

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 839 of 2014

- Mahendra Netam, son of late Uday Ram Netam, aged about 29 years, resident of village Dabgaon, P.S. Nagri, Civil and Revenue District Dhamtari (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through the Station House Officer Police Station Dhamtari, Civil and Revenue District Dhamtari (C.G.)

---- Respondent

For Appellant	:	Ms. Laxmin Tondey, Advocate
For Respondent/State	:	Mr. Neeraj Kumar Mehta, PL.

DB : Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Rajani Dubey

Judgment on Board by Hon'ble Shri Justice Prashant Kumar
Mishra

05/07/2019

1. The appellant would call in question the legality and validity of the impugned judgment of conviction and order of sentence dated 28.07.2014 passed by Additional Sessions Judge, Dhamtari, in Sessions Trial No.40/2013, whereby he has been convicted by the trial Court for committing offence under Section 302 IPC and held him guilty for causing murder of his father Uday Ram Netam at about 7:30 PM of

29.07.2013.

2. According to the prosecution case, deceased Uday Ram had three sons namely Mahesh Kumar Netam, Mahendra Netam and informant Umendra Kumar Netam. There was subsisting land dispute between the accused and his father Uday Ram Netam, the deceased, in respect of half acre land which is adjoining to the share of land fallen in the share of accused. On the date and time of incident, appellant had reached to the house of informant Umendra Kumar with whom the deceased was residing. The appellant started raising quarrel with his father in respect of the land in dispute. At this point of time, informant Umendra Kumar reached the place of occurrence and tried to persuade and separate the appellant and their father. But the appellant picked up the burning wooden log and gave one blow over the head of the deceased causing lacerated wound and serious bleeding. The deceased fell down on the ground and died after some time.
3. The FIR (Ex. P-3) was lodged by Umendra Kumar Netam (PW-2). This witness has been examined before the trial Court and has fully supported the case of prosecution. At para 5 of the deposition, he has stated that he had not seen the occurrence but in the same breath he rectified his earlier statement saying that he has seen the occurrence. His presence over the place of occurrence is otherwise

corroborated by the MLC report (Ex. P-16/A) proved by Dr. Suneel Bharti (PW-13). The fact of the informant having sustained injuries during scuffle is also mentioned in the FIR. Thus, the statement of this witness that he has seen the occurrence is duly corroborated from his own medical evidence and the contents of FIR, therefore, only for the reason that at one stray place in his deposition he has stated that he has not seen the occurrence, would not be fatal for the prosecution.

4. The prosecution case being mainly based on the eye-witness account of the incident rendered by Umendra Kumar (PW-2) and the weapon of offence having been picked up at the place of incident itself, there was no necessity of sending the same for any expert examination, therefore, we are not referring to the other evidence regarding seizure of the burning wooden log, panchnama, dead body inquest etc. Though, the witnesses of the seizure memo have also supported the seizure of burning wooden log.
5. At this stage, learned counsel for the appellant would submit that even if the statement of Umendra Kumar (PW-2) would nail the appellant, the act committed by him would not fall under Section 302 IPC as there was neither any intention nor knowledge that his act would cause death of the deceased.

6. Contesting this argument of the counsel for the appellant, it is argued by learned counsel for the State that land dispute between the appellant and the deceased was going on for some time, therefore, the appellant had reached to the place of occurrence in a premeditated state of mind, therefore, the offence would fall under Section 302 IPC.
7. The principle as to when offence under Section 302 IPC can be converted to one under Section 304 Part-I or Part-II IPC has been dealt with by the Hon'ble Supreme Court in an extremely recent judgment, in the matter of **Rambir vs. State of NCT, Delhi, in S.L.P. (Cr.) No. 9781 of 2018 decided on 06.05.2019**, wherein the following has been held;

A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

- (I). There must be a sudden fight;
- (II). There was no premeditation;
- (III). The act was committed in a heat of passion;
and
- (IV). The offender had not taken any undue advantage or acted in a cruel or unusual manner.

By applying the above tests, the High Court has found that two of the ingredients are absent so as to bring the case of the appellant under Exception 4 to Section 300 IPC. The High Court has found that the act of picking up a 'saria' and compressing forcefully the neck of his wife by the appellant, can,

by no stretch of imagination, be said to be an act committed in a heat of passion. Further it is held that, the manner in which the appellant compressed his wife's neck also depicts an act of extreme cruelty. From the evidence on record it is clear that incident occurred in a sudden fight and there was no pre-meditation. Even the primary witness PW-7, the son of the accused and deceased, has deposed that he had seen the appellant strangulating his mother- deceased- with the 'saria' when she had taken out some money from the appellant's wallet. It is not as if 'saria' was brought in a pre-planned way to murder the wife of the appellant. The iron rod (saria) is picked up at the spur of the moment at the time of incident and used to compress the neck forcefully. In that view of the matter it is nothing but an act committed by the appellant in a heat of passion. Further, the High Court has not given the benefit of Exception 4 to Section 300 IPC on the ground that appellant compressed his wife's neck also depicts an act of extreme cruelty. Having regard to nature and manner of incident it cannot be said that act of the appellant was extremely cruel. Unless it is barbaric, torturous and brutal, strangulation of the appellant's wife cannot be said to be an act of extreme cruelty for denying the benefit of Exception 4 to Section 300 IPC.

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** 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 injuries 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.

8. Considering the evidence available in this case, in the light of the law laid down by the Supreme Court, it is to be seen that there was dispute concerning half acre of land which had fallen in the share of appellant's deceased father, but the appellant was demanding the said area of land. Otherwise, there was no ill-will or animosity between the

appellant and the deceased. There is no evidence that, at any point of time prior to the present occurrence, the appellant has ever tried to assault the deceased. The fact that the appellant has reached the house of the informant or the deceased without any weapon and was only raising a verbal altercation would demonstrate that there was no pre-meditation of mind. The appellant otherwise picked up a burning wooden log from the place of occurrence itself and had caused one blow over the head of the deceased. The assault was not repeated either before or after the deceased fell on the ground. Though, an assault by means of burning wooden log is, by itself, a serious issue but the fact remains that after making the only assault, the appellant has not acted in a cruel manner. Therefore, considering the entire attending circumstances in which the incident had taken place, we are of the considered view that present is a fit case where the appellant had neither intention nor knowledge that his act of assaulting the deceased by burning wooden log would cause his death. Therefore, the offence committed by the appellant would fall under Section 304 Part-II IPC.

9. Accordingly, the appeal is allowed in part. The conviction of appellant under Section 302 IPC is set-aside and instead thereof the appellant is convicted for committing an offence under Section 304 Part-II IPC. The impugned judgment

would refer that the appellant has remained in jail from the date of his arrest i.e. 01.08.2013. He has not been released on bail in this appeal. Therefore, as on date, the appellant has already suffered about six years of jail sentence. Therefore, considering the entire facts, situation of the case, we are of the considered view that the jail sentence undergone by the appellant would be the sufficient sentence and is sentenced to the period already undergone by him.

10. The appellant be released forthwith if not required in any other case, on 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 six months as required under the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge