

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 224 of 2011**

- Gulab Verma, S/o Govind Verma, aged about 30 years, Occupation Vegetable Business, R/o Acharya Vinoba Nagar, Dev Baloda, P.S. G.R.P. Charoda, District Durg (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through the Station House Officer, Arakshi Kendra, G.R.P. Charoda, District Durg (C.G.)

---- Respondent

For Appellant : Shri Goutam Khetrapal, Advocate

For Respondent/State : Shri N.K. Mehta, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Judgment on Board by Justice Prashant Kumar Mishra****15.07.2019**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22.02.2011 passed by learned Special Judge, under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Durg (C.G.) in Special Case No. 45 of 2009, whereby the appellant stands convicted under Section 302 of IPC for committing murder of deceased- Raj Bai and sentenced to undergo life imprisonment and fine of Rs.2,000/-, in default of payment of fine to undergo further rigorous imprisonment for three months.

2. As per prosecution case, on 06.09.2009 at about 10:00 AM, when PW-1 Amrit Gendra was on her way for fetching water from public water supply line, Golu son of co-accused Saroj Verma and his brothers Umesh and Sonu were playing glass-balls (*Kanche*) one stone hit the leg of Amrit Gendra. When she (PW-1) was persuading Golu not to play with glass-balls, co-accused Saroj Verma intervened and an altercation took place. Hearing this, PW-3 Anusuiyai also reached the spot while co-accused Saroj Verma was pulling hairs of Anusuiya, at this time, their mother deceased Raj Bai, who was returning from the village tank, also reached the place of occurrence and tried to separate them. Appellant Gulab Verma also

reached the place of occurrence during this time and caught hold of deceased Raj Bai and started assaulting her on chest by hands and fists. Raj Bai fell down on the ground and became unconscious. A local Doctor, called for first-aid, declared that Raj Bai is dead.

3. First Information Report (FIR) was lodged by Amrit Gendre (PW-1) vide Ex.-P/1 at about 11:30 hours i.e. within one & half hours of the incident. During autopsy, the deceased was found to have sustained abrasion over left knee of size 0.5 cm; abrasion over left foot medially of size 0.5 cm. Subcutaneous haematoma was present over upper middle at center of chest with fracture of 5th rib, blood clot was there around the heart, heart was ruptured and blood deposit was there in the chest as stated in postmortem report (Ex.-P/17) submitted by Dr. A.K. Mishra (PW-11). There being no use of any weapon in committing the offence, the Investigating Officer has not recorded any memorandum statement nor effected any seizure. Charge-sheet was filed only on the basis of postmortem report (Ex.-P/17) and case diary statements of witnesses.

4. Based on statements of witnesses, the Trial Court while acquitting the accused/appellant of the charges under Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, convicted and sentenced the appellant under Section 302 IPC as above. One co-accused Saroj Verma was convicted under Section 323 IPC, however, considering the facts and circumstances of the case and nature of offence committed by her, keeping in view the jail period already undergone by her i.e. 72 days, she was sentenced to the period already undergone by her. She has not filed any appeal challenging her conviction under Section 323 IPC.

5. We have heard learned counsel for both the parties and perused the record.

6. Both the witnesses namely PW-1 Amrit Gendre and PW-3 Ku. Anusuiya would depose in similar lines in terms of prosecution case as mentioned above, contained in FIR (Ex.-P/1). Thus, it is admitted position from the evidence available on record that the appellant inflicted 3-4 blows by hands and fists on the chest of

deceased Raj Bai causing fracture of 5th rib which in turn ruptured the heart leading to blood clotting which further resulted into shock and hemorrhage causing death of deceased.

7. Learned counsel for the appellant would submit that even if the entire prosecution is taken as it is, the appellant cannot be held guilty under Section 302 IPC and at best, he can be convicted under Section 325 IPC.

8. Learned counsel for the State would support the impugned judgment.

9. Having seen the eye witnesses account rendered by PW-1 Amrit Gendra and PW-3 Ku. Anusuiya and reading the same in juxtaposition to the medical evidence of PW-11 Dr. A.K. Mishra and the postmortem report (Ex.-P/17), we are of the considered view that the act committed by the appellant would fall under Section 325 IPC and not under Section 302 IPC for the reason that the incident happened all of a sudden without premeditation of mind. The appellant was not armed and also had not reached the spot with preparedness for causing such injuries to the deceased with intention and knowledge to commit murder. His act of giving hands and fists blows to the deceased developed on the spot due to the circumstances where an altercation and manhandling between members of two families was going on. The appellant has not acted in a cruel or unusual manner by continuing the assault on the deceased even after she fell down. Such being the evidence on record, there is no material to hold that the appellant had intention or knowledge to cause such bodily injuries which would have resulted in death of the deceased. His intention was only to cause grievous injuries which is punishable under Section 325 IPC.

10. For our above view, we may profitably refer to the law laid down by the Hon'ble Supreme Court in the matters of ***Parusuraman alias Velladurai and others Vs. State of Tamil Nadu, AIR 1993 SC 141; Khuman Singh and others Vs. State of M.P., (2005) 9 SCC 714; State of A.P. Vs. Naragudem Papireddy and others, (2004) 9 SCC 14 and Shaikh Karimullah alias Babu and others Vs. State of Andhra Pradesh, (2009) 11 SCC 371.*** We have also taken similar view

while deciding Criminal Appeal No. 566 of 2019 (*Lalchand Vs. State of Chhattisgarh*) on 08th of July, 2019.

11. The appellant having already remained in jail for about five months during trial i.e. from 07.09.2009 to 16.02.2010, thereafter, for about one year and one month from 22.02.2011 to 18.03.2012, has thus undergone sentence of about one year six months. The above sentence already suffered by the appellant is considered adequate for the offence under Section 325 IPC. It is also to be mentioned that at the time of commission of offence, the appellant was aged about 29 years and there is no previous criminal record of the appellant.

12. Accordingly, the appeal is allowed in part and conviction & sentence of the appellant under Section 302 IPC are set aside and instead, he is held guilty under Section 325 IPC and is sentenced to the period already undergone by him.

13. It is also stated that the accused/appellant is on bail since 16.03.2012, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge