

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 236 of 2012

- Baijnath Bargah, S/o Shri Rampayari Bargaha, aged about 40 years, R/o village Poota Thumi Badi, Police Station Patna, District Koriya (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Patna, District Koriya (CG)

---- Respondent

For Appellants	:	Shri Ashish Surana, Advocate
For Respondent	:	Shri Anil Pillai, Dy. Adv. General

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgement

Per P. Diwaker, J

12/09/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 25.11.2011 passed by the learned 1st Additional Sessions Judge, Manendragarh at Baikunthpur, District Koriya in S.T. No.57/11 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.1,000/-, in default to undergo additional RI for 3 months.
2. Case of the prosecution, in brief, is that there was dispute for fishing rights between the accused/appellant and the deceased for fishing in the Nagdabra pond situated in village Putta Tumbi Badi. On 20.3.2011 at about 4 in the afternoon, accused/appellant had called the deceased to his house for discussion and in the course of discussion, he picked up the wooden log, which was being used to tie the cattle, lying on the spot and

gave a solitary blow on the temporal region of deceased as a result of which he started bleeding. He was immediately taken to the hospital where during the course of treatment he died on 21.3.2011. Initially, FIR (Ex.P-1) was registered on 20.3.2011 for the offence punishable under Sections 294, 506B & 323 of IPC. On receipt of intimation regarding death of deceased, Dehati Merg (Ex.P-15) was recorded on 21.3.2011. Inquest (Ex.P-3) was prepared over the body of deceased on 21.3.2011. Dr. Sushil Ekka (PW-10) conducted post-mortem on the body of deceased vide Ex.P-20 and noticed one depressed fracture on right side of skull of 5x1.5cm in size. He has opined that cause of death was coma due to cardio respiratory arrest on account of head injury, death was homicidal in nature and duration of death was within 12 to 24 hours from the time of post mortem examination. On 23.3.2011 memorandum (Ex.P-9) of the accused/appellant was recorded and based on which one wooden log was seized vide seizure memo Ex.P-10.

3. After investigation, charge sheet against the accused/appellant herein was filed under Section 302 of IPC and accordingly the charge under that section was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/appellant examined 14 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his 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/appellants in the manner as described above.
5. Counsel for the appellant submits that;-
 - sole eyewitness to the incident i.e. PW-12, did not support the prosecution case and turned hostile.

- PW-3 Kalawati, who is said to have seen the appellant running away from the spot, is the related witness being wife of the deceased and therefore her evidence cannot be relied upon for convicting the appellant for the offence like murder.
 - even if the entire prosecution case is taken as it is, it is apparent that the incident suddenly occurred due to heat of passion wherein the appellant gave a single blow which proved fatal. In these circumstances, it cannot be said that the appellant acted in a cruel or unusual manner or his act by which the death of deceased was caused was done with intention to cause his death and therefore the case against the appellant clearly fell within Exception IV to Section 300 of IPC i.e. culpable homicide not amounting to murder.
 - the appellant is in custody for the last more than seven & half years and therefore while converting his conviction under Section 304 Part II of IPC, he be sentenced to the period already undergone.
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 had been assaulted, the intention on the part of accused/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. Jugul Prasad (PW-1), son of deceased, has stated that on the date of incident he was informed by Kalawati (PW-3) that some quarrel is going on between accused and deceased. When he reached the spot, he saw that his father was lying on the ground in injured condition and blood was oozing from his ear. He has further deposed that he was informed by Shivcharan (PW-2) that it is accused/appellant who gave wooden log blow

on the head of his father (deceased). Thereafter he went to the police station and lodged the report.

8. Shivcharan (PW-2) is the person who accompanied Jugul (PW-1) to the place of occurrence. He is also witness to the memorandum (Ex.P-9) and seizure memo (Ex.P-10).
9. Kalawati (PW-3), wife of deceased, has stated that on coming to know from Leelawati about the quarrel between appellant and deceased, she rushed to the place of occurrence and on reaching there, she saw the accused running away from the spot and her husband (deceased) was lying on the ground in injured condition. She has further deposed that on the fateful day the accused/appellant had come to her house thrice to call her husband (deceased).
10. Radheshyam (PW-4) & Amarlal Toppo (PW-6) are the police personnel who have assisted in the investigation. Jamadaar (PW-5) is the hear-say witness. Kshay Kumar Paikra (PW-7) is the Patwari who prepared the spot map (Ex.P-14). O.P. Kujur (PW-7) is the investigating officer who has duly supported the prosecution case. Vijay Shankar Singh (PW-9) is the Constable who helped in the investigation.
11. Dr. Sushil Ekka (PW-10) is the doctor who conducted post-mortem on the body of deceased and noticed the injury as mentioned above. He opined the cause of death was cardio respiratory arrest due to head injury and death was homicidal in nature. This witness had also examined the wooden log seized from the possession of accused/appellant and after examination, he opined vide Ex.P-20 that the injury present on the body of deceased could be caused by it.
12. Leelawati (PW-11) & Shivnath (PW-12) did not support the prosecution and turned hostile.
13. Close scrutiny of the evidence on record makes it clear that there was

dispute relating to fishing rights in the village pond between accused and deceased. On the fateful day, the accused/appellant called the deceased for discussion and in that process, he gave wooden log blow on the head of deceased which resulted in his death during treatment. According to Kalawati (PW-3), he saw the accused/appellant running away from the spot towards forest. Version of Kalawati (PW-3) gets corroboration from the promptly lodged FIR and medical evidence. The doctor conducting post-mortem examination found the death to be homicidal due to head injury caused by hard & blunt object. Nothing could be brought on record by way of cross- examination of PW-3 to show that she had any interest in falsely implicating accused/appellant or she had any axe to grind against them. Thus, considering the overall evidence, ocular and medical, on record, we are of the opinion that the prosecution has been able to successfully prove the complicity of accused/appellant in the crime in question.

14. 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?
15. From the evidence on record it appears that on the fateful day a quarrel ensued between the accused/appellant and deceased in connection with dispute relating to fishing right in the village pond and in this process, the accused picked up the wooden log lying there on the spot and gave a single blow to the deceased on his head which proved fatal. The doctor who conducted post-mortem examination did not depose that the injury inflicted by using hard and blunt object is sufficient in the ordinary course of nature to cause death. Since the accused/appellant had given only a solitary blow on the head of the deceased with wooden log and he did not make any attempt to give second blow and as there is no evidence to

show that the single injury thus caused is sufficient in the ordinary course of nature to cause death, it cannot be said that the accused/appellant had the intention to commit murder of the deceased, but he could certainly be attributed to the knowledge that he was likely to cause an injury which was likely to cause death of deceased. Therefore, we are of the view that the accused/appellant had committed the offence punishable under Section 304 Part II of IPC and not under Section 302 of IPC.

16. As regards the sentence, the appellant is in jail for the last about 7½ years, he has no criminal past and considering the age of accused/appellant, we feel that the end of justice would be met if he is sentenced to the period already undergone.
17. Accordingly, the appeal is partly allowed. While acquitting the appellant of the charge under Section 302IPC, they are convicted under Section 304 Part II of IPC and sentenced to the period already undergone by him. However, the sentence of fine is hereby maintained. The appellant is reported to be in jail. He be set free forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

roshan/-