

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1338 of 2014**

- Ramkumar Alias Kishun Ram, S/o Dewlu Ram Lohar, Aged About 27 Years, R/o Village Admagodi, P.S. Mohla, Civil and Revenue District Rajnandgaon, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Mohla, District Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Vishwanath Goswami, Advocate
Shri Avinash Choubey, PL

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Prashant Kumar Mishra J.****14/08/2019**

1. Challenge in this appeal is to the judgment of conviction and sentence rendered by the Trial Court convicting the appellant under Section 302 of IPC and sentencing him to undergo life imprisonment for committing murder of his father Dewlu Ram at about 8-9 pm on 01.01.2014.
2. At the relevant time, the appellant's mother PW-2 Smt. Jhamit Bai and his father deceased Dewlu Ram were warming themselves in a campfire. The deceased asked his son, the appellant, to engage in some work so that the debt incurred for purchasing ox can be repaid, otherwise he should live separate and allow him to work and repay the loan. The appellant stated that he will repay the loan amount but the

deceased started provoking him by saying that the appellant has no guts to repay the loan. The appellant thereafter went inside the house, returned and again started warming himself, but the deceased kept on provoking the appellant, on which the appellant inflicted knife blow causing his death.

3. The entire prosecution case is based on eye witness account rendered by PW-2 Jhamit Bai. She has narrated the above sequence of events in her court examination also. PW-5 Dr. S. R. Kovachi has found one incised wound over the right side of chest between nipple and sternum. The injury caused over the right side of chest punctured the right lungs and heart. It also caused fracture of 4th and 5th ribs, as mentioned in the postmortem report (Ex-P-10). The cause of death was shock due to rupture of right lung and heart.
4. From the evidence of PW-2 Jhamit Bai and PW-5 Dr. S. R. Kovachi, it is proved that the deceased died homicidal death on account of injuries sustained by him, which was caused by the appellant. Thus, the Trial Court has not committed any illegality in holding the appellant guilty of committing the act causing death of the deceased.
5. The crucial question to be considered is whether the act of the appellant would be an offence under Section 302 of IPC or would fall under any of the exception to Section 300 of IPC to attract conversion of the offence under Section 304 Part-I or 304 Part-II of IPC.
6. 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.

7. 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.”

8. 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."

9. Perusal of the evidence, particularly the evidence of eye witness (PW-2), who is none other than the mother of the appellant and wife of the deceased, would reveal that the deceased was under the state of intoxication at the time of incident. It is he who initiated the hot talks and provoked the appellant and asked the appellant to repay the loan. The deceased did not stop here, inasmuch as when the appellant agreed to repay the loan, the deceased started commenting that the appellant has no guts to repay the loan. During all this time, the deceased was also abusing the appellant and the eye witness as well as the appellant's wife. In these circumstances, the appellant inflicted one single knife blow over the person of the deceased. The genesis of the incident is otherwise a very trivial one. The family appears to be belonging to lower strata of the society. Therefore, considering all relevant aspects of the matter, it appears that the appellant gave one

single knife blow at the spur of the moment, in heat passion without any pre-meditation and being provoked by the deceased. He had knowledge that the injury inflicted over the right side of chest may occasion death of the deceased but he had no intention to commit murder, therefore, it will be a case attracting 4th exception to Section 300 of IPC and the appellant would be guilty of committing offence under Section 304 Part-II of IPC. Accordingly, the appellant is convicted under Section 304 Part-II of IPC. The appellant is in jail since 02.01.2014 i.e. for about more than 5 years and 8 months. The jail sentence already suffered by the appellant appears to be adequate for the offence committed by him, therefore, he is sentenced to the period already undergone.

10. In the result, the appeal is allowed in part. The appellant's conviction under Section 302 of IPC is converted to an offence under Section 304 Part-II of IPC and he is sentenced to the period already undergone.
11. 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/-
Gautam Chourdiya
Judge