

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 1378 of 2015**

Balram Sahu, S/o. Shri Bhagat Sahu, Aged About 31 Years, R/o. Village Bahera, Thana Bemetara, Distt. Bemetara, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through Police Station- City Kotwali, Bemetara, Distt. Bemetara, Chhattisgarh.

---- Respondent

 For Appellant : Mr. Anish Tiwari, Advocate
 For State/Respondent : Mr. Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****16.02.2018**

1. This appeal is against the judgment dated 30.10.2015 passed by the learned Sessions Judge, Bemetara, District Bemetara (C.G.) in Sessions Trial No.57/2014 whereby the appellant has been convicted under Section 304 Part-II of Indian Penal Code and sentenced to undergo R.I. for 7 years and fine of Rs.2000/-, in default of payment of fine, further R.I. for 1 month was ordered for.
2. As per the prosecution case, the incident was of 2014, the deceased Santram Verma had raised some superstructure (Kothar) and house for which different labourers were employed. On 22.05.2014 at about 7 p.m. the deceased while was sitting in front of his house, the appellant Balram Sahu came to him and asked for money for liquor for the reasons that complainant had constructed a new house. The said demand was objected by the deceased Santram Verma on the ground that he do not drink. Having said so, the accused abused the deceased and they landed into scuffle with each other. During such quarrel, the accused has kicked in the scrotum and abdomen of the deceased. The wife of the deceased Santram namely Satwantin Bai intervened in such scuffle by the time the

deceased Santram Verma because of the injury fell down to the ground. Thereafter, the family members of Santram took him to a private Hospital at Bemetara. The complainant Satwantin Bai had made a report on 24.05.2014 at City Kotwali Bemetara for which an offence was registered under Section 294, 506 & 323 of I.P.C. During the treatment in the private nursing home Maa Karma Hospital Bemetara, the condition of Santram Verma deteriorated, as such, he was shifted to another hospital at Raipur for better treatment on 24.05.2014. During such treatment on 24.05.2014 Santram died. The dead body thereafter was subjected to post-mortem and after post-mortem and further investigation, the charge sheet was filed under Section 294, 506, 323 & 302 of I.P.C.

3. During the course of trial, the appellant/accused abjured the guilt and claimed to be tried. The prosecution on their behalf had examined as many as 23 witnesses and the trial Court after evaluating the evidence on record convicted the accused/appellant as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would submit that the trial Court failed to appreciate the fact that the incident happened on spur of moment and there was no intention to kill so as to take the case within the ambit of Section 304 Part-II of I.P.C. He would further submit the way the incident happened, it has been supported by the eye-witness PW-3, it would reveal that both the appellant and deceased landed into scuffle, thereafter, the deceased fell down which may have caused the injury. He referred to the post-mortem report Ex.P-18 and submits that the cause of death was due to perforation in intestine and septicemia, therefore, it would not a cause of any hitting in the scrotum for which the cause can be attributed to the appellant. He further submits in order to convict the accused under Section 304 Part-II, the intention of causing death is the necessary ingredients, which was absent in this case along-with the knowledge. Consequently, the case would fall not beyond the scope of Section 325 of

I.P.C. He further submits that during the scuffle, no weapon was used which would show that the knowledge and intention were absent.

5. Per contra, learned State counsel opposes the argument advanced by the learned counsel for the appellant. He referred to eighth clause of Section 320 of I.P.C. and further went through Section 39 of I.P.C. He would submit that the statement of the eye-witness would clearly demonstrate the fact that because of the injury caused by the appellant the death was resulted. Consequently, the order passed by the Court below is well merited, which do not call for any interference.
6. I have heard learned counsel appearing for the parties and perused the records.
7. The date of incident in this case was of 22.05.2014 at about 7 p.m. The FIR Ex.P-1 would show that the report was made by Smt. Satwantin Bai on 24.05.2014 for the incident of 22.05.2014. Initially the crime was registered under Section 294, 506 & 323 of I.P.C. but subsequently when the death occurred Section 302 of I.P.C. was added when the charge sheet was filed. Perusal of the FIR would show that on a demand of money for the liquor, the quarrel started whereby the appellant had assaulted the deceased and the FIR speaks about the deceased was taken initially to a local hospital of the area. Smt. Satwantin Bai, wife of deceased, was examined as PW-1. Though in the examination in chief, she stated that she has seen the incident, but at para 3 of the cross-examination the fact has come that when she reached to the spot, she saw that her husband was lying on the ground and the appellant was also present there. She tried to further lament the incident by saying that at the time of incident no one was present except her. The witness PW-1 has further stated that her husband was taken to the hospital for treatment. Likewise, the statement of PW-2, Umesh Kumar Verma, who is son of the

deceased, stated that the appellant had kicked into scrotum of the deceased whereby it burst open, this witness is also not an eye-witness and is a hearsay. The incident was said to have disclosed by her mother PW-1. Though the statement stated about the rupture of the scrotum but the post mortem report do support so. In a result, the PW-1 & PW-2 though were said to be eye-witness of the incident but reading of their statement in the cross-examination would reveal that they were reached to the spot after the incident.

8. Reading of the statement of PW-3, Baldau Sahu, would show that he had seen the incident. According to him, the appellant was coming from the direction of area known as Piparbhata and he was in drunken condition. The witness further stated at that time Santram came after taking his bath from the pond and both stood in front of his shop. Thereafter, it is stated that both the appellant and deceased started talking to each other and subsequently quarrel and altercation started. According to this witness, the wife of Santram, PW-1 Satwantin came at that time the other person of the village namely Mohan, Domar Verma and others also intervened to separate them from scuffle and thereafter people went away to their house. The witness further stated that the deceased was admitted for two days in Karma Hospital at Bemetara, thereafter, he was taken to Raipur wherein he died. In the cross-examination, the witness accepted the suggestion that at the time of incident, the appellant and Santram both were drunk and the deceased Santram and appellant landed into altercation and scuffle and had assaulted each other. He further stated that for what reason they quarreled, he cannot say. He has deposed that he intervened in such scuffle and after separating them he went to his shop, thereafter, the quarrel ended. Further stated that thereafter the wife of the deceased Satwantin came there and took away her husband to her house.

9. Therefore, according to the eye-witness, the way the incident happened would show that while deceased was coming from pond, he met the appellant on the way and for some reason or other they entered into altercation and scuffle. It is not the case of the prosecution that at the time of incident, the appellant was armed with weapon and both the appellant and deceased were empty handed while they were quarreling.
10. The deceased admittedly thereafter was taken to the Hospital. The Doctor who treated the deceased at the first is PW-12 Dr. Vivek Pandey of New Maa Karma Hospital Bemetara. According to him, on 22.05.2014 at 10:30 p.m., the deceased Santram Verma was brought to the Hospital and primary treatment was given. According to him the deceased complained of pain in hypogastrium i.e. in the abdomen, therefore, some anti-biotic medicine were administered. The Doctor further stated that in respect of the cause of the injury, nothing was disclosed to him and after examination of the injured, the Doctor found hypogestium in the right side of the abdomen and patient was complaining of pain in the abdomen and the abdomen had bulged out. The report was given by Ex.P-7. The document Ex.P-7 is not a part of the record. The treatment sheet is marked as Ex.P-8. Perusal of Ex.P-8 would show that injured was prescribed with the medicine and he was admitted on 22.05.2014. The medical treatment history sheet is up to 23.05.2014. Thereafter, the document Ex.P-9 is on record to show that his condition was shown to be critical and at the risk of the family members of the patient, he was discharged to be admitted in the other Hospital by Ex.P-10. The entire document do not suggest that any operation was carried out on the deceased.
11. The subsequent Doctor who is examined as PW-14 is Dr. Rishi Agrawal of Arogya Hospital at Raipur. According to him, the deceased Santram died at their Hospital on 24.05.2014. According to this Doctor because of perforation in the small intestine, it caused septicemia and because of

poisoning and shock the patient died. The document of New Maa Karma Nursing Home & Diagnostic Center about the treatment is marked as Ex.P-11 and the entire treatment sheet is filed and marked as Ex.P-13. This document also do not show that any operation was carried out over the patient. According to Doctor PW-14, the patient i.e. the injured when was brought to the hospital was critical and eventually the patient died and the death certificate was given by the Doctor with a reason and cause of death was shown as old ilial perforation with septicemia and cardiogenic shock, the same is marked as Ex.P-16.

12. The body of Santram was subjected to post mortem by Ex.P-18 and the post mortem was conducted by Dr. Pawan Kumar Dhritlahare, PW-19. According to the post mortem report, 14 stitches were found of surgical wound on the abdomen and after opening fecal matter were found inside the abdomen as the intestine were found perforated. The cause of death was shown as perforation in the intestine due to blunt injury on the abdomen leading to shock and cardio respiratory arrest. The Doctor stated that two perforation found in the intestine. In reply to specific query by the prosecution the reasons were assigned that due to internal perforation of intestine due to blunt injury lead to shock and cardio respiratory arrest the death was caused. The same report was marked as Ex.P-18. Likewise, other report the cause of death when was asked for, the reason was given by the Doctor perforation in the intestine.
13. The statement of the Doctor PW-12 who initially treated the patient thereafter the another Doctor i.e. PW-14 wherein injured was further shifted for treatment they have not stated that the deceased was operated upon. The medical history treatment papers and the hospital also do not say so, however, the post mortem report affirms the fact that the abdomen was opened and the operation was conducted on the injured. Therefore, plausible inference can be drawn that the perforation in the intestine was

missed out by the Doctor even after operation fecal matter and food leaked out into abdomen from the perforation of intestine which had caused the septicemia resulting into death due to shock. However, the treating Doctors completely avoided to divulge about the operation which ultimately came to fore after the post mortem.

14. Now referring to Section 299, 300 & 304 would be relevant to quote the Section for the purpose.

299. Culpable homicide - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Murder – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

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.

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the

knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

15. As has been laid down in ***State Through Police Station, Lodhi Colony, New Delhi v. Sanjeev Nanda***¹, Section 292 of I.P.C. defines as under :

“Section 299 of the Indian Penal Code defines culpable homicide as an act of causing death (i) with the intention of causing death; (ii) with the intention of causing some bodily injury as is likely to cause death; and (iii) with the knowledge that such act is likely to cause death. The first and second clauses of the section refer to intention apart from knowledge and the third clause refers to knowledge apart from intention. “Intention” and “Knowledge” postulates the existence of positive mental attitude. The expression 'knowledge' referred to in Section 299 and Section 300 is the personal knowledge of the person who does the act. To make out an offence punishable under Section 304(II) of the Indian Penal Code, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew such act of his is likely to cause death.”

16. The Supreme Court in ***Jagriti Devi v. State of Himachal Pradesh***² held that Section 304 Part-II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

17. In case of ***Andhra Pradesh v. Rayavarapu Punnayya & Another***³ the Court succinctly examined the distinction between Section 299 and Section 300 of the Indian Penal Code and in para 12 of the judgment held as under:

“In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans' special

¹AIR 2012 SC 3104

²(2009) 14 SCC 771

³(1976) 4 SCC 382

characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the 1st part of Section 304. Then there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second Part of Section 304."

18. It was further held that the difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. The word "likely" in Clause (b) of Section 299 conveys the sense of 'probable' as distinguished from a mere possibility. The words "bodily injury...sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature.
19. It was laid down that the question whether is a murder or culpable homicide not amount to murder has to be decided on the suggestions. The first suggestion would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached.
20. In the principles as has been cited would show the nature of dispute which resulted into injury was not most probable to cause death and the circumstances can be summarized as under :

(i) As per the statement of PW-3, the deceased while was coming after taking his bath from the pond met the appellant/accused on the way. Therefore, it points out there was no premeditated mind.

(ii) The accused/appellant at the relevant time was without any arm and further the meeting was not pre-determined and it was by chance.

(iii) According to PW-3 both the appellant & accused entered into scuffle and started beating each other and deceased fell down on the ground. Therefore, both the accused and deceased after altercation entered into scuffle.

(iv) As per the Doctor though the deceased was admitted to the hospital and was operated upon but was never treated for the perforation of the intestine wherefrom the fecal matter and food came out into abdomen which caused the septicemia resulting into shock. The medical treatment history sheet and post mortem suggest that treatment to the perforation in the intestine was missed out by the Doctors.

21. Therefore, taking into the facts into chronologically order, it would lead to show that the intention and the knowledge on the part of the appellant/accused to cause death with the act may cause death has not been established by the prosecution beyond reasonable doubt. It cannot be unreasonably concluded that the appellant had intention to cause death of the deceased. The unfortunate scuffle had occurred after a sudden quarrel. If the appellant had an intention to cause death, he would have been come armed. Instead facts suggest over a trivial issue both the appellant and deceased entered into scuffle whereby the deceased sustained injury. Most important fact as would reveal for medical report and documents shows that the Doctors were failed to diagnose the perforation in the intestine which eventually resulted discharge of fecal matter and fluid & food into abdomen and developed into septicemia for

cause of death. Both the Doctor though treated the deceased but has tried to conceal the fact that he was operated upon which was substantiated by the post mortem report. Therefore doubt has been created over cause of death.

22. In the result, taking into consideration the circumstances of this case, it would be not reasonable and legal to hold that the accused/appellant voluntarily caused grievous hurt to the deceased; thereby he was liable to be convicted under Section 304-II of I.P.C.
23. Accordingly, the appeal is allowed in part. Conviction of the appellant under Section 304 Part-II of IPC is altered into Section 325 of IPC and he is sentenced to the period already undergone by him. The accused/appellant is in jail, he be set at liberty forthwith, if not required in any other case.

Sd/-
(Goutam Bhaduri)
JUDGE