

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 614 of 2013**

Raghunath @ Raghunath S/o Shivrath Nagwanshi Aged About 27 Years
 R/o Village Kachhar Sukbasupara, P.S. Patthalgaon, Distt. Jashpur C.G.
 Civil And Rev. Distt. Jashpur C.G. **----Appellant**

Versus

State Of Chhattisgarh Through - P.S. Patthalgaon, Distt. Jashpur C.G.
....Respondent

For Appellant	:	Mr. Yogeshwar Sharma, Advocate
For State	:	Mr. Wasim Miyan, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board by Manindra Mohan Shrivastava, J.****12.11.2018**

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 29.04.2013 passed by Additional Sessions Judge Kunkuri, District Jashpur (CG) in Sessions Trial No.34 of 2012, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Rigorous Imprisonment for life and fine of Rs.5,000/-, in default of which, additional R.I. for 1 year.

2. The prosecution story, as unfolded from the impugned judgment and records of the case, is that a morgue intimation in Ex.P/1 was given in the Police Station by Ambika Prasad (PW2), wherein, it was recorded that in a quarrel between the appellant (the son) and his father (the deceased), the appellant gave blow by crowbar, due to which, appellant's father fell down and died. An FIR was thereafter recorded in Ex.P/2. The police proceeded to the scene of occurrence,

inquest over dead body was prepared in presence of witnesses and dead body was, thereafter, sent for postmortem. Dr. J. Minz (PW13) conducted postmortem and prepared his report (Ex.P/2). In his report, Dr. J. Minz (PW13) stated regarding head injury and the injury on the neck and according to the doctor, the cause of death was due to hemorrhagic shock and excessive bleeding. After completion of usual investigation, the charge-sheet was filed and the appellant was put to trial. The prosecution examined number of witnesses including Smt. Balmati (PW1), the mother of the appellant and wife of the deceased, who stated regarding a quarrel between father and the son and thereafter, deceased having suffered injury and died. Relying mainly on prosecution evidence, learned trial Court held the appellant guilty of commission of offence under Section 302 of IPC and convicted the appellant.

3. Without entering into other aspects of the matter with regard to the guilt of the appellant or the cause of death, the argument of learned counsel for the appellant is that the trial Court has relied upon the testimony of Smt. Balmati (PW1), the mother of the appellant, whose evidence clearly shows that it was a case of quarrel between the father and son and the appellant was asking for partition of property and at that time, in a sudden fight, a quarrel in the heat of passion, the appellant hit the deceased with the help of crowbar resulting in a head injury and death. He would submit that in these circumstances, as stated in the evidence of Smt. Balmati (PW1), it would be a case of culpable homicide not amounting to murder, covered by Exception 4 to Section 300 of IPC and circumstances of the case that the appellant has otherwise not acted in a cruel and unusual manner, therefore, the conviction of the appellant under Section 302 IPC may be altered to Section 304 Part-II of IPC. By now, the appellant has already undergone more than 6 years of imprisonment.

4. On the other hand, learned State counsel opposes and submits that the evidence of Smt. Balmati (PW1) shows that the appellant had attacked his own father with the help of crowbar and murdered him and merely because the father was not accepting his demand for partition of property, it cannot be said to be covered as an Exception 4 to Section 300 of IPC.

5. We have heard learned counsel for the parties and perused the records.

6. The conviction of the appellant is principally founded on the eyewitness

account of Smt. Balmati (PW1), who happens to be the mother of the appellant and the wife of the deceased. It is undisputed that the appellant is the son of the deceased Shivnath.

7. Smt. Balmati (PW1) has deposed in her evidence that the appellant was asking for partition of property from his father but the father resisted by stating that partition would be allowed only after marriage, at this stage, that assault is said to be received by the deceased. This witness has not given details of the manner, in which, the assault was given by the appellant but then we find that it was the appellant, who was present at the spot and was quarreling with the father and thereafter Shivnath was found lying on the floor and having sustained injury on his head. There is singular injury on the head of the deceased which proved to be fatal.

8. The background, in which, the assault is said to be given shows that the incident happened in the heat of moment on account of sudden quarrel developing between the father and the son over the issue of partition. Moreover, according to the prosecution, the appellant is said to have used an agriculture equipment namely crowbar and on the head, there is only one single injury, which is said to be fatal. The postmortem report Ex.P/2 was proved by Dr. J. Minz (PW13) proves that there was one single injury given on the head of the deceased and there was another injury on the neck. However, head injury proved to be fatal. Taking into consideration the totality of the circumstances, particularly, taking into consideration that the appellant cannot be said to have otherwise acted in unusual and cruel manner, in our opinion, it would be a fit case to bring it within the Exception 4 to Section 300 IPC and alter appellant's conviction to that under Section 304 Part-II IPC. However, in the totality of the circumstances, we are of the view that despite alteration of conviction, the gravity of offence, requires imposition of jail sentence of 10 years on the appellant.

9. In the result, the appeal is partly allowed. The conviction of the appellant is altered to one under Section 304 Part-II of IPC and sentence of 10 years is imposed on the appellant.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge