

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 303 of 2013

- Dhan Singh S/o Late Vishwanath Samrath, aged about 44 years, R/o Village Motimdh Likhma, Thana - Borai , Distt. Dhamtari (CG)

---- Appellant

Versus

- State Of Chhattisgarh, Through - The District Magistrate , Dhamtari

---- Respondent

For Appellant	:	Shri Sachin Singh Rajput, Advocate
For Respondent	:	Shri Avinash K Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgement

Per P. Diwaker, J

23/08/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 26.2.2013 passed by the learned Additional Sessions Judge, Dhamtari in S.T. No.51/12 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life and fine of Rs.500/-, in default to undergo additional RI for 2 months.
2. As per case of the prosecution, on 23.4.2012 deceased Anup Ram Samarth was playing cricket along with his friend Ishwar (PW-10) and at that time, acquitted accused Kanwarlal @ Kauru came there and took the deceased along with him to his house. No sooner the deceased entered the house of acquitted accused, accused/appellant Dhan Singh, who was already sitting there carrying bow & arrow in his hand, shot an arrow which

caused bleeding injury on the right side of the stomach of deceased. Injured Anup was immediately taken to the hospital at Vishrampur for treatment where he disclosed to Ishwar (PW-10) and Vijay Chakravarti that accused Dhansingh shot an arrow at him and caused an injury on his person. When the condition of deceased became critical, he was firstly shifted to a hospital at Dhamtari and thereafter to the Medical College Hospital, Raipur where on 1.5.2012 he succumbed to arrow injury during the course of treatment. Intimation regarding death of deceased was sent from the hospital to the police station vide Ex.P-8 on 1.5.2012 based on which merged intimation (Ex.P-14) was recorded. Inquest (Ex.P-9) was prepared over the body of deceased on 1.5.2012. Dr. S.K. Bagh (PW-17) conducted post-mortem on the body of deceased vide Ex.P-20 and noticed one contused lacerated wound on right 10th intercostal space lateral aspect of 2.5x1cm in size. As per opinion of the autopsy surgeon, death was due to cardio respiratory failure as a result of abdominal injury and its complications, duration of injury was within 8 days prior to death and duration of death was within 24 hours from the time of post-mortem examination. After merged inquiry, FIR (Ex.P-21) was registered on 15.6.2012 for the offence punishable under Section 302 of IPC against accused persons. On 1.7.2012 accused/appellant herein was arrested and his memorandum was recorded vide Ex.P-3 and pursuant to disclosure statement made by accused/appellant, one bow was seized vide seizure memo Ex.P-4. In the course of investigating, one arrow was seized vide Ex.P-13. Seized bow & arrow was sent for chemical analysis to the Forensic Science Laboratory, Raipur, but the report received from the FSL does not confirm presence of blood on the arrow seized.

3. After investigation, charge sheet against the accused persons was filed under Section 302 of IPC. The trial Court while framing the charge has

framed the charges under Section 302 & 302/34 of IPC against the accused persons. The prosecution in order to bring home the charges levelled against the accused persons examined 18 witnesses in all. Statement of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above. However, co-accused Kanwarlal alias Kauru was acquitted of the charge under Section 302/34 of IPC.

5. Counsel for the appellant submits that;-

- conviction of accused/appellant is based on the testimony of eyewitness Ishwar (PW-10), but evidence of this witness is not trustworthy and reliable for the reason that his statement under Section 161 of CrPC has been recorded after a considerable delay and the prosecution has not offered any plausible acceptable explanation. Thus, this inordinate delay in recording the statement of this crucial witness makes his version highly suspicious and doubtful.
- the prosecution has failed to prove motive behind the commission of crime;
- appellant aimlessly shot an arrow which accidentally hit on the stomach of the deceased; he succumbed to that injury after about eight days of incident in the hospital while undergoing treatment and the doctor, who conducted post-mortem on the body of deceased, has opined that the death was due to cardio respiratory failure as a result of abdominal injury and its complication. In these

circumstances, it cannot be said that the appellant intended to inflict any injury to the deceased, which in ordinary course of nature is sufficient to cause death and at best, he can be held guilty for voluntarily causing hurt by dangerous weapon to the deceased, which is punishable under Section 324 of IPC.

- the appellant has already remained in jail for more than three years and therefore while converting his conviction under section 324 IPC, he be released forthwith.

6. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that the manner in which and the part of the body where the deceased has been assaulted, the intention on the part of the appellant to cause his death is writ large. In these circumstances, the conviction of the appellant under Section 302 IPC and the resultant sentence is just and proper and no interference therewith is warranted.

7. Amar Singh (PW-1) is the hear say witness who came to know about the incident from village Sarpanch. Rakesh (PW-2), Basanti Bai (PW-3), Rajesh Kumar (PW-4), have not supported the prosecution case and as such declared hostile. Kishore Kashyap (PW-5) is the Patwari who prepared the spot map Ex.P-2. Kunwar Singh (PW-6) is the witness of memorandum (Ex.P-3), seizure memo (Ex.P-4) and arrest memos Ex.P-6 & Ex.P-7. Laxman Singh (PW-8) is another witness of memorandum & seizure memos, but he did not support the prosecution case and as such declared hostile. Prakash Pasheriya (PW-8) is the Ward Boy of Dr. Bhimrao Ambedkar Hospital, Raipur who went to the police station along with the memo of the doctor (Ex.P-8) and informed the police in regard to death of deceased. Fool Singh (PW-9) is another witness of inquest (Ex.P-9).

8. Ishwar (PW-10) is the sole eyewitness of the incident. He has stated that on the date of incident at about 4 in the evening when he was playing cricket on the road along with the deceased, acquitted accused came there and took the deceased along with him to his house where accused/appellant was already present and the moment they stepped inside the house, accused/appellant shot arrow at the deceased which hit in his stomach and thereafter the accused fled from there. They took the deceased to Borai hospital where he was given primary treatment and thereafter they took him to Vishrampuri Hospital from where the deceased was brought to Dhamtari for treatment. Looking to the condition of deceased, he was taken to Medical College Hospital, Raipur for better treatment where during treatment he breathed his last on 1.5.2012. He is also a witness to inquest (Ex.P-10). Nothing could be elicited by the defence in the cross examination of this witness so as to make his testimony unreliable or untrustworthy.
9. Vijay Kumar (PW-11) did not support the prosecution case and turned hostile. Gopi Chandrakar (PW-12) is the police person who recorded seizure memo of Ex.P-13 by which one arrow was seized from the possession of accused/appellant. Gopi Alakhram Sirdar (PW-13), Hira Singh Dhruw (PW-14), Dipak Kumar Bharti (PW-15) & Lakhan Lal Suryavanshi (PW-16) are police persons and they helped in the investigation. Dr. S.K. Bagh (PW-17) is the doctor who conducted post-mortem on the body of deceased and noticed the injury (s) as described above. Ajit Kumar Ogre (PW-18) is the investigating officer who has duly supported the prosecution case.
10. Close scrutiny of the evidence available on record makes it clear that on the date of incident when the deceased & Ishwar (PW-10) were playing cricket on the road, they were called by acquitted accused to his house

and the moment they stepped inside the house, accused/appellant, who was already present there, shot arrow at the deceased which hit in his stomach and thereafter the accused fled from there. Ishwar (PW-10) has duly supported the prosecution case stating that no sooner they stepped inside the house of acquitted accused, the accused/appellant shot an arrow towards the deceased and thereafter fled from there. The manner of occurrence and the weapon used, as described by PW-10, finds support from the medical evidence as the post-mortem report proved by the prosecution clearly show that the injury noticed on the body of deceased i.e. stomach, was caused by pointed object. This witness had been cross-examined at length but the defence has not been able to point out any contradiction of a material nature in his deposition which makes this witness unbelievable or unreliable.

True it is that there is some delay in recording of diary statement of PW-10 by the police, but in the instant case FIR has been registered 15.6.2012 on the basis of merg inquiry and thereafter statements of witnesses were recorded under Section 161 CrPC. Prior to registration of FIR, recording of statement under Section 161 CrPC would not be possible. Even otherwise, the defence did not put any question in this regard to the investigating officer and thus no explanation was required to be furnished on this issue. In these circumstances, delay in recording statement under Section 161 of CrPC would not be fatal to the prosecution. For this view we are fortified from the judgements of the Hon'ble Supreme Court in Sunil Kumar & another v. State of Rajasthan reported in (2005) 9 SCC 283.

Thus, taking into consideration the overall evidence on record, we are of the view that complicity of the accused/appellant in the crime in question is established beyond doubt.

11. Now the next question which arises for consideration of this Court is whether the act of the appellant makes him liable to be convicted under Section 302 of IPC or for any other offence?
12. The incident had taken place on 23.4.2012 in which the accused/appellant had inflicted single arrow injury in the abdomen of deceased and the deceased breathed his last on 1.5.2017 in the hospital while undergoing treatment. A perusal of the post mortem report reveals that there was only one injury caused by some pointed object and cause of death of the deceased was cardio-respiratory failure due to abdominal injury and its complications. Thus, the autopsy surgeon has not opined as to whether the injury present on the body of deceased was simple or grievous or dangerous to life and as such, there was no evidence on record to the fact that the appellant had caused any fatal injury to the deceased resulting in his death. In such a situation, it can safely be concluded that the conviction of accused/appellant under Section 302 of IPC was not justified. However, when we see the nature of assault and compare it with Section 324 of IPC, it would clearly reveal that the act committed by the appellant has all the ingredients of Section 324 of IPC.
13. Thus, on overall scrutiny of the facts and circumstances of case coupled with medical evidence, we are of the view that the offence would be one punishable under Section 324 IPC and not under Section 302 of IPC.
14. Accordingly, the appeal is partly allowed. While acquitting the appellant of the charge under Section 302 IPC, he is convicted under Section 324 of IPC for voluntarily causing hurt to deceased by using an instrument as defined in Section 324 of IPC and sentenced him to undergo RI for 3 years. Appellant is reported to be on bail. Since accused/appellant has

already served the sentence imposed upon him, he need not to surrender
and his bail bond stands discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Smt. Rajani Dubey)
Judge

roshan/-