

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 10/07/2018

Judgment delivered on : 17/07/2018

CRA No. 10 of 2015

- Anand Ram Nagesiya S/o Jansai Nagesiya Aged About 50 Years
R/o Village - Riri Asna Bathan, P.S. Lundra, Lakhanpur Jala -
Surguja Civil And Revenue Distt. Surguja C.G.

**---- Appellant
In Jail**

Versus

- State Of Chhattisgarh Through District Magistrate Surguja Distt.
Surguja C.G.

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Ajay Kumar Tripathi, C.J.

Hon'ble Shri Pritinker Diwaker, J

C A V Judgment

Per Pritinker Diwaker, J:

This appeal arises out of the judgment of conviction and order of sentence dated 17.11.2014 passed by the III Additional Sessions Judge, Ambikapur, Distt. Surguja in S.T. No.221/2012, convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, deceased Naiharobai and the appellant had cultivated the land jointly, however, on 21.3.2012 on account of there being some dispute between the appellant and the deceased, it is alleged that the appellant caused club injuries to the deceased resulting in her unfortunate death. At the instance of PW-1

Jagdish, *merg* intimation (Ex.P/1) was recorded on 22.3.2012 and soon thereafter, Dehati Nalishi (Ex.P/13) was recorded against the appellant under Section 302 of IPC. Based on the Dehati Nalishi, FIR (Ex.P/14) was registered against the appellant u/s 302 of IPC. Inquest on the dead body of the deceased was conducted on 23.3.2012 vide Ex.P/7 and thereafter, the dead body was sent for postmortem which was conducted on the same day by PW-8 Dr.YG Kindo vide Ex.P/10A. The autopsy surgeon noticed contusion over right and left scapular region, lacerated wound on right ankle joint, lacerated wound over left eye, fracture of right tibia bone and fracture of right temporal bone. In his opinion, the cause of death was head injury due to nurogenic shock and that the death was homicidal in nature. Memorandum of the appellant (Ex.P/2) led to seizure of his bloodstained clothes and a club vide Ex.P/3 & P/4 respectively. However, there is no FSL report on record. After investigation, charge sheet was filed against the appellant under Section 302 of IPC followed by framing of charge by the trial Judge accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined 12 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Counsel for the appellant submits that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part-II of IPC because the incident occurred all of a sudden in the heat of passion on a sudden quarrel without there being any premeditation on the part of the appellant to commit such offence. She further submits that considering the detention period of the appellant, which comes to more than six years and four months, after conversion of his conviction into Section 304 Part-II of IPC, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and as such, there is no scope for any interference in the judgment impugned.

07. Heard learned counsel for the respective parties and perused the material available on record.

08. PW-1 Jagdish Ram is the informant. He states that the deceased was his elder sister. On the second day of incident he was informed about the incident by Jhiman (PW-3). PW-2 Baijram has been examined as an eyewitness to the incident. He is also a witness of oral dying declaration made by the deceased before him. He has stated that the deceased was his daughter and while he was grazing the goats he saw the appellant causing club injuries to the deceased, however, due to fear he could not go near the deceased and when he reached near the deceased, he noticed injuries on her body. He states that when he asked the deceased as to why the appellant beat her, she

could not tell the reason. In cross-examination, this witness has not been confronted with his diary statement.

09. PW-3 Jhiman has also been examined as an eyewitness to the incident but in para-9 he has stated that the appellant had not caused any injury to the deceased nor did the deceased inform him about the incident. PW-4 Jugnu and PW-5 Indrakunwar are also the witnesses to oral dying declaration made by the deceased before them. They too have supported the prosecution case. PW-6 Sunaram and PW-7 Magnaram have turned hostile. PW-8 Dr. Y.G. Kindo conducted postmortem on the body of the deceased on 23.3.2012 vide Ex.P/10A. The autopsy surgeon noticed contusion over right and left scapular region, lacerated wound on right ankle joint, lacerated wound over left eye, fracture of right tibia bone and fracture of right temporal bone. In his opinion, the cause of death was head injury due to neurogenic shock and that the death was homicidal in nature. He also examined the club seized at the instance of the appellant and opined that the injuries suffered by the deceased could be caused by the said club vide Ex.P/12A. PW-9 S.L. Gadwal, Assistant Sub Inspector did part of investigation. PW-10 Prashant Tiwari, Patwari, prepared the spot map Ex.P/5. PW-11 Vijay is a hearsay witness. PW-12 PS Shyam, investigating officer, has supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 21.3.2012 it is the accused/appellant who on account of there being some dispute with the deceased inflicted injuries on her with club which ultimately led to her death. PW-2 Baijoram states that he saw the appellant assaulting the deceased with club, however, due to fear he could not

intervene in the matter. He has further stated that when he asked the deceased about the incident she disclosed to him that it is the appellant who caused her injuries. Defence has failed to elicit anything from him to discredit his version. Further, PW-4 Jugnu states the deceased made oral dying declaration before him that it is the appellant who caused her injuries and this witness remained firm in cross-examination. Likewise, PW-5 Indrakunwar, another witness to oral dying declaration, has also supported the prosecution case. This apart, medical evidence also lends due corroboration to the evidence of the aforesaid witnesses, according to which corresponding injuries were noticed on the person of the deceased. Considering all this, involvement of the accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

11. Now the question which arises for consideration is as to whether the act of the appellant makes him liable for conviction u/s 302 of IPC or for any lesser offence.

12. It is not in dispute that there was no motive with the appellant to commit the crime, the incident occurred all of a sudden in the heat of passion as there was some quarrel between the appellant and the deceased on the field and it appears that the appellant being infuriated opened assault on the deceased which unfortunately resulted in her death. For bringing home the charge under Section 302 of IPC, it is necessary to prove that the accused assaulted the deceased with premeditated mind and while making such assault had the knowledge that such injuries would result in his/her death. However, in the present case, as observed above, it does not appear that the appellant had any

intention to cause such bodily injuries to the deceased which could result in her death, but at the same time considering the manner in which assault was made, especially on vital organ head, it can safely be inferred that while inflicting injuries on the deceased the appellant had the knowledge that infliction of such injuries would result in her death. Being so, the case of the appellant is covered by Exception 4 to Section 300 of IPC i.e. culpable homicide not amounting to murder and he is liable to be convicted under Section 304 Part-II of IPC and not 302 as has been held by the trial Court.

13. As regards the sentence, from the record it appears that the appellant has remained in jail for the last more than six years and four months and there is no minimum sentence prescribed for offence under Section 304 Part-II of IPC, therefore, in the overall facts and circumstances of the case, we are of the opinion that ends of justice would be served if the appellant is sentenced to the period already suffered by him.

14. In the result, the appeal is allowed in part. While acquitting the appellant of the charge u/s 302 of IPC, he is held guilty u/s 304 Part-II of IPC and sentenced to the period already suffered by him. He is reported to be in jail, therefore, he be set free forthwith if not required to be detained in connection with any other offence.

Sd/

(Ajay Kumar Tripathi)
Chief Justice

Sd/

(Pritinker Diwaker)
Judge