

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 566 of 2019**

- Lalchand, S/o Sahjoo Ram Uraon, Aged About 45 Years, Occupation Agriculture, R/o Village Jigadi, Police Chowki Pasta, District Balrampur Ramanujganj, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through District Magistrate, Bemetara District (Revenue and Civil) Balrampur-Ramanujganj, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Anand Kesharwani, Advocate
Shri Neeraj Mehta, PL

Hon'ble Justice Shri Prashant Kumar Mishra
Hon'ble Justice Smt. Rajani Dubey

Order On Board by Prashant Kumar Mishra J.**08/07/2019**

1. The appeal is posted for hearing on IA No.3/2019, application for suspension of sentence and grant of bail. However, with the consent of learned counsel for the parties, we proceeded to hear the appeal finally.
2. Appellant stands convicted by the Trial Court for committing offence under Section 302 of IPC while acquitting him of the charges under Sections 294 and 506 Part II of IPC.
3. Admittedly, appellant is the son of deceased Sahjoram Uraon, aged about 85-90 years. On the date of incident, the appellant had gone to the house of his sister Chimo Bai (PW-2) and started altercation with

his father, deceased Sahjoram Uraon. He was not armed, therefore, he assaulted his father by hands, fists and kicks. The incident is said to be witnessed by PW-1 Bhandu Ram and PW-2 Chimo Bai. The Trial Court has convicted the appellant on the basis of statement of these two witnesses.

4. The appellant having not used any weapon, there is no memorandum statement or recovery from him. The investigation proceeded by sending the dead body for autopsy and recording case diary statement of witnesses. The deceased was first sent to the Community Health Centre, Rajpur, where his MLC was conducted by PW-8 Dr. Ramprasad Tirki, who submitted his report (Ex-P-7A) finding the following injuries:-

- I. Lacerated wound over chest wall - 5 cm x 3 cm
- II. Lacerated wound over upper and lower rib – 3cm x 2 cm
- III. Lacerated wound over eye orbit

For the first injury, X-ray was advised and the second and third injuries were found to be simple in nature. The deceased was later on referred for higher medical centre and he died the next morning. His autopsy was conducted by PW-10 Dr. K. P. Vishwakarma, who submitted his report (Ex-P-12) opining that the death is due to cardio respiratory arrest caused by chest injury, nature homicidal.

5. We have heard learned counsel for the parties and perused the record.
6. While PW-1 Bhandu Ram would speak as if he has seen the occurrence, however, PW-2 Chimo Bai, daughter of the deceased and

sister of the appellant, after describing the incident would say that Bhandu Ram entered her house after the assault when she was trying to separate the appellant and the deceased. Thus, as per the statement of this witness, PW-1 Bhandu Ram reached the place of occurrence after the appellant had already assaulted the deceased. In any case as per the statement of PW-2 Chimo Bai, it becomes doubtful whether PW-1 had reached the place of occurrence at the time of incident or reached thereafter.

7. Be that as it may, PW-2 Chimo Bai has fully supported the case of prosecution and there is nothing in her statement which would discredit her evidence. The incident has otherwise happened at her residence, therefore, her presence on the spot is very natural. This witness has rightly been believed by the Trial Court.
8. We are now required to consider whether the death of the deceased is homicidal and if yes whether the appellant's act would fall within the definition of culpable homicidal amounting to murder or he deserves to be convicted for some other lesser offence.
9. Admittedly, appellant did not enter the house of PW-2 Chimo Bai having any arms with him. The parties are otherwise closely related to each other. There appears some dispute concerning share of land allotted to the sons and daughters of the deceased Sahjuram Uraon. Appellant may have some grudge with his father, which is reflected from the statement of PW-2 Chimo Bai, however, the fact remains that the appellant has not used any weapon nor the injuries caused by him were of such nature, which may amount to culpable homicide

amounting to murder. The deceased had not received any serious external injuries. Out of three external injuries sustained by the deceased, two were simple in nature and for the first injury, he was referred for X-ray but that never took place. In the postmortem report, the deceased was found to have sustained fracture on 3rd, 4th and 5th rib, left side at mid clavicular region. Thus, the first injury was grievous. When the appellant has not used any weapon but has caused grievous injuries by hands, fists and kicks, he is guilty of causing grievous hurt. The death seems to have taken place due to rupture of left lung, which in turn was probably due to fracture of the rib on the left side. The death was therefore not the direct result of the assault made by the appellant but it was due to indirect result because of rupture of lung due to fracture of rib.

10. The Supreme Court in the matter of **Parusuraman alias Velladurai and others vs State of Tamil Nadu**¹ has held thus in paras 2 & 3:-

- “2. We have heard learned counsel for the parties. We agree with the High Court that the participation of the appellants in the occurrence which result in the death of Jawahar has been proved beyond doubt. We are, however, of the view that keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the offence committed by the appellants comes within the mischief of S. 325 read with S. 34, IPC. Thirteen external injuries were found on the dead body of Jawahar. Out of those 11 were on lower legs and arms.....”
3. Agreeing with the above observations of the High Court we are of the opinion that the intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of S. 325, IPC. We, therefore, set aside the conviction and sentence of the appellants under S.304, Part I, IPC read with S.34, IPC and instead convict them under S.325, IPC read with S. 34, IPC. We impose the sentence of imprisonment already undergone by the

¹ AIR 1993 SC 141

appellants.....”

11. The Supreme Court in the matter of **Khuman Singh and others vs State of M.P.**² has held thus in para 10:-

“10.It is, no doubt, true that they assaulted the deceased in such a manner that the deceased suffered several fractures, but the injury which caused the death of the deceased was the one suffered by him on account of the rib bone puncturing the liver. We are convinced that this injury was not intended by the appellants, and the injury suffered by the deceased on his liver was at best accidental.....”

12. In view of the above, we are of the considered view that the act committed by the appellant would fall under Section 325 of CrPC causing grievous hurt and would not be culpable homicide amounting to murder. Appellant's conviction under Section 302 of IPC is therefore set aside and instead he is convicted for committing offence under Section 325 of IPC. The appellant is in jail since 01.04.2017 for nearly two years and 3 months, therefore, the appellant is sentenced to undergo rigorous imprisonment for the term for which he has already undergone. The appellant be released forthwith, if he is not required for any other offence, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Trial Court. The bail bond shall remain in operation for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the Higher Court as and when required.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Rajani Dubey
Judge