

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.A No. 1078 of 2007

Janglu Ram S/o Renu Ram Anchala, aged about 35 years,
Occupation – Farmer, R/o Village Khedegaon, Police Station
Durgukondal, District Kanker, Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh, through : The Station House Officer, Police
Station – Durgukondal, District – Kanker, Chhattisgarh.

---- Respondent

For Appellant : Mr. S. P. Sahu, Advocate

For Respondent/State : Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

By P. Sam Koshy, J.

21/07/2018

1. The instant criminal appeal arises out of judgment dated 30.01.2006 passed by the First Additional Sessions Judge, Kanker, District Kanker, Chhattisgarh in Sessions Trial No.178/2005 whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo Life Imprisonment with fine of Rs. 500/- with default stipulation.
2. The case of the prosecution in brief facts is that the present appellant, who is younger brother of deceased Mangau Ram, is said to have gone to the house of the complainant on 24.06.2004 carrying lathi in his hand, a quarrel between the accused/appellant and his father (deceased) had taken place in connection with some land and during the course of said quarrel

the accused gave a blow on the head of deceased with a club as a result of which he fell down and died. Merg intimation was recorded vide Ex.P-19. FIR (Ex.P-20) was registered on 26.6.2004 at the instance of complainant (PW-8). Inquest was prepared vide Ex.P-2. Body of the deceased was sent for postmortem examination which was conducted by Dr. D.S. Thakur (PW-6) vide Ex.P-16 and he noticed lacerated wound present over head left frontal region in the size of 3cmx1cm.

3. After completion of investigation, the police filed charge sheet against the accused/appellant under Section 302 of IPC followed by framing of charge against the appellant under that section by the Court below. In order to prove its case, the prosecution has examined as many as 10 witnesses out of which two witnesses namely Nohri Bai (PW-7) and Chaitu Ram (PW-8) were shown as eyewitness to the incident. After conclusion of trial, the Court below based on the evidence of prosecution witness by the impugned judgment found the appellant guilty for commission of offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer Life Imprisonment with a fine of Rs. 500/-, in default of payment of fine to further undergo RI for 1 month.
4. After passing of the impugned judgment of conviction, the appellant has preferred this criminal appeal through the High Court Legal Aid Services, Bilaspur. This Court vide order dated 06.8.2008 suspended the sentence imposed upon present appellant and released him on bail.
5. Today when the matter has been called out for hearing, none appeared on behalf of the appellant.

6. Considering the fact that this appeal has been filed through the High Court Legal Aid Committee and the same is pending for the last about 11 years, we feel it appropriate to appoint another counsel on behalf of the appellant and to hear the appeal finally. Accordingly, Shri S.P. Sahu, Advocate who is present in the Court is appointed as counsel on behalf of the appellant to argue this appeal.
7. Learned counsel for the appellant submits that almost all the material witnesses including son of deceased (PW-8) examined by the prosecution have not supported the prosecution case and turned hostile. Nohari Bai (PW-7) being the wife of the deceased was an interested witnesses and therefore the trial Court should not have relied upon her testimony for convicting the appellant. He further submits that even if the entire prosecution case is taken as it is, it is apparent that the incident had occurred all of a sudden, in a heat of passion and without any premeditation and in addition the appellant had given only a single blow with a club and as such, the appellant can, at best, be convicted under Section 304 Part II of IPC and not under Section 302 of IPC. He further submits that the appellant has already remained in custody for about 3½ years, therefore, after converting his conviction under Section 304 Part II of IPC, he be sentenced to the period already undergone.
8. On the other hand, learned State counsel submits that the conviction of the appellant is based on the eyewitness account and there is no reason to disbelieve the testimonies of Nohari Bai (PW-7) & Chaitu Ram (P-8) who were present on the spot at the time of occurrence. He further submits that the manner in

which the deceased was assaulted, the intention on the part of the appellant to cause his death is writ large. He further submits that the sentence awarded by the trial Court is commensurate with the proved guilt of accused/appellant. It is neither harsh nor excessive and therefore no interference is called for.

9. We have heard learned counsel for the parties and perused the record of the trial court including the impugned judgment.
10. Admittedly, the appellant and the deceased are brothers and they were residing separately. The incident had occurred on 24.6.2004. As per spot map (Ex.P-16 & P-17), the place of incident is the house of deceased Mangau Ram. It is the present appellant who came to the house of deceased armed with club. There is no medical report showing presence of any injury on the person of the appellant and thus it is clear that it is not a case of a fight between both the parties.
11. Perusal on record shows that the prosecution case rests upon the testimonies of Nohari Bai (PW-7) & Chaituram (PW-8), however, during the course of trial Chaituram (PW-8) did not support the prosecution case and turned hostile. Thus, the only relevant evidence left to be considered is that of Nohari Bai (PW-7), who is not only an eyewitness of the incident but also happens to be the wife of the deceased.
12. According to Nohari Bai (PW-7), on the date of incident the accused/appellant came to her house and assaulted on the head of her husband as a result of which he started bleeding and died. Her version gets corroborated from the FIR which was lodged by PW-7. Medical evidence also supports the

version of PW-7 regarding the occurrence. According to Dr. D.S. Thakur (PW-6), who conducted postmortem examination over the body of deceased vide Ex.P-16, he noticed one lacerated wound over the left frontal region of the size 3x1cm and he opined that the cause of death was coma due to injury to brain caused by hard and blunt object and the death was homicidal in nature. Nohari Bai (PW-7) has been cross-examined at length by the defence but nothing could be elicited which would show false implication of the appellant. Though Chainuram (PW-7), lodger of FIR did not support the prosecution case and turned hostile, but considering his evidence it stands proved that FIR (Ex.P-20) was lodged by him at Police Station Durgkondal, District Kanker. RP Tiwari (PW-9) testifies that report (Ex.P-20) was tendered to him on 26.6.2004 by Chainuram (PW-7). Even otherwise, mere declaration of lodger of FIR hostile will not completely wash out the entire prosecution case particularly when there is clear and cogent eyewitness i.e. PW-7, who in very categorical term stated before the Court to have witnessed the appellant assaulting the deceased with club. Thus, we are of the considered view that on the basis of evidence adduced by the prosecution, complicity of accused/appellant in commission of offence stands proved beyond all reasonable doubts.

13. As regards the submission of counsel for the accused/appellant that the act of the appellant comes within the ambit of Section 304 Part-II of IPC. As per testimony of Nohari Bai (PW-7), on the date of incident there was exchange of words between appellant and deceased which led to the assault over the land

related dispute going on between accused and deceased since long. During the course of said quarrel, the appellant had given one club blow to the deceased which resulted in his death. The postmortem report of the deceased reveals that he had received only single injury on his head. It can thus clearly be seen from the evidence of eyewitness itself that there was no intention on the part of the appellant to cause death of the deceased. It appears that in the heat of passion upon sudden quarrel, the appellant assaulted on the head of deceased with a club which proved fatal and led to his death. However, keeping in mind the fact that the assault was made on the vital part i.e. head, it can be safely inferred that while inflicting injury on the deceased, the appellant had the knowledge that the injuries which he is going to cause to the deceased, particularly on his head, may result in his death. Thus, this Court thinks that the act of accused/appellant can be termed as culpable homicide not amounting to murder, which is covered within Exception-IV to Section 300 of the IPC. That being the position, we are of the considered opinion that conviction of accused/appellant under Section 302 of the IPC is not based on the correct appreciation of evidence available on record the conviction of the appellant for the offence under Section 302 of the IPC thus is set aside and taking into consideration all aspects of the matter, we are of the opinion that he would be rather convicted under Section 304 Part-II of IPC.

14. As regards the sentence, considering the fact that the incident took place 15 years ago, the appellant remained in jail for only about three and half years, and there is no criminal antecedents

to the credit of the accused/appellant, therefore, we feel that the end of justice would be met if the appellant is sentenced with 7 years of rigorous imprisonment, however sentence of fine is, however, maintained alongwith the default stipulation.

15. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-II of the IPC and he is sentenced to the period of 7 years rigorous imprisonment. He is reported to be on bail, his bail bonds stand canceled, he is directed to immediately surrender before the trial Court or be arrested by the police to serve out the remaining sentence imposed.

Sd/-

(P. Sam Koshy)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge