7 years, he may be sentenced to the period already undergone by convicting him accordingly.

6. On the other hand, State counsel while supporting the

judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Sections 302 and 449 IPC are strictly in accordance with law and there is no infirmity in the same.

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

8. Garibo (PW-1) - the second wife of the deceased and the lodger of FIR has stated that on the date of incident when she was sitting with the deceased in the house of her brother Sheetal Ghansi, the accused/appellant came inside and caused injuries to the deceased with the help of club as a result of which he died in the hospital during treatment. She is also the witness to seizure made under Ex. P-2. This witness however has stated that there was no dispute between the deceased and the accused. Sheetal Ram (PW-2) - is the witness in whose house the incident took place, has stated that on the date of incident when he was sitting along with deceased, Garibo (PW-1) and his own family members, the accused/appellant barged in his house carrying club in his hand and caused a club injury on his head which ultimately resulted in his death in the hospital during treatment. He is also the witness to memorandum Ex. P-3 and seizure of club based thereon vide Ex. P-4. This witness however has been declared hostile. In the cross-examination, he has stated that there was no dispute between the deceased and the accused. Sitaram (PW-3) who came to know about the incident on the next day, has not supported the case of the prosecution and has been declared hostile. Anuranjan Toppo (PW-4) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-10 stating that he noticed two stitched wounds on the left occipito-parietal aspect

and the cause of death was head injury and mode homicidal in nature. Dinesh Rajwade (PW-5) ands Prabhat Kumar Tiwari (PW-11) are the witnesses who assisted in the investigation. Vikas Kumar (PW-6) is the witness who presented the copy of the FIR before the concerned Magistrate. Mohd. Farookh Javed (PW-7) is the Patwari who prepared spot map Ex. P-6. Dr. Lalit Ekka (PW-9) is the witness who medically examined the deceased when he was alive and gave his report Ex. P-17 stating therein that he noticed one lacerated wound on the occipito-temporal region of skull measuirng 5 x 3 cm and advised for x-ray also. Dwarika Prasad Srivas (PW-10) is the investigating officer who has duly supported the case of the prosecution.

9. After going through the material on record including the evidence of the witnesses it is apparent that on the fateful day i.e. 08.02.2011 the accused gained an entry into the house of (PW-2) where the deceased and his second wife were already there, and dealt a club blow on his head which led to his death on 10.02.2011 in the hospital while taking treatment. Incident of assault has been duly supported by PW-1, as also by PW-2 though he turned hostile. Doctors (PW-4) conducting autposy and (PW-9) medically examining the deceased when alive have also duly supported the case of the prosecution stating that they noticed injury on the occipito-parietal region of his skull. Further, on the memorandum of accused/appellant Ex. P-3, seizure of club has also been made. Thus the involvement of the accused/appellant in the crime in question is writ large.

10. Now the point to be decided is whether the act of the accused/appellant would fall under Section 302 or 304 of the Indian Penal Code? Evidence shows that the accused/appellant had a

suspicion in his mind that the deceased was having illicit intimacy with his wife which provoked him to teach a lesson for his lascivious attitude and probably in furtherance of that he opened an assault on him by entering the house of PW-2 where he was sitting with his second wife and ultimately the injuries resulted in his unfortunate death. Evidence does not even reflect any previous dispute between the accused and the deceased which could have prompted the accused to quench his thirst for blood of his own father. Had the accused any premeditation to do away with the deceased, he could have chosen some lethal weapon for executing the crime but he picked up the club which is commonly available in every household particularly in the villages and caused injury to the deceased that too only once. This act of the accused/appellant thus unequivocally speaks that while inflicting injury he might be having intention of causing such bodily injury which could result in his death, but at the same time knowledge about the likelihood of resultant death by such act was lacking on his part. Thus taking overall evidence of the witnesses into consideration, it does not appear to be a case of conviction beyond section 304-I IPC with imposition of sentence of RI for 10 years.

11. Since the accused/appellant is going to be convicted under Section 304-I IPC which carries maximum punishment of life imprisonment, the conviction of accused under Section 449 IPC cannot stand but his act of entering the house of PW-2 would slide into section 450 IPC which pertains to commission of an offence punishable with imprisonment for life.

12. In the result, the appeal is allowed in part. Conviction of the accused under Sections 302 and 449 IPC is set aside. He is however convicted under Sections 304-I and 450 IPC and sentenced to

undergo RI for 10 years and 05 years respectively. Sentences so imposed shall run concurrently.

Sd/-

(Thottathil B.Radhakrishnan)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge