

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 873 of 2012****Reserved on 27.04.2018****Pronounced on 18.05.2018**

- Birendra Nareti, S/o Shri Bhanuram Nareti, Aged 32 Years, R/o Village - Metamendale, P.S - Badgaon, Distt. Kanker (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh, Through: Station House Officer, Police Station - Badgaon, Distt. Kanker (C.G.)

---- Respondent

For Appellant	:	Shri Alok Dewangan, Advocate
For Respondent/State	:	Shri Vaibhav A. Goverdhan, P.L.

**Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ**

C. A. V. Judgment**Per Sanjay Agrawal, J.**

1. This criminal appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C. in short) against the judgment dated 27.07.2012 passed by the Sessions Judge, North Bastar Kanker (C.G.), in Sessions Trial No. 129/2011 whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code (for brevity, the IPC) and sentenced to life imprisonment with fine amount of Rs.500/- and, in default of payment of fine amount, he has to undergo additional rigorous imprisonment for three months.

2. Briefly stated, case of the prosecution is that on 04.07.2011, the appellant assaulted his mother Jayamati Bai with an axe on her head, as a result of which, she died on the spot. It is alleged that on the fateful day, appellant's brother Ram Charan went to his agricultural land along with his family members and at that time, appellant, his brother's daughter-in-law, namely, Hiraya Bai and mother Jayamati Bai were at home. It is alleged further by the prosecution that the alleged incident took place when appellant's mother refused to provide him *Mahuwa* liquor, owing to which, appellant got annoyed and inflicted his mother with the aid of axe, resulting in her instantaneous death.
3. Based upon the aforesaid incident, merg intimation (Ex.P.2) was lodged by the appellant's brother Ram Charan on 06.07.2011 while narrating the incident and immediately thereafter F.I.R. (Ex.P.1) was lodged by him before the Station House Officer, Badgaon, Distt. North Bastar Kanker against his brother Birendra Nareti under Section 302 IPC. Inquest of the dead body was conducted on 06.07.2011 vide Ex.P.3. After inquest, the dead body of the deceased was sent for autopsy to Community Health Center, Pakhanjur where Dr. S. Shinde (P.W.6) conducted post-mortem examination of the dead body of the deceased and submitted its report vide Ex.P.7 opining that the cause of death was cardio-respiratory failure due to cerebral haemorrhage and is homicidal in nature. During investigation, the used weapon of offence, i.e., axe was recovered vide seizure memo (Ex.P.5) from the place of incident.
4. After usual investigation of the matter as such, the offence punishable under Section 302 of IPC has been registered against the

appellant by the concerned Station House Officer and submitted its final report before the Judicial Magistrate First Class, Pakhanjur, Distt. Kanker and the matter was thereafter committed to the Sessions Judge, North Bastar Kanker for its trial.

5. After considering the prima facie materials available on record, the trial Court has framed charge under Section 302 of IPC against the appellant on 04.10.2011, who pleaded not guilty in connection with the aforesaid crime and claimed to be tried.
6. In order to bring home the guilt of the appellant, the prosecution examined as many as 7 witnesses while none was examined by the appellant in his defence.
7. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellant and sentenced him as aforesaid.
8. Being aggrieved, the appellant has preferred this appeal. Shri Alok Dewangan, learned counsel for the appellant submits that the judgment under appeal as passed by the trial Court is apparently contrary to law as the same has been passed without considering the evidence in its proper perspective. He submits further that even if the entire prosecution case is accepted as it is, at the most, the appellant could be convicted either under Part-II or Part-I of Section 304 IPC., as the alleged crime was committed with spur of moment when mother refused to provide him *Mahuwa* liquor and his act, under such circumstances, would come within the purview of Exception - 4 to Section 300 IPC. He, therefore, submits that the judgment impugned be modified accordingly by sentencing the appellant to the period

already undergone by him.

9. On the other hand, Shri Vaibhav A. Goverdhan, learned counsel for the State supported the impugned judgment by submitting, inter alia, that it has been passed upon due and proper appreciation of the evidence, and therefore, does not require to be interfered.
10. We have heard learned counsel for the parties and perused the entire record carefully.
11. Ram Charan (P.W.1) is the brother of the appellant and is stated to have lodged the merg intimation (Ex.P.2) and F.I.R. (Ex.P.1) and has stated in his evidence that the appellant's wife Kamila informed him that her husband has killed his mother causing injury on the head with the aid of axe. He rushed there and saw that his mother Jayamati Bai was lying on the floor near the afflux of blood. He has stated further in his evidence that when he asked his brother (appellant) about the same, he informed that mother refused to provide him *Mahuwa* liquor, therefore, he assaulted her with axe on her head, as a result of which, she died. Upon knowing the said information from his brother, this witness informed the villagers, before whom, the appellant has confessed the commission of alleged crime. This witness was firm in his cross-examination.
12. Laduram (P.W.2) while supporting the prosecution case has stated that the appellant's brother Ram Charan (P.W.1) came to his house and informed that his brother Birendra (appellant) has killed his mother Jayamati Bai by assaulting her head with an axe. He has stated further that the appellant has also confessed the commission of alleged crime before the villagers. He is the witness to the seizure

memo (Ex.P.5), inquest (Ex.P.3) and also to the witness of spot map (Najri Naksha) (Ex.P.6). Likewise, Johan Ram (P.W.4), the witness of inquest (Ex.P.3) also came to know about the alleged incident from appellant's brother Ram Charan and has stated that his brother, the appellant, has made confession regarding commission of alleged crime before the villagers. Both these witness have thus supported the prosecution case.

13. Amul Das (P.W.3) has stated in his evidence that he came to know about the alleged incident from Ram Charan, brother of the appellant. However, he has stated in his cross-examination that he was not in village Metamedale when the villagers enquired the appellant about the incident. Hiraya Bai (P.W.5) is the daughter-in-law of appellant's brother Ram Charan and was at home on the date of alleged incident along with the appellant and her grandmother-in-law, i.e., Jayamati Bai (deceased). According to her, she was doing some work in her kitchen garden where the appellant Birendra came and informed that he has killed his mother with an axe. She has stated further that the appellant's wife Kamila Bai asked him as to why have you killed the mother whereupon he replied that his mother refused him to provide *Mahuwa* liquor, therefore, he has killed the mother. This witness was firm in her cross-examination.
14. Vipin Rangari (P.W.7) is the Investigating Officer and has assisted the prosecution case. Dr. S. Shinde, who has conducted the post-mortem examination of the dead body, has noticed the following injuries :-

1. Whole body was swollen, face was also swollen, tongue was protruded out, eyes closed, blood like stain was coming through nose and left ear.

2. Lacerated wound of 5 cm x 5 cm over left side of head above the left ear in parietal region.
3. Fracture of left parietal bone piercing in brain matter. Blood clot was present over left side of skull, which was found depressed.
4. Post-mortem blisters through body. No rigor mortis was present and no other injury was seen.

15. After noticing the aforesaid injuries, he submitted its report vide Ex.P.7 giving opinion regarding death of deceased, which reads as under:

“अभिमत:— मेरे मतानुसार मृत्यु का कारण श्वासन तंत्र एवं हृदय तंत्र का रुक जाना तथा सिर में पहुंचाई गई चोटों के परिणामस्वरूप था । मृत्यु हत्यात्मक स्वरूप की थी जो मेरे परीक्षण के लगभग 36 से 48 घंटे के बीच की थी । मेरी पोस्टमार्टम रिपोर्ट दो पन्नों प्र०पी-7 है जिसके अ से अ भाग पर मेरे हस्ताक्षर हैं ।”

16. Upon close scrutiny of the entire evidence adduced by the prosecution, it is evident that on the fateful day, the appellant assaulted his mother Jayamati Bai with an axe intentionally on her head when she refused to provide *Mahuwa* liquor, which led to her instantaneous death. It also emerged from the record that after committing the alleged crime, the appellant has not only confessed the same before his relatives but has also confessed before the villagers. Besides, in view of injuries sustained by the deceased coupled with the post-mortem report (Ex.P.7), it is evident that the cause of death was homicidal in nature. The prosecution has thus proved its case beyond reasonable doubt that the appellant was the author of the alleged crime.
17. Now, the question which arises for determination is as to whether the act of the appellant comes within the ambit of Exception – 4 of

Section 300 IPC, as contended by the counsel for the appellant, so as to hold that the appellant is liable to be convicted either under Part-II or Part-I of Section 304 IPC.

18. In order to ascertain the answer of the aforesaid question, it is necessary to examine the Exception – 4 of Section 300 IPC, which is relevant for our purpose, is reproduced as under :-

“**300. Murder.**---- Except in the case hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

xxxx	xxxx	xxxx	xxxx	xxxx
xxxx	xxxx	xxxx	xxxx	xxxx

Exception 4.--- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--- It is immaterial in such cases which party offers the provocation or commits the first assault.”

19. To invoke the aforesaid Exception to Section 300 IPC, it is necessary that four requirements are to be satisfied, namely, i) it was sudden fight; ii) there was no premeditation; iii) the act was done in a heat of passion; and iv) the assailant had not taken any undue advantage of act in a cruel manner.
20. A bare perusal of the evidence led by the prosecution, it is clear that the alleged incident took place when the mother of the appellant refused to provide him *Mahuwa* liquor. However, there was no fight, much less, sudden fight, which can be held to be occurred in a heat of passion upon a sudden quarrel so as to attract the aforesaid Exception to Section 300 IPC. Instead, in the instant case, as reflected from the post-mortem report (Ex.P.7), the injuries caused

were the result of blow with an axe by the appellant on the head of the deceased Jayamati Bai, which was given with such a force that her left parietal bone got fractured and blood was clotted in left skull of the deceased resulting her death instantly. Therefore, from any stretch of imagination, it cannot be held that the alleged crime was committed with a sudden fight in a heat of passion upon a sudden quarrel between the appellant and his mother so as to hold that the act of the appellant comes within the ambit of Exception – 4 to Section 300 IPC.

21. In view of the aforesaid discussions, we do not find any substance in this appeal. The appeal is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE