

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 442 of 2011

- Nand Kumar Sewai S/o Ganesh Ram Sewai, Caste Satnami, R/o Village-Ghunchapali, P.S. Bagbahra, Distt.-Mahsamund, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, through the Station House Officer, Police Station Bagbahra, District Mahasamund (CG)

---- Respondent

For Appellant	: Shri Suresh Tandon, Advocate
For Respondent/State	: Shri Vivek Sharma, G.A.

HON'BLE SHRI JUSTICE PRITINKER DIWAKER

& HON'BLE SHRI JUSTICE SANJAY AGRAWAL

Judgement on Board by Pritinker Diwaker,J.

02/01/2018

This appeal has been preferred against the judgment and order dated 02.04.2011 passed by the Sessions Judge, Mahasamund in Sessions Trial No. 46/10 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000 with default stipulation.

2. As per prosecution case, some casting work was going on in the house of accused/appellant which occasioned some dispute between him and the deceased Dayaram Satnami who was his neighbour. It is said that on 31.05.10 appellant threw a wooden plank on the deceased as a result of which he suffered some injuries. Immediately he was

taken to hospital and on the same day FIR Ex.P-2 was lodged by PW-2 Niranjana nephew of the deceased based on which offence under Section 307 IPC was registered against the appellant. Injured was medically examined by Dr.Arvind Gupta (PW-7) who noticed lacerated wound on the parietal region. During treatment on 09.06.10 deceased succumbed to his injuries. Vide Ex.P-13 information was sent on the same day to the police and unnumbered merger intimation Ex.P-25 was recorded. Inquest on the body of deceased was prepared vide Ex.P-3 and body was sent for postmortem examination which was conducted by Dr.Sendu (PW-6) vide Ex.P-4 and according to him cause of death was due to cardio respiratory failure as a result of head injury and their complications and the injuries are ante mortem in nature. On 29.06.10, memorandum of the accused/appellant was recorded vide Ex.P-6 and one wooden plank vide Ex.P-7 was seized however there is no FSL or serological report. While framing charges, trial judge has framed charge against the appellant under Section 302 IPC.

2. In support of its case, prosecution has examined 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits that even if the entire prosecution case is taken as it is at best the appellant can be convicted

under Section 304-II IPC.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Niranjan Sewai (PW-2) is the eyewitness to the incident while supporting the prosecution case has stated that on the date of incident, casting work was going on and during that time some dispute cropped up between the appellant and the deceased. He has stated that the appellant threw a wooden plank from the roof of his house towards the deceased as a result of which he sustained injury on his head and became unconscious. He has further stated that the injured was taken to hospital where he succumbed to the injuries on 09.06.10. Kumari Ishwari (PW-3) daughter of the deceased is also the eyewitness to the incident has categorically stated that on account of dispute over casting of roof appellant threw the plank towards the deceased resulting injury on his head. Medical report Ex.P-7 also reveals the injuries on the body of deceased and the postmortem report also confirms injuries sustained by the deceased which has been duly proved by Dr. Sendu (PW-6). Kumar Singh Usendi (PW-8) is the investigating Officer who has duly supported the prosecution case.

9. Evidence shows that there is no premeditation on the part of the accused to commit the offence and it is also apparent that the appellant had no prior intention to kill the deceased and in a heat of passion, the appellant threw a wooden plank towards the deceased which hit him on

the head, remained hospitalized and died after nine days.

10. The next question which falls for consideration before this court is whether, on consideration of the peculiar facts and circumstances of the case, the conviction of the appellant under Section 302 IPC should be upheld or the conviction be converted to one under Section 304 Part II IPC?

11. Admittedly, the incident happened at the spur of the moment; the incident took place on 31.05.10 and the deceased remained hospitalized and ultimately died on 09.06.10; it has been observed that there was no previous enmity between the parties. In the instant case, the occurrence had taken place at the spur of the moment. Only the appellant inflicted a single blow with the wooden plank. There was no intention or pre-meditation in the mind of the appellant to inflict such injury to the deceased as was likely to cause death in the ordinary course of nature.

12. Section 304 IPC provides the punishment for culpable homicide not amount to murder. It draws a distinction between the penalty to be imposed in the cases where an intention to kill being present, the act would amount to murder, but if it falls within one of the Exceptions in Section 300, and cases in which the crime is culpable homicide not amounting to murder, that means, where there is knowledge that death will be a likely result but the intention to cause death, or bodily injury likely to cause death, is absent. The first part of Section 304 applies where there is intention, whereas the second part applies where there is knowledge. The important thing is that before holding the accused guilty under any part of Section 304, it has to be observed that a death must have been caused by him under any of the circumstances

mentioned in the five Exceptions to Section 300, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation. Knowledge in doing an act is quite different than the intention which denotes that a particular consequence should ensure. To attract the former part of Section 304, an element of intention is a factor whereas for attracting the later part, it is an element of knowledge. The intention is the purposeful doing of a thing to achieve a particular result, whereas the knowledge is an awareness which attributes to be well informed that a particular result may happen by doing a thing. Here in this case, record shows that on the date of incident, some dispute arose between the accused/appellant and the deceased on casting work of roof, in a spur of moment in heat of passion, without any premeditation or preparation on the part of the accused/appellant, caused death of the deceased by throwing a wooden plank, his act would not come within the purview of Section 302 IPC.

13. Therefore, it is clear that there was no pre-arranged plan or that the incident had taken place in furtherance of the common intention of the accused persons. When all these facts and circumstances are taken into consideration in proper perspective, then it becomes difficult to maintain the conviction of the appellant under Section 302 IPC.

14. Thus, when we apply the settled principle of law which has been enumerated in the aforementioned cases, the conviction of the appellant under Section 302 I.P.C. cannot be sustained. In our considered view, the accused appellant is liable to be convicted under

Section 304 Part II I.P.C. instead of under Section 302 I.P.C.

26. We accordingly convert the conviction and sentence of the appellant from Section 302 IPC to one under Section 304 Part II IPC. As regards sentence, the appellant is in jail since last more than 7 1/2 years and therefore his sentence is reduced to the period already undergone by him. Order accordingly. Appellant be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge