

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 198 of 2018**

- Devendra Kenwat S/o Late Jagannath Kenwat Aged About 45 Years R/o Pushpanjali Chowk, Rampur, P. S. Kartala, District Korba Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Kartala, District Korba Chhattisgarh

---- Respondent

For Appellant	Mr. Sudhir Kumar Bajpayee, Advocate
For Respondent /State	Mr. Avinash Choubey, Panel Lawyer

**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mr. Justice Gautam Chourdiya**

Judgment On Board By Prashant Kumar Mishra, J.**13/8/2019**

1. Heard.
2. The appellant would assail his conviction under Section 302 of IPC and sentence of life imprisonment imposed by the trial Court vide judgment dated 12.1.2018 passed by the learned Sessions Judge, Korba in ST No.55/2017.
3. At about 6:30 pm, on 11.3.2017, a dispute arose in the common courtyard (*Angan*) of the house of the appellant and deceased Ram Bai, who happens to be related as *Devar* and *Bhabhi*. A dispute concerning use of tullu pump arose, where-after, the

appellant picked up a *Parsul* (an instrument used to cut vegetables) and inflicted one stab wound over the person of the deceased causing her instant death.

4. Appellant Devendra Kewat, Rohit Kumar and PW-12 Galeshwar Prasad Kewat, who is the husband of deceased Rambai, are the three brothers. They reside in a common compound. From the prosecution case, it appears that they are engaged in selling vegetables. At the time of the incident, the appellant was packing and bundling green spinach (*palak*) and red spinach (*lal bhaji*) for taking the same to the vegetable market. At this time, the appellant's sisters-in-law (bhabhi) PW-1 Rajkumari and deceased Rambai were engaged in conversation. Rambai instructed the appellant to bring the tullu pump to her house, on which, the appellant became enraged and replied that the tullu pump has been purchased by him, therefore, why Rambai should use it alone. Thereafter, the appellant went inside the house, brought a *Parsul* and inflicted one injury over the chest and nose of Rambai, on account of which, she fell unconscious and died on her way to the hospital.
5. During postmortem, the deceased was found to have sustained only one injury being a stab wound over left side of the chest over fifth intercostal space penetrating the left lower chamber of the heart, size 3 ½ x ½ x 5½ cm deep. She died of shock on account of massive haemorrhage due to the injury over the heart and the nature of death was homicidal. The *Parsul* was recovered from the appellant vide Ex.-P/2 pursuant to his

memorandum statement-Ex.-P/1.

6. The trial Court has convicted the appellant on the basis of eye-witness account rendered by PW-1 Rajkumari, the statement of Autopsy Surgeon PW-9 Dr. VK Singh and recovery of the weapon from him.
7. Learned counsel for the appellant would submit that the appellant had no intention to commit murder of the deceased and the incident happened due to grave and sudden provocation, therefore, the appellant is entitled to acquittal.
8. Learned counsel for the State would read over the evidence particularly the evidence of the eye-witnesses to argue that the appellant has committed the offence, therefore, the conviction is justified.
9. PW-1 Rajkumari has clearly stated that when she was in conversation with deceased Ram Bai, at about 6:30 p.m., on the date of the incident, the deceased demanded the tullu pump from the appellant, which he denied and thereafter, he immediately brought one *Parsul* from his house and caused the stab wound over the person of deceased. There is nothing in the cross-examination of Rajkumari which can discredit her evidence. Although this witness admits that regular dispute used to occur between the three brothers and their family members because they were residing in one common compound and further that the tullu pump for which the dispute arose was used jointly by the appellant and the deceased, she also admits

that at the time of the incident, some hot talks had taken place but there was no quarrel. PW-2 Laxminarayan Kenwat has proved the memorandum statement and the consequent seizure Ex.P/1 and Ex.-P/2 respectively, whereas other witnesses had taken part in the investigation and all of them have supported the prosecution case.

10. Galeshwar Yadav, husband of the deceased, examined as PW-12 was not present in the house at the time of the incident. He was informed about the incident by PW-1 Rajkumari. However, this witness has been declared hostile as he has not stated as to what was the nature of information given to him by Rajkumari.

11. Considering the nature of evidence available on record, it is proved by PW-1 Rajkumari read with the statement of PW-9 Dr. V.K. Singh that the appellant has inflicted one stab wound over the left side of the chest of the deceased penetrating her heart, for which, she died on her way to the hospital and the death is homicidal. Therefore, the appellant has rightly been held guilty for causing the death of the deceased.

12. The issue to be considered now is whether the appellant has committed culpable homicide amounting to murder or his act would fall within any of the Exceptions to Section 300 of IPC bringing his act within the parameters of culpable homicide not amounting to murder.

13. 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.

14. 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.”

15. 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 injures 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.”

16. In the case at hand, the altercation between the appellant and the deceased started all of a sudden, where-after, the appellant inflicted one stab wound from an instrument which is used for

cutting vegetables i.e. *Parsul*. It is not a weapon by itself. The appellant got provoked and enraged after a brief hot talk. There was no premeditation of mind nor the appellant has taken undue advantage nor he has acted in a cruel or unusual manner, inasmuch as, after giving one assault, he did not repeat the blow.

17. Considering the entire facts' situation including the genesis of the offence, we are of the considered view that the appellant had the knowledge that the assault by means of *Parsul* may cause the death of the deceased but he had no intention to commit her murder, therefore, his act would fall within Exception 4 to Section 300 of IPC and the offence would fall under Section 304 Part-II of IPC.

18. Accordingly, we allow the appeal in part. The conviction of the appellant under Section 302 of IPC is set-aside and instead thereof, he is convicted for committing an offence under Section 304 Part-II of IPC and sentenced to undergo RI for 5 years. The sentence of fine amount shall remain intact.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge