

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 185 of 2013

- Jailal Bhoy S/o Bhokalo Bhoy Aged About 51 Years, Occupation Labour, R/o Village Nagramuda , P.S. Tamnar , Distt. Raigarh C.G.

---- Petitioner

Versus

- State Of Chhattisgarh Through - Station House Officer, Thana - Tamnar , Distt. Raigarh Chhattisgarh

---- Respondent

For Applicant	Mr. BL Dembra, Advocate
For Respondent /State	Mr. Sameer Behar, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &

Hon'ble Mr. Justice Sanjay Agrawal

Order On Board By

Prashant Kumar Mishra, J.

17/2/2018

1. Heard.
2. Challenge in this appeal by the appellant is to the conviction under Section 302 of IPC for causing murder of his elder brother Lalaram.
3. The incident occurred at about 5 p.m. on 26.2.2011. It is alleged that deceased Lalaram, the elder brother of appellant Jailal, had parted with some land in their possession to Panikram Guihar (PW-7), for which, the appellant was annoyed with the

deceased, as according to the appellant, the land could have been used by their family members in future. On the date of the incident, the appellant had called the deceased to his house, on which, the deceased and his wife Ambika Bai (PW-4) went to the appellant's house, where some altercation took place between them and while both of them were returning, the appellant came from behind and caused one axe blow over the occipital region of the deceased, after which, the deceased fell down, became unconscious and succumbed to the injuries while on his way to the hospital.

4. The conviction is based on the eye-witness account rendered by PW-4 Ambika Bai. There are other witnesses examined before the trial Court, who are the co-villagers to prove the motive; the persons who stood witnesses at the time of recording of memorandum statement, seizure and *Panchnama* etc. and; the Police Personnel who conducted the investigation or assisted during the investigation.
5. Since the eye-witness account is available and the entire argument advanced by learned counsel for the appellant remained focused on the statement of PW-4 Ambika Bai, we shall advert to the said evidence to find out as to whether the trial Court has rightly relied on her statement or it is a case of no evidence.
6. Ambika Bai (PW-4) is the wife of the deceased. She has deposed that the appellant had come to their house and invited them to his house, on which, she and her husband Lalaram (deceased)

had gone to the appellant's house and while they were returning, the appellant caused the injury. She has not been confronted with her case diary statement to find out any contradiction or omission, therefore, her Court statement is in line with her case diary statement. PW-2 Ramila Bai has also supported the prosecution by stating that since Lalaram had parted with some piece of land to Panikram (PW-7), appellant Jailal was not pleased with him.

7. PW-3 Kirtan Bhoi has deposed that immediately after the occurrence, he had gone near the house of the appellant and witnessed that the appellant was carrying an axe and the dead body of Lalaram was lying there. PW-7 Panikram is the person to whom deceased Lalaram has given the possession of the land, however, he was not present at the time of occurrence, therefore, his statement is not significant for proving the guilt against the appellant except that he would admit the fact that the deceased had given possession of land to him.
8. Considering the entire evidence on record particularly the statement of PW-4 Ambika Bai, it appears, the finding of guilt recorded by the trial Court is fully borne out from the material available on record. There is nothing in the evidence of Ambika Bai, which would discredit or would dent her statement. She has fully withstood her case diary statement and has supported the prosecution, therefore, the trial Court has not committed any error in basing the conviction on the statement of PW-4 Ambika Bai.

9. The question which may now arise is whether the appellant would be guilty of committing offence under Section 302 of IPC or Section 304 Part-I or Part-II of IPC.
10. This issue has been considered by the Supreme Court time and again. One of the latest being in the matter of **Bivash Chandra Debnath alias Bivash and others Vs. State of West Bengal, (2015) 11 SCC 283**, wherein, the principle has been laid down as to when an offence would fall under any of the Exception to Section 300 of IPC. To convert offence under Section 302 into 304 Part I or Part-II of IPC, para 20 of its judgment needs reference, which is reproduced hereunder :

“20. On appreciation of evidence on record of the present case, we agree with the contention of the learned Senior Counsel for the appellants that since it is a case of sudden fight and there was no premeditation on the part of the appellants and the offenders have not acted in “unusual manner”, their acts are covered under Exception 4 to Section 300 IPC. In the similar case in *Pulicherla Nagaraju Vs. State of AP*, (2006) 11 SCC 444, in para 29, this Court has discussed the issue as to when the conviction can be converted from an offence punishable under Section 302 IPC to Section 304 Part I or Section 304 Part II IPC and the same is reproduced hereunder : (SCC pp 457-58, para 29)

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or significant matters – plucking of

fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in death. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the

accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

11. We shall now proceed to consider the evidence in the present case on the anvil of the principle laid down by the Supreme Court in **Bivash Chandra Debnath alias Bivash** (supra) . There is no evidence that prior to handing over possession of some land to Panikram (PW-7), there was any animosity or ill will between the appellant and the deceased, who are the real brothers. On the date of the incident also, the appellant had called the deceased to his house for discussion on the land issue. The prosecution case is silent on this aspect as to what exactly happened when the deceased had gone to the house of the appellant. Even if it is considered that there might have been heated discussion between the two brothers and thereafter, the deceased came out of the house of the appellant, it would remain a case of acting on sudden impulse or heat of passion rather than a premeditated or conspired act. It is not a case where for the land issue the appellant had earlier also threatened the deceased.
12. The fact that the appellant had given only one blow on the occipital region of the deceased is also a pointer that he intent to cause injury to the deceased and not commit his murder although he may be aware that the injuries caused on the occipital region may result in his death but there was no

intention to commit his death. The act committed by the appellant would, thus, fall under Fourth Exception to Section 300 IPC and the offence would be under Section 304 Part-I of IPC.

13. Accordingly, the appeal is partly allowed and the conviction of the appellant under Section 302 of IPC is set-aside and instead, he is convicted under Section 304 Part I of IPC.

14. The appellant has already remained in jail from 27.2.2011 till date i.e. little less than 7 years. Considering the entire fact situation of the case, the jail sentence already suffered by the appellant is found sufficient, therefore, he is sentenced to the period already undergone. The appellant is to be set at liberty forthwith unless to be required in connection with any other case.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Sanjay Agrawal)