

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 567 of 2014

- Shashibhushan Patnayak, S/o Chhamanidhi Patnayak, Aged about 51 Years, R/o Village Godi, P.S. Tamnar, Civil And Revenue Distt.-Raigarh, C.G.

---- Appellant

Versus

- State of Chhattisgarh Through P.S. Tamnar, Distt.-Raigarh, C.G.

---- Respondent

For Appellant : Shri CR Sahu, Advocate
For Respondent/State : Shri Dheeraj Wankhede, Government Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava &

Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board by Manindra Mohan Shrivastava, J.

17.03.2018

- 1) Heard.
- 2) This appeal is directed against impugned judgment of conviction and order of sentence dated 16.04.2014 passed by the Additional Session Judge, Raigarh, Chhattisgarh in Sessions Trial No.60 of 2013 whereby & whereunder the appellant has been held guilty of commission of offence punishable under Section 302 of IPC and sentenced to life imprisonment and to pay fine of Rs.5,000/- and in default of payment of fine, further RI for one year.

3) Prosecution case is that on 07.02.2013 at about 8 am in the morning, while the appellant was taking away manure from the courtyard area, deceased- Sukanti, his sister-in-law asked him not to take it away. At that time, Phanindra (PW-1), brother of the appellant & husband of the deceased and Govind Singh (PW-2), the village Sarpanch were also present on the spot. The appellant is then said to have picked up a shovel and inflicted a lethal blow on the head of the deceased with so much force that there was transverse fracture and opening the skull and the brain matter was scattered out resulting in instant death of Sukanti.

4) Morgue intimation was recorded vide Ex.P/1 at the instance of Phanindra (PW-1) followed by registration of FIR in Ex.P/2 by the Police. Inquest of the dead body was prepared in the presence of the witnesses and thereafter, dead body was sent for post mortem, where Dr SP Ware (PW-6) conducted autopsy and prepared report vide Ex.P/19, wherein he opined that cause of death is fracture of skull, laceration of brain and excessive bleeding, stating the nature of death to be homicidal. The appellant was arrested and on his memorandum, a shovel, used by him for commission of offence was seized from his possession. Upon completion of usual investigation including recording statements under Section 161 CrPC of the prosecution witnesses, charge-sheet was submitted before the jurisdictional Magistrate which was in turn committed for trial. On the basis of material contained in the charge-sheet, learned trial Court framed charges against the appellant on the allegation of having committed murder of Sukanti, which the appellant abjured and demanded trial.

5) In order to prove its case, prosecution examined as many as six witnesses. Thereafter, the appellant was examined under Section 313 of the CrPC in respect of incriminating evidence and circumstances appearing against him in the evidence lead by the prosecution. The appellant denied and said that he is innocent. No defence witness was examined. Relying upon the evidence of the prosecution, learned trial Court recorded finding of guilt that the appellant is guilty of commission of murder of Sukanti and imposed sentence as described above.

6) Assailing correctness and validity of the impugned judgment of conviction and sentence, learned counsel for the appellant contended that looking to the manner in which the incident happened, the appellant has been falsely implicated. The evidence of so called eyewitnesses-Phanindra (PW-1) and that of Govind Singh (PW-2) is after thought and it is concocted. In the alternate, it is submitted that even if it is found that Sukanti died due to injury sustained by her on the assault given by the appellant, in the circumstances of the case, at the most, offence of culpable homicide under Section 304 Part II is made out and the appellant having already undergone 6 and half years of sentence by now, sentence may be reduced to the period already undergone by him.

7) Learned counsel for the appellant further elaborated his submission by contending that even according to the evidence of the two eyewitnesses- PW-1 and 2, a dispute had instantaneously arisen at the spot when the appellant was trying to remove manure from the area, which is said to be disputed in nature. He would highlight that the appellant and Phanindra (PW-1) were brothers and deceased-Sukanti was

the sister-in-law of the appellant. The dispute was initiated by Phanindra and his wife- Sukanti when the appellant was not being allowed to take away manure from the disputed area and in this state of affairs, when the appellant was abused by his sister-in-law, a single assault by a shovel was given. Learned counsel for the appellant would also highlight that there was no intention to cause death because, the shovel is an agricultural equipment with the appellant, that he was holding incidentally to take manure from the area. He used only the blunt part of the shovel to give one single blow on the head of Sukanti, which unfortunately, proved to be fatal though there was no intention to cause death. In these circumstances, therefore, at the most, the appellant could be convicted under Section 304 Part II of the IPC.

8) On the other hand the learned Government Advocate, supports the judgment of conviction and order of sentence by submitting that there being no case made out under any of the exceptions under Section 300 IPC, it cannot be said to be a case of culpable homicide merely because only a single blow was given and for the purpose of assault, blunt part of the shovel was used. He would further submit that it is not a case where there was any sudden and grave provocation and deprived of the power of self control by such sudden and grave provocation, death was caused to the person who gave the provocation. It is also not the case where such death is caused to any other person by mistake or accident falling immediately after sudden and grave provocation. Learned State counsel further submits that it is not even a case of sudden fight. In fact, it is argued, the evidence of the two eyewitnesses show that there was no

fight as such and Phanindra (PW-1), the brother of the appellant, sought a peaceful and amicable resolution of the dispute for which he had already called the Sarpanch (PW-2). There is no evidence to show that either Phanindra or the deceased- Sukanti had assaulted or attempted to assault the appellant by means of any weapon or that any other overt act was done by them so as to constitute grave and sudden provocation. Therefore, it is a case of murder because even if it is held that the appellant has no intention of causing death, he clearly intended to cause such bodily injury which he fully knew that it is likely to cause death of Sukanti. In the alternative, it is submitted that even if it is found that there was no intention to cause death, as there was intention for causing bodily injury which was sufficient in ordinary course of nature to cause death, it would be a case of a murder and the appellant having failed to make out a case under any of the exceptions enumerated under Section 300 IPC, it is not a case of alteration of conviction under Section 304 Part I or 304 Part II.

9) The Morgue intimation (Ex.P/1) followed by the FIR (Ex.P/2) have been duly proved by the prosecution from the evidence of Phanindra (PW-1) and the evidence of Investigating Officer (PW-4); and there is no quarrel on this aspect. In the FIR lodged at the instance of Phanindra (PW-1), husband of the deceased it has been stated that on 07.02.2013, Shashibhushan, the accused was removing manure from the courtyard belonging to him and then he called the Sarpanch (PW-2) and while they were informing the Sarpanch that the appellant is removing manure from

his area, all of sudden, the appellant picked up a shovel and assaulted, gave a lethal blow on the head of Sukanti, his wife.

10) In order to prove its case, the prosecution has relied upon the eyewitness account of the two prosecution witnesses Phanindra (PW-1), the husband of the deceased and Sarpanch (PW-2) of the village. Phanindra in his testimony has stated that the appellant was quarrelsome. The appellant was taking away manure from his courtyard and when he asked him not to do that, and called the Sarpanch stating that partition was already done by their father, in the meanwhile, the appellant picked up a shovel and gave a blow on the head of his wife, who fell down and started bleeding and died instantaneously on the spot. In the cross-examination of this witness, what has been elicited is that a dispute relating to property is going on between the two brothers. It is also admitted that a day before the incident, there was a quarrel in respect of which no report was lodged in the Police Station. He has denied suggestion that when the appellant was removing manure from his courtyard, his wife came out hurling abuses on the appellant. He has admitted that at the time when the appellant was removing manure, he along with his wife and Sarpanch were present in the courtyard. He also denied suggestion that when his wife did not accept the appellant's version, then only he picked up shovel and chased her and Sukanti sustained injury during the time when the attempt was made by him to snatch the shovel from the hand of the appellant.

From the evidence of this witness there is nothing to show that either this witness or his wife Sukanti committed any overt act so as to

constitute a sudden and grave provocation preceding assault by the appellant.

11) Govind Singh (PW-2) is an independent witness being the Sarpanch of the Village. He has deposed that in the morning at about 8 to 9 a.m. when he was at home, Phanindra had come to call him where after he reached house of Phanindra. He further states that he along with Phanindra and wife of Phanindra were standing in the courtyard and at that time, deceased informed him that the appellant was removing manure from their land at which he advised Sukanti to allow the appellant to remove manure and at that time the appellant was pouring manure in the container with the help of a shovel and deceased again asked him not to do it. On that, the appellant came over and assaulted Sukanti by shovel on her head. Immediately thereafter, he caught hold of the appellant and the appellant was taken to the guard of the locality from where he was taken to police station. This witness has also been subjected to a detail cross-examination. He has denied suggestion that Sukanti was hurling abuses to the appellant; he has also denied that the appellant had not assaulted Sukanti with the help of a shovel. It is admitted by this witness that he, Phanindra and deceased Sukanti, all were standing in the courtyard and the appellant was standing at a little distance. The testimony of this witness also does not reveal that at that time, on the spot, any kind of fight was going on or any scuffle was taking place or that Phanindra and his wife were attempting to either assault or they used any force physical or otherwise to prevent the appellant from taking away the manure in the container.

From the evidence of aforesaid two witnesses, all that is proved is that while the appellant was removing manure from the courtyard area which was claimed to be in the share of Phanindra, his wife- Sukanti asked the appellant not to remove manure from there. Moreover, it is also proved that Phanindra did not commit any overt act and, in fact, he had called Govind Singh (PW-2), Sarpanch of the village to inform him as to what was being done by the appellant.

This much of evidence, in our considered opinion cannot be said to constitute a case of sudden and grave provocation or to say that it was a case of sudden fight and in the heat of passion, upon a sudden quarrel, assault was given by the appellant. In fact, at the spot the appellant was orally asked by deceased- Sukanti not to remove manure and except this no overt act done either by Sukanti or by her husband Phanindra (PW-1). The incident happened in the presence of the Sarpanch who was called by Phanindra which only indicates that some dispute was already going on. A suggestion has been given to Phanindra (PW-1) and he has admitted that there was a dispute on the preceding day. All this evidence only shows that there exists some dispute between the two brothers with regard to the area of their share. But then the existence of dispute without anything more, neither constitutes a grave and sudden provocation nor can be said to be a sudden fight. In fact there is no evidence on record to show that other persons, except Sukanti asked the appellant not to remove the manure. The suggestion that Sukanti hurled abuses to the appellant has been denied by both of these witnesses, PW-1 and PW-2. Govind Singh (PW-2) is an independent witness.

12) True it is that the appellant is alleged to have given a single blow. The appellant had used shovel for inflicting blow. The part of the body which was chosen by him to inflict blow was the head of the deceased Sukanti. The medical evidence on record proved by Sarju Prasad (PW-3) clearly shows that the blow was with maximum possible pressure so much so that there was a transverse fracture across the skull, the skull got opened and the brain matter was scattered around. For this purpose we need to extract herein below the evidence of Dr SP Ware (PW-6) regarding the nature of injury :-

"3.बॉडी को मरचुरी टेबल पर सुफाईन पोजिशन पर लेटाया गया था। बॉडी सामान्य कद काठी की थी। शरीर का तापमान ठंडा हो गया था उसके सिर में खून का थक्का जमा हुआ था। उसकी आंख की पुतली बिल्कुल सिकुड़ गई थी, उसके सिर के मध्य भाग में फटा हुआ घाव था जिसकी आकार करीबन 3 से.मी. x 1 x 0.5 था, उसके खोपड़ी के बीच भाग में ट्रांसफर फ्रेक्चर थे। साथ ही साथ खोपड़ी में सामने भाग पर जो जोड़ रहता है वह खुल गया था तथा खोपड़ी के अंदरूनी भाग पर रक्त जमा हुआ था। उसके ब्रेन के सामने वाला भाग छिततरा हुआ था। मृतिका के शरीर के अन्य भाग पर अन्य कोई चोटें मैंने नहीं पाई थी। चोट एन्टीमॉटम थी।

4. मेरे मतानुसार उसकी मृत्यु खोपड़ी के टूटने से अस्थिभंग और ब्रेन के छिततरा जाने से तथा अत्यधिक रक्तस्राव से सुकांति की मृत्यु हुई थी। जो हत्यात्मक प्रकृति की थी। जो मेरे परीक्षण के लगभग 3-4 घंटे के पूर्व की थी।"

13) It would thus be seen that the appellant used a shovel which is quite heavy object with an iron plate used for excavation. The part of the body chosen for assault was the head which is one of the most sensitive part of the body. Over and above all this, the force with which the assault was

given was so much so that the skull was opened and the brain matter scattered around. The combination of these was bound to be fatal in nature, irrespective of the fact that it was only one single blow.

14) In order to constitute 'murder' as defined under Section 300 of IPC, the law provides that if the act by which the death is caused is done with the intention of causing death it would be murder. Further, even if there is no intention, the other three clauses namely "secondly, thirdly and fourthly", if proved may also constitute murder. The clauses are reproduced herein below :-

"Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

15) Even if for the sake of argument, it is assumed that there was no intention on the part of the appellant to cause such bodily injury as defined under the clause "secondly" or knowledge could not be attributed to him as provided in clause "fourthly", the present case would be squarely covered under "thirdly" clause. There was an intention of causing bodily injury which is clear from the evidence on record. The bodily injury which was intended to be inflicted was an assault on the head by a shovel. The

medical evidence on record proves that the injury inflicted was sufficient in the ordinary course of nature to cause death as the skull was opened and the brain matter was scattered. Therefore, there is no escape from the conclusion that it is a case of murder.

16) Every culpable homicide would be murder unless it is proved to have been covered under any of the exceptions carved under Section 300 of IPC. The submissions have been made by the learned counsel for the appellant to make out a case either under exception 1 or under exception 4. As far as exception 1 is concern, it provides that culpable homicide is not murder if the offender, whilst deprived of power of self control by grave and sudden provocation, causes the death of a person, who gave the provocation or causes the death of any person by mistake or accident. Therefore, in order to make out a case under exception 1 it is necessary to prove from the circumstances that it was a case of sudden and grave provocation and the offender was deprived of power of self control by such grave and sudden provocation. In the evidence of the prosecution or from the attending circumstances of the case, there is nothing to show that there was any sudden and grave provocation. In order to attract applicability of exception 1, every provocation will not bring it within the said exception, but only those which are sudden and grave. There is hardly any evidence that the deceased Sukanti or her husband Phanindra (PW-1) did anything at the spot which resulted in grave and sudden provocation and the appellant was deprived the power of self control by such grave and sudden provocation.

In order to make out a case under exception 4 it is required to be proved that it was a case of a sudden fight and without pre-meditation, in the heat of passion, upon a sudden quarrel, injury was inflicted. This provision, however, may not apply where it is found that the offender has taken undue advantage or acted in a cruel or unusual manner. The evidence led before the Court does not show that there was any sudden fight. In fact, there was no fight on the spot. All that happened was that when the appellant was taking out manure and Sukanti asked him not to do that. As far as Phanindra (PW-1) is concerned, all that he did was that, he called the Sarpanch of the Village and at that time Sarpanch, Phanindra and Sukanti were standing. There is nothing to show that any attempt was made by any of these persons to stop the appellant by use of force or that the shovel or manure, which he was holding was attempted to be snatched away from his hands or that any attempt was made to assault him. Thus, the only evidence is of a peaceful protest by Sukanti and nothing more. The evidence of PW-2 shows that he advised Sukanti to allow the appellant to take away the soil. Thus the entire evidence on record contains nothing to make out a case under exception 1 and exception 4 of Section 300 IPC. We would therefore, irresistibly conclude that it was a case of murder.

Submission of learned counsel for the appellant that it is a case of single blow only, in our opinion, cannot be said to be decisive in all the cases to come to the conclusion that it is not a case of murder but only culpable homicide not amounting to murder. Single blow is only one of the circumstance which is to be weighed with all other proved attending

circumstances of the case to decide whether it is a case of murder or culpable homicide, not amounting to murder. For the reasons we have stated above in our discussion, we have no hesitation to hold that no case is made out for altering conviction of the appellant under Section 304 either Part I or Part II.

17) In these circumstances, we are unable to grant any relief to the appellant in this appeal and the appeal is deserves to be and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Sharad Kumar Gupta)
Judge