

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 527 of 2012**

- Ashok Korety, S/o Ramcharan Korety, aged about 29 years, Occupation - Agriculture, R/o Village Bhainshakanhar Nayapara, Chowki Kacche Police Station, Bhanupratappur, District Kanker (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through - District Magistrate, Kanker, District Kanker (C.G.)

---- Respondent

For Appellant : Shri R.K. Pali, Advocate.
For Respondent/State: Shri Anand Verma, Dy. G.A.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava
&
Hon'ble Smt Justice Rajani Dubey

Judgment On Board**08.01.2019****Per Manindra Mohan Shrivastava, J**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 28.04.2012 passed by learned Session Judge, North Bastar Kanker (C.G.), in S.T. No.110/2010 whereby and whereunder, the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with fine of Rs.500/-, in default of payment of fine, to further

undergo additional R.I. for one month.

02. According to the prosecution story, in the incident of fight between the appellant and his brother Sarvan, the appellant assaulted his brother with a club on his head resulting in compressed fracture and extradural brain hemorrhage leading to shock and death. FIR without number was initially given in the police station on 14.06.2010 vide Ex.P/10 by Tulsi Ram (PW/4), appellant's maternal uncle, and later on, a numbered FIR was registered in Ex.P/20 on 15.06.2010, on the report of the same person i.e. PW/4. In the postmortem conducted by Dr. Priti Singh (PW/1), a compressed fracture was found in the head, which according to the opinion of the Doctor, resulted in hemorrhage and death. There were another four minor scratches and bruises found on the body of the deceased. The appellant was tried for commission of offence of killing his own brother. The learned trial Court, relying upon the eye-witness account of Smt. Pushpa (PW/3) and Ku. Seema (PW/6), held the appellant guilty of commission of offence and sentenced as mentioned herein above.

03. While learned counsel for the appellant does not wish to assail the finding that it is the appellant who had assaulted his brother with a club, he would argue that in these circumstances of the case, it would be, at the most, a case of commission of offence of culpable homicide not amounting to

murder. He would submit that according to the prosecution evidence, prior to the incident of assault, deceased Sarvan, brother of the appellant, had entered into a quarrel with his father Ramcharan and he had assaulted his father. The incident of assault took place, soon thereafter, when the appellant came back after attending a marriage, late in the night. He would next submit that there is single injury found on the head of the deceased, and many bruises and scratches which only proves that there was some scuffle between the brothers and without premeditation, the appellant gave a single blow on the head of his brother, of which he had no knowledge that it may be fatal. Therefore, in these circumstances, the conviction of the appellant may be altered to Section 304 Part-II and the sentence may be reduced to the period already undergone by him. According to him, the appellant has undergone more than eight years of imprisonment by now.

04. On the other hand, learned counsel for the State, supporting the impugned judgment submits that the assault given by the appellant on the deceased proved by the ocular testimonies of Smt. Pushpa (PW/3) and Ku. Seema (PW/6) who are emphatic and nothing could be elicited from their cross-examination to make out a case that the incident of assault was an outcome of a sudden fight between the brothers or that the assault was given without premeditation, without

there being any intention to commit murder.

05. We have heard learned counsel for the parties and perused the evidence on record.

06. Smt. Pusha (PW/3) and Ku. Seema (PW/6) both are eye-witnesses of the case. Smt. Pushpa (PW/3) is wife of the deceased and she has stated in her evidence that at about 2.00 in the night, the appellant had come to her house and had assaulted her husband on the temporal part due to which her husband fell down from *Machan* (scaffold). She has also stated that about two years before the date of incident, there was some land dispute between her husband and the appellant. In the cross-examination, she has stated that in the night Chameli, wife of the appellant, had come to her house and there was dispute and 'maarpeet' (fight) between her husband and Chameli, in which Chameli was assaulted by her husband. She has also disclosed an important fact that on that very day, her father-in-law, Ramcharan committed suicide by hanging himself. According to her, at that time when the appellant assaulted her husband, her father-in-law, Ramcharan was not present. She has further stated that the appellant and his wife both were present. From the evidence of this witness what is reflected is that the appellant had come to the house of the deceased at about 2.00 AM in the night and at that time, his (appellant's) wife was also along with him and there was 'maarpeet' (fight) between his wife and

deceased Sarvan, and soon thereafter, the appellant assaulted the deceased.

07. Subhiya Bai (PW/5), mother of the appellant and the deceased, has deposed that in the incident, a quarrel had taken place between Ramcharan and Sarvan (deceased). She has also stated that her husband went to the field and hanged himself. In cross-examination, she admits that a fight had taken place between Sarvan and her husband Ramcharan where-after Ramcharan went towards the field and hanged himself.

From the evidence of witnesses and from this witness also, it is found that on the date of incident itself, a dispute had taken place between Ramcharan and Sarvan (the deceased) and that it was a fight also where-after Ramcharan went to field and committed suicide.

08. Ku. Seema (PW/6), daughter of the deceased, has also been examined as one of eye-witness of the prosecution, who has deposed that the appellant had assaulted his father due to which her father fell down. She has also admitted that the date on which her father was killed, her grand father had also committed suicide. She has stated that after the assault her father fell down from scaffold (*Machan*)

09. The evidence of Dr. Priti Singh (PW/1) proves the injury found on the body of the deceased, including one, which proved to be fatal. One depressed fracture was found in the

temporal region which caused haematoma of blood in the frontal and temporal region and extradural hemorrhage was also found after opening the skull, which appears to be the cause of death.

We find that all other injuries were scratches and bruises, about five in numbers and the fatal injury was the singular blow given on the head of the deceased, resulting in haematoma and extra as well as subdural haematoma resulting in shock and death.

10. From the evidence of prosecution witnesses, which have been discussed herein above, what appears is that a dispute between deceased Sarvan and his father Ramcharan had arisen and even fight had also taken place. Thereafter, in the night when appellant Ashok came back home after attending marriage, having come to know of the incident, came to the house of the appellant along with his wife and there deceased Sarvan, who was drunk also, had scuffled with the appellant's wife and then followed fight between the two brothers appellant Ashok and deceased Sarvan in which the appellant is said to have given fatal blow on the head of deceased Sarvan leading to his death. In our considered opinion, this would make out a case of Exception 4 to Section 300 IPC. The background of the incident was that deceased Sarvan had entered into fight with his father Ramcharan, who left the house and it is said that he committed suicide, and when

appellant Ashok went to the house of the deceased in the night along with his wife, probably because of the incident which had taken place, there was maarpeet between the deceased and the appellant's wife and then followed a sudden fight between the two brothers. Therefore, looking to one singular injury on the head of the deceased, and all other injuries were bruises and scratches, present is a case where the appellant, at the most, can be said to have committed an offence of culpable homicide not amounting to murder, and accordingly conviction of the appellant could only be sustained under Section 304 Part-II IPC. We, accordingly, do so.

11. The appeal is allowed in part. The conviction of the appellant is altered to that under Section 304 Part-II IPC. The appellant has already undergone eight years of imprisonment, and in the circumstance of the case, we consider it to be commensurate with the gravity of the offence committed by the appellant. Therefore, the sentence is also reduced to the period already undergone by the appellant and the appellant be set at liberty forthwith, if not required in any other case.

12. The appeal is thus allowed in part.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**

Sd/-

**(Rajani Dubey)
Judge**