

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 291 of 2014

- Arjun Netam S/o Birsingh Netam Aged About 35 Years R/o Village Madaanaar Ps Kondagaon Distt. Kondagaon C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through The Ps Kondagaon, Distt. Kondagaon C.G.

---- Respondent

For Petitioners	:	Shri Abhijeet Sarkar, Advocate
For Respondent/State	:	Shri Bhaskar Pyasi, P.L.

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

Judgement on Board by Pritinker Diwaker, J.

26/09/2017

This appeal arises out of judgment and order dated 12.12.13 passed by the Additional Sessions Judge, Kondagaon district Kondagaon in Sessions Trial No. 326/2012 convicting the accused/appellant under Sections 302 and 323 of IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1,000/- and RI for 1 year with default stipulations.

2. In the present case name of the deceased is Harilal, elder brother of the appellant. As per prosecution case, on 04.05.2010 at about 8.00 p.m. accused/appellant knocked the door of the house of deceased and asked him to drop off the salfi (a kind of country made beverage) from the tree for consumption but the deceased refused to drop the same as it was night, at that time accused/appellant started shouting and

abusing at him, picked up the fire wood and caused injuries on the head as a result of which deceased died instantaneously. When wife of the deceased Tijai Bai (PW-2) tried to intervene, appellant also caused injury to her. This incident was also witnessed by Dewantin Bai (PW-1) daughter of the deceased. The next morning i.e. on 05.05.10 at about 7.30 a.m. FIR Ex.P-7 was lodged by Tijai Bai (PW-2) against the appellant under Sections 302, 294 and 323 IPC. Immediately thereafter merger intimation Ex.P-2 was recorded at 7.40 a.m. Inquest on the body of deceased was prepared vide Ex.P-6 and body was sent for postmortem examination which was conducted by Dr. S. Lonhare who could not be examined in the Court as he died during the pendency of the trial however postmortem report has been duly proved by medical officer Dr. Kumud Kanwar (PW-6) and she opined that cause of death was due to excessive hemorrhage and death was homicidal in nature. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 and 323 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 6 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.

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 that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part II IPC. It has been argued that the

appellant in a heat of passion on a sudden quarrel picked up a firewood and caused two injuries as a result of which the deceased died instantaneously. He submits that the appellant is in jail since last more than 7 years and therefore after converting his conviction into Section 304 Part II IPC his sentence may be reduced to the period already undergone.

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 evidence available on record.

8. Devantin Bai (PW-1) daughter of the deceased has stated that on the date of incident after taking meals when her father was sleeping, accused/appellant came to their house and called her father and when he came out accused assaulted him and caused injury on his head as a result of which he died instantaneously. She has stated that when she and her mother were trying to intervene accused/appellant caused injury to them also. In cross-examination there appears to be some contradiction but considering the fact that this witness is a rustic villager her statement cannot be denied in toto. Tijai Bai (PW-2) is the wife of the deceased who lodged the FIR has also supported the prosecution case. She has stated that the accused/appellant had asked her husband to get salfi and when he refused to drop off the same, the appellant caused injury to her husband and when she tried to intervene she was also assaulted by him. In her statement also there appears to be some contradictions but not of much significance. Shyam Sundar Thakur (PW-3) a villager, has not stated anything and has been

declared hostile. Mayaram Nag (PW-4) is the Sarpanch of the village and witness to seizure and inquest. M.K.Hota (PW-5) is the Investigating Officer who has duly supported the prosecution case. Dr. Kumud Kanwar (PW-6) is the medical officer who had medically examined Tijai Bai and noticed simple injuries and the report is Ex. P-16.

9. Close scrutiny of the evidence makes it clear that on 04.05.2010, in a heat of passion, accused/appellant picked up the firewood and caused injuries to the deceased resulting his instantaneous death. He also caused injuries to Tijai Bai (PW-2) wife of the deceased when she tried to intervene. Thus, from the statement of the eyewitnesses, who are the wife and daughter of the deceased, involvement of the accused/appellant in the crime in question, has been duly proved by the prosecution. The complicity of the appellant in the commission of the offence has been duly proved.

10. Now the only question which arises for consideration before this Court is as to what offence has been committed by the appellant. It is apparent that two injuries were caused by the accused/appellant with fire wood on the head of the deceased and he died instantaneously. It is not a case of prosecution that the appellant has brought any arm with him, but it is the prosecution case itself that the appellant picked up the firewood from the spot.

11. The incident occurred on a spur of moment in heat of passion and thus, considering the facts and circumstances of the case, we are of the view that accused/appellant is liable to be convicted under Section 304 Part II IPC instead of Section 302 IPC as has been done by the trial court. As regards sentence, keeping in mind the fact that the

appellant is in jail since last about 7 years, ends of justice would be served if the sentence imposed on him is reduced to the period already undergone by him. As the accused/appellant is reported to be in jail he be set free forthwith if not required in any other case.

So far as the conviction of the appellant under Section 323 IPC is concerned, the same is maintained.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge