

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 368 of 2014**

- Chottan @ Hudda S/o Aghnu Baiga Aged About 25 Years R/o Village Aamanala, Upartola, PS Gourela, Distt. Bilaspur C.G. Civil And Rev. Distt. Bilaspur C.G

**---- Petitioner****Versus**

- The State Of Chhattisgarh Through PS Gourela, Distt. Bilaspur Chhattisgarh

**---- Respondent****CRA No. 473 of 2019**

- Sukhpal Singh S/o Veer Singh Aged About 20 Years R/o Village Amanala, Upartola, Police Station Gaurela, District Bilaspur Chhattisgarh

**---- Petitioner****Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Gaurela, District Bilaspur Chhattisgarh

**---- Respondent**

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|---------------------------|----------------------------------------------------|
| For respective Appellants | Mr. AK Prasad and Mr. Sushobit Singh,<br>Advocates |
| For Respondent /State     | Ms. Madhunisha Singh, Panel Lawyer                 |

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**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &****Hon'ble Mr. Justice Gautam Chourdiya****Judgment On Board by Prashant Kumar Mishra, J.****30/7/2019**

1. Criminal Appeal No.368 of 2014 preferred by accused Chottan @ Hudda (appellant) is listed for further hearing whereas Criminal Appeal No.473 of 2019 preferred by accused Sukhpal Singh (appellant) is listed for hearing on application for suspension of sentence and grant of bail. However, since both the appellants being in jail since 4.1.2011 i.e. for about 8 1/2 years, with the consent of learned counsel for both the parties, the appeals are heard finally.
2. The appellants have been convicted under Section 302/34 of IPC for committing murder of deceased Bechuram at about 5:00 p.m. on 2.1.2011. Bechuram was the real brother of appellant Sukhpal Singh and cousin of appellant Chottan@ Hudda.
3. According to the prosecution, deceased Bechuram was suspecting that his brother Sukhpal Singh (appellant) has illicit relations with his wife. The deceased was otherwise wanting to separate Sukhpal Singh and was insisting that Sukhpal Singh should leave the house and live separate. With this background, at about 5:00 p.m, on the date of the incident, deceased Bechuram was chasing and running after appellant Sukhpal Singh. At that point of time, accused Chhotan @ Hudda reached there and exhorted appellant Sukhpal Singh to assault the deceased, on which, Sukhpal Singh gave an axe blow over the head of the deceased causing his instant death.
4. Dehatinalisi -Exp/4 was registered at about 21:40 hours on the date of the incident itself at the instance of PW-3 Beer Singh,

father of appellant Sukhpal Singh and deceased Bechuram. Beersingh informed the Police that appellant Sukhpal Singh has confessed that he and appellant Chhotan have assaulted the deceased by an axe because the deceased was abusing them. Dehati Merg -Ex.-P/5 was recorded at 21:30 hours . The Autopsy was conducted by PW-5 Dr. A.I. Minj on 3.1.2011 finding the following injuries :

(i) Incised wound over the right side of parietal bone extending up to middle of the right forehead upto right side of occipital bone of skull admeasuring 18 cm long x 2 cm wide x 2 cm deep;

(ii) Fracture of the skull beneath the incised wound admeasuring 18 cm long x 2 cm wide x 2 cm deep, blood clot present around the wound.

5. The postmorem report Ex.-P/9 mentioned the cause of death due to cardio respiratory failure due to head injury and the death was homicidal in nature. Memorandum statement of appellant Sukhlal Singh was recorded vide Ex.-P/11, pursuant to which, an axe was recovered from his house vide ExP/12. Memorandum statement of appellant Chhotan @ Hudda was recorded vide Ex.P/13, consequent to which, an axe was recovered from him vide Ex.P/14. Shirt belonging to appellant Chhotan was also recovered vide Ex.P/15. In the FSL report- Ex.P/27, blood was found over the axe recovered from appellant Sukhlal Singh but it was negative in respect of the shirt

recovered from appellant Chhotan.

6. The prosecution case rested on the evidence of extra judicial confession, memorandum statements of the accused persons/appellants and the consequent seizure. The trial Court relied on the evidence to convict the appellants for the offence under Section 302/34 of IPC.
7. Learned counsel for the respective appellants would submit that the extra judicial confession is a weak type of evidence and even otherwise, the said evidence in the statement of PW-6 Bhagirathi would reveal that the extra judicial confession was extracted in front of many villagers, therefore, an inference can be drawn that the confession was not voluntary. For appellant Chhotan, it is argued that he has not taken part in making assault, therefore, he is entitled to acquittal.
8. Learned counsel for the State would argue that the evidence adduced by the prosecution is unimpeachable. The oral evidence is duly supported by the medical evidence as well as the memorandum statements, therefore, no interference with the impugned judgment is called for.
9. Indisputably, deceased Bechuram and appellant Sukhpal Singh are real brothers. They had no dispute as such in the sense that they were not having inimical relation. In the memorandum statement of appellant Sukhpal Singh, he would reveal that the deceased wanted him to live separate, whereas, PW-6 Bhagirathi would state that the deceased was suspecting that

appellant Sukhpal Singh was having illicit relations with his wife. Thus, the prosecution is not consistent over the alleged motive or the reason for the soured relation between appellant Sukhpal Singh and deceased Bechuram. Even these two projected motives are not consistently uttered by all the witnesses but they have been spoken at stray places, one by PW-6 Bhagirathi and the other by appellant Sukhpal Singh in his memorandum statement.

10. The alleged motive stated by PW-6 Bhagirathi in his Court statement was not informed to the Police in his case diary statement-Ex.-D/1, therefore, this part of the statement of Bhagirathi is spoken by him for the first time in the Court and as such, it is not reliable. If this motive, as stated by Bhagirathi, is not reliable, the other motive is gathered only from the memorandum statement of appellant Sukhram Singh that his brother wanted him to live separate. There is no eye-witness to the assault made by appellant Sukhlal Singh to the deceased. The only evidence is that of PW-6 Bhagirathi, before whom, appellant Sukhpal Singh made extra judicial confession. There are other villagers like PW-3 Beer Singh & PW-4 Budhariya, father and mother of appellant Sukhpal Singh and deceased Bechuram, PW-10 Lalta Prasad and PW-11 Santram Baigah, who were present when appellant Sukhpal Singh allegedly made extra judicial confession but these witnesses have not supported the case of the prosecution. Therefore, the only evidence for the prosecution is that of PW-6 Bhagirathi.

11. The statement of PW-6 Bhagirathi has to be scrutinised carefully because otherwise extra judicial confession is a weak evidence. Bhagirathi is an independent witness being an Agriculturist as also Up-Sarpanch of the concerned village. He has no enmity with the family of the deceased and appellant Sukhpal Singh. He went to the spot in the next morning where some villagers and appellant Sukhpal Singh were present. Sukhpal Singh confessed before him and the villagers that he had assaulted deceased Bechuram by an axe. Appellant Chottan @ Hudda didn't make any confession in the presence of these witnesses.

12. The defence has not asked any question from PW-6 Bhagirathi that the extra judicial confession was extracted from appellant Sukhpal Singh by pressure or undue coercion or threat nor there is anything to indicate that the extra judicial confession was made in the presence of Police. Therefore, the extra judicial confession made in the presence of PW-6 Bhagirathi appears to be trustworthy and can be acted upon if it finds corroboration from other evidence. The Postmortem report Ex.-P/9 proved by PW-5 Dr A.I. Minj clearly narrates the nature of injuries sustained by the deceased and the said medical opinion corroborates with the kind of weapon and manner of assault made by appellant Sukhpal Singh over the head of the deceased.

13. Moreover, the axe recovered from appellant Sukhpal Singh pursuant to his memorandum statement has been found to be

blood stained in the FSL report-Ex-P/27. Thus, there is sufficient corroboration to the extra judicial confession made in the presence of PW-6 Bhagirathi and the prosecution has been able to prove that the act of assault over the head of the deceased has been committed by appellant Sukhpal Singh and at that point of time, appellant Chhotan @ Hudda had caught hold of the deceased.

14. We shall now consider as to whether the act committed by the appellants would amount to culpable homicide amounting to murder or it is culpable homicide not amounting to murder.

15. The law as to when offence under Section 302 of IPC can be converted into one under Section 304 Part-I or Part-II of IPC is now well settled.

16. In the matter of **Lavghanbhai Devjibhai Vasava Vs. State of Gujarat, (2018) 4 SCC 329**, the Hon'ble Supreme Court has referred to its earlier decision in the matter of **Dhirendra Kumar Vs. State of Uttarakhand, 2015 SC OnLine SC 163**, to delineate the parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 or under Section 304 of IPC. The said parameters are reproduced hereunder :-

“(a) The circumstances in which the incident took place;

(b) The nature of weapon used;

(c) Whether the weapon was carried or was taken from the

spot;

(d) Whether the assault was aimed on vital part of body;

(e) The amount of the force used;

(f) Whether the deceased participated in the sudden fight;

(g) Whether there was any previous enmity;

(h) Whether there was any sudden provocation;

(i) Whether the attack was in the heat of passion; and

(j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.”

17. In an extremely recent judgment rendered by the Supreme Court in the matter of **Rambir Vs. State of NCT, Delhi (Criminal Appeal No.839 of 2019 decided on 6.5.2019)**, the following has been held in para 14:

“14. Having regard to evidence on record, we are of the view that the case of the appellant falls within Exception 4 to Section 300 IPC. Further, the judgment in the case of **Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC 217**, also supports the case of the appellant. In the aforesaid case, the knife blows were inflicted in the heat of the moment, one of which caused death of the deceased, this Court has held that accused is entitled to the benefit of Exception 4. In the

aforesaid judgment, this Court further held that in a sudden quarrel, if a person, in the heat of the moment, picks up a weapon which is handy and causes injuries one of which proves fatal, accused would be entitled to the benefit of Exception 4. We are of the view that the said judgment supports the case of the appellant and further having regard to evidence on record we are of the view that all the four ingredients which are required to extend the benefit of Exception 4 to Section 300 IPC, apply to the facts of the case on hand. Since the occurrence in sudden quarrel and there was no premeditation, the act of the appellant-accused would fall under Exception 4 to Section 300 IPC. As such, the conviction recorded against the appellant under Section 302 IPC is liable to be set-aside and is accordingly set-aside and the conviction of the appellant-accused under Section 302 IPC is modified, as the one under Section 304 Part II, IPC and we impose a sentence of 10 years' simple imprisonment on the accused."

18. If we examine the evidence available in the case at hand to find out whether the offence committed by the appellants would fall under Section 302 of IPC or Section 304 Part-I or Part-II of IPC, it is to be noticed that appellant Sukhpal Singh and the deceased are real brothers. They had no subsisted ill-will or dispute of such nature, which would compel Sukhpal Singh to

premeditate to commit murder of the deceased. The motive attributed to appellant Sukhpal Singh for committing murder is also not very clear. The motive attributed by PW-6 Bhagirathi was not informed to the Police in his case diary statement-Ex.D/1. The other motive that the deceased wanted appellant Sukhpal Singh to leave his house and live separate is available only in the memorandum statement of appellant Sukhpal Singh. Even if this part of the statement is a fact revealed by appellant Sukhpal Singh to the Police and is, therefore, admissible, the fact remains that it is not such kind of 'motive' which would persuade him to commit murder. Further, if this part of the confession is admissible, the other fact disclosed in the memorandum statements of both the appellants is that appellant Sukhpal Singh snatched the axe carried by deceased Bechuram and thereafter, Sukhpal Singh gave an axe blow, would also be admissible. This confession would mean that Sukhpal was not armed but he used the weapon carried by the deceased to assault him. Thus, the circumstances in which the incident took place and for the fact that it was a sudden fight and there being no previous enmity between the appellants and the deceased, it appears, the attack happened in a heat of passion because deceased Bechuram was chasing appellant Sukhpal Singh asking him to leave the house.

19. In view of these special features available in the matter and there being no premeditation by both the appellants and further, appellant Sukhpal Singh having not acted in cruel or

unusual manner as also for the reason that only one assault was made though it was somewhat severe but the assault was not repeated, we are of the considered view that while causing the assault, appellant Sukhpal Singh had knowledge that the assault may endanger life of the deceased but he appears to have no intention to commit his murder. Therefore, the offence would fall under Section 304 Part-I of IPC and not under Section 302 of IPC.

20. Accordingly, we allow the appeals in part. The conviction of the appellants under Section 302 of IPC is set-aside and instead thereof, the appellants are convicted for committing an offence under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years.

Sd/-

**( Prashant Kumar Mishra)**  
Judge

Sd/-

**(Gautam Chourdiya)**  
Judge