

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 980 of 2013**

[Arising out of judgment/order dated 24.07.2013 in Sessions Trial No.66/2011 of the learned Sessions Judge, Korba (C.G.)]

- Sanjay Tirkey S/o Ganga Tirkey, Aged About 30 Years R/o. (Kodawari Wasin) P.S. Kartala, Civil And Rev. Distt. Korba (Chhattisgarh) ---- **Appellant**

Versus

- State Of Chhattisgarh Through Station House Officer, ,P.S. Kartala, Civil And Rev. Distt. Korba, (Chhattisgarh) ---- **Respondent**

For Appellant	:	Shri Chandra Bhushan Kesharwani, Advocate
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer

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

Judgment on Board**13.04.2018****Per Sanjay Agrawal, J.**

1. This appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973, against the judgment dated 24.07.2013 passed by the learned Sessions Judge, Dist. Korba (C.G.) in Sessions Trial No.66/2011 whereby he has been convicted and sentenced as under:

Conviction	Sentence
Under Section 302 of the Indian Penal Code (for short 'the IPC')	Life imprisonment and fine amount of Rs.2,000/- and, in default to pay fine amount, further RI for one year.
Under Section 323 IPC	Rigorous imprisonment for 6 months.
Sentences have been directed to run concurrently.	

2. Briefly stated, the case of prosecution is that on 12.07.2011 at 04.00 PM, father of the appellant Gangaram returned home after ploughing

his field and told his son (appellant) to work in the field whereupon the appellant got annoyed and assaulted his father with a wooden vessel near both of his ears, as a result of which, he fell down on the ground and died on the spot. It is alleged further by the prosecution that the appellant assaulted his mother Kanti Bai (P.W.1) also with a wooden bat when she tried to intervene the matter.

3. Based upon the aforesaid incident, merger intimation (Ex.P.1) was lodged by the deceased's brother Jagsai (P.W.2) on 13.07.2011 at 09.40 AM, based upon which, F.I.R. (Ex.P.2) was also lodged by him against the appellant under Section 302 IPC. Inquest upon the dead body was conducted on 13.07.2011 vide Ex.P.7. After inquest, the dead body of the deceased was sent for autopsy to the Community Health Center, Kartala, where Dr. Virendra Kumar Singh (P.W.12) conducted the post-mortem examination on the dead body and submitted his report (Ex.P.13) by opining that the cause of death was shock due to massive internal haemorrhage as a result of head injury and mode of death was homicidal in nature. Injuries of appellant's mother and deceased's brother Jagsai were examined by Dr. Rakesh Agrawal (P.W.11), who submitted his M.L.C. reports (Ex.P.16 & Ex.P.17) by opining that the injuries sustained by the appellant's mother are simple in nature. Disclosure statement (Ex.P.3) of the appellant led to the recovery of wooden vessel with bloodstained and a wooden bat (like cricket bat), vide seizure memo (Ex.P.5).
4. After usual investigation of the matter as such, the offence punishable under Section 302 & 323 IPC was registered against the appellant by the Station House Officer, Kartala, District Korba, who submitted its final report before the Judicial Magistrate First Class,

Kartala, District Korba (C.G.) on 07.08.2011. The matter was, thereafter, committed to the learned Sessions Judge, Korba for its trial.

5. After considering prima facie materials available on record, charges under Section 302 & 323 IPC have been framed against the appellant who has pleaded not guilty in connection with the aforesaid charges, as framed, and claimed to be tried.
6. In order to bring home the guilt of the appellant, the prosecution has examined as many as 13 witnesses, while one witness has been 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 Chandra Bhushan Kesharwani, 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, the appellant can be convicted either Part – II or Part – I of Section 304 IPC. In support, he placed his reliance upon the principles laid down in the matter of ***Roopan Sai & Another v. State of M.P. (Now C.G.)*** reported in **2014 (4) C.G.L.J. 294 (DB)**.
9. On the other hand, Shri Adil Minhaj learned Panel Lawyer for the State has supported the impugned judgment by submitting, inter alia, that the trial Court has not committed any illegality in relying upon the

prosecution witnesses, particularly, injured eyewitness, namely, Kanti Bai (P.W.1) while convicting the appellant as such. He submits further that the case law as relied upon by Shri Kesharwani is distinguishable from the facts of this case and would not come as a rescue for him.

10. We have heard learned counsel for the parties and perused the entire record carefully.
11. Kanti Bai (P.W.1) is the mother of the appellant and is injured eyewitness to the commission of the alleged incident occurred on 12.07.2011 at 4.00 PM. In her evidence, she has stated that her husband Gangaram was assaulted by her son Sanjay Tirkey with a wooden vessel on his head and near the ear, resulting in his instantaneous death. She has stated further that her deceased husband told her son that why you often consume liquor day and night and does not cultivate the field, which gave him annoyance leading to the commission of alleged crime. She has stated further that she was also assaulted by him when she tried to intervene the matter. She was firm in her cross-examination and nothing could be elicited from her rendering her statement unworthy or doubtful.
12. Jagsai (P.W.2) is the uncle of the appellant and is stated to have lodged the reports (Ex.P.1 & Ex.P.2) and has stated in his statement that he did not know as to how the alleged incident took place and came to know about the same from his brother's (deceased) wife (Bhabhi) Kanti Bai, who informed him that her son (appellant) assaulted her husband with a wooden vessel. He is, thus, a hearsay witness and not supported the prosecution case.

13. Joseph Bada (P.W.3), though turned hostile but has accepted his signature on seizure memo (Ex.P.5), by which, wooden vessel and wooden bat were recovered from the appellant on the basis of his disclosure statement. Bitus Kujur (P.W.4) has turned hostile without supporting the prosecution case. Jaisingh (P.W.5) is the Patwari, who prepared the spot map vide Ex.P.8. Santosh Kumar (P.W.6) is the Constable who took the dead body to the Community Health Center at Kartala for its post-mortem examination and has also got done the M.L.C. of the injured Kantibai and Jagsai from the said Community Health Center. This witness has, thus, supported the prosecution case. Dhaniram (P.W.7) is the witness of inquest (Ex.P.7).
14. Bajru Tirkey (P.W.8) is a hearsay witness, who came to know about the said incident from the deceased's wife Kantibai as he was informed by her that her son has killed her husband. R.R.Patel (P.W.9) is an Assistant Sub-Inspector, who recorded the reports (Ex.P.1 & Ex.P.2). Shiv Shankar (P.W.10) is a formal witness.
15. Dr. Rakesh Agrawal (P.W.11) has examined the injuries sustained by Kantibai and Jagsai and submitted his M.L.C. reports vide Ex.P.16 & Ex.P.17 by opining that the injuries sustained by Kantibai are simple in nature. Dr. Virendra Kumar Singh (P.W.12) has conducted the post-mortem examination on the dead body of deceased Gangaram and noticed the following injuries :-
 - (1) Contusion of 7 x 4 cm over left temporal region
 - (2) Contusion of 5 x 3 cm over right temporary region.
 - (3) Contusion of 4 x 3 cm over upper occipital region

16. After noticing the aforesaid injuries, he has submitted his report vide Ex.P.13 by opining that the cause of death was shock due to massive internal haemorrhage, which occurred as a result of head injury. He opined further that mode of death was homicidal in nature.
17. Kedarnath (P.W.13) is an Investigating Officer and has assisted the prosecution case.
18. Manjeet (D.W.1) was examined by the appellant in his defence but he has not stated anything about the occurrence of the alleged crime.
19. Upon close scrutiny of the entire evidence adduced by the parties, particularly, the statement of injured eyewitness Kantibai (P.W.1), the mother of the appellant Sanjay Tirkey, it is evident that the alleged incident took place on 12.07.2011 at 4.00 PM when the deceased returned home after ploughing his land and told his son, in an admonition manner, to do some work in the field, which made the appellant enraged to assault his father with a wooden vessel on his head resulting in his death instantly. Perusal of further prosecution evidence would reveal that the mother of the appellant Kantibai was also assaulted when she tried to intervene the matter. In the facts and circumstances of the case, the involvement of the accused/appellant in the alleged crime is thus established beyond doubt. In consequence, the trial Court has not committed any illegality in arriving at a conclusion that the appellant has not only assaulted his father with a wooden vessel which resulted in his instantaneous death but has assaulted his mother also and has caused injuries. The findings so recorded by the trial Court, therefore, deserves to be and are hereby affirmed.

20. As far as the contention of the counsel for the appellant based upon the said case law, i.e., **Roopan Sai & Another v. State of M.P. (Now C.G.)** (supra) that the appellant, under the facts and circumstances, can be convicted either under Part-II or Part-I of Section 304 IPC is, however, noted to be rejected as the facts involved in the said case is entirely different from the facts involved in the present case. That is the case where the accused persons and the deceased had consumed liquor and all of a sudden a quarrel took place between them and it was the deceased, who first started abusing the accused persons and, in such circumstances, it was held that the incident occurred because of heat of passion upon a sudden quarrel without premeditation or intention. However, in the instant case, there was no sudden quarrel occurred between the father (deceased) and his son (appellant) so as to hold that the alleged incident took place as a result of sudden quarrel, as contended by Shri Kesharwani. In such an eventuality, it is difficult to hold that the act of the appellant while committing the alleged crime comes within the purview of any of the exceptions provided under Section 300 IPC, so as to hold the appellant guilty under Section 304 IPC.
21. In view of foregoing discussions, we do not find any substance in this appeal. The appeal is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Sanjay Agrawal)
JUDGE