

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 952 of 2019**

- Manturam Rathiya S/o Sukhsingh Rathiya, aged about 21 Years, R/o Adukala, Police Station Chhal, District Raigarh Chhattisgarh, at Present R/o Village Tumidih, Police Station Punjipathra, District Raigarh Chhattisgarh.

---Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Station Punjipathra, District Raigarh Chhattisgarh.

---- Respondent

For appellant	Shri C.K. Sahu, Advocate.
For Respondent/State	Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Shri Prashant Kumar Mishra J.****06/08/2019**

1. The matter is listed for hearing on admission as well as on application (IA No.01) for suspension of sentence and grant of bail.
2. The appeal is **admitted** for hearing. However, with the consent of the parties, it is heard finally.
3. The appellant would call in question the legality and validity of the judgment of conviction and order of sentence dated 07.05.2019 passed by the Additional Sessions Judge, Gharghoda, District

Raigarh, C.G., in ST No.55/2018, whereby he has been convicted and sentenced as under :

Conviction	Sentence
Under Section 302 of IPC	Life imprisonment and fine of Rs.500/-, in default of payment of fine 2 months additional rigorous imprisonment.

4. The incident occurred at about 3 pm on 31.05.2018. PW-1 Angad Rathiya lodged FIR at 15:30 hours on the date of incident itself informing that appellant Manturam Rathiya has assaulted his father-in-law Ghasiaram by means of club causing his instant death. Merg intimation Ex.P-1 was registered by PW-7 Virendra Chandra and thereafter FIR Ex.P-2 was registered. The dead body was sent for autopsy which was conducted by PW-6 Dr. Dhan Singh Paikara who submitted his report vide Ex.P-9 opining that the mode of death is head injury, excessive blood loss and hypovolumic shock and the nature of death is homicidal. He found single lacerated wound over left side parietal bone with fracture. Memorandum statement of the accused was recorded vide Ex.P-6, consequent to which club and shirt were recovered from the appellant's possession vide Ex.P-7 and Ex.P-8 respectively. The Investigating Officer recorded case diary statements and after completion of investigation, filed the charge sheet. The appellant abjured his guilt but did not examine any defence witness whereas the prosecution examined 7 witnesses to bring home the charges.

5. Case of the prosecution rested mainly on the eyewitness account rendered by PW-3 Jamuna Rathiya, wife of the appellant. She has stated that when the appellant returned home after attending duties she served him lunch. During lunch the appellant raised quarrel for the reason that the meals had too much salt. Deceased intervened and asked the appellant and his wife that if they wanted to fight, they should settle the dispute outside the house. On this the appellant got provoked, picked up a club and caused one blow over the head of the deceased due to which he started bleeding profusely and died on the spot. PW-3 has fully supported the case of the prosecution.
6. PW-5 Kanhaiya Lal Gupta, witness to the appellant's memorandum statement Ex.P-6 and seizure of club Ex.P-7 has supported the prosecution case. However, he has not supported the seizure of shirt (Ex.P/8).
7. Be that as it may, the eyewitness having fully supported the case of the prosecution and doctor having opined that the death was homicidal in nature, it is proved that it was the appellant who caused assault by club on the deceased resulting in his homicidal death.
8. We are now required to consider whether the act committed by the appellant would be an offence under Section 302 IPC or would amount to culpable homicide not amounting to murder punishable under Section 304 Part-I or Part-II of IPC.
9. 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.

10. 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.”

11. When the above parameters laid down by the Hon'ble Supreme Court are applied to the facts of the case in hand, we find that the appellant being the son-in-law of the deceased was residing in his house. There was no enmity, ill-will or soured relation between the appellant, his wife or his father-in-law. The incident occurred on a trivial issue of putting excess salt in the food. The appellant was not armed. He picked up a club kept in the house and gave only one blow causing fracture of parietal bone of the deceased which was the cause of his death. He has not behaved in a cruel or unusual manner inasmuch as he did not repeat the blow after the deceased fell down. The incident occurred in a sudden fight in the heat of passion upon a sudden quarrel and not on account of any premeditated plan. The offence committed by the appellant would certainly fall under Section 304 Part-II IPC and not under Section 302 IPC.

12. For the aforesaid, we allow the appeal in part. The appellant's conviction under Section 302 IPC is set aside and instead he is

convicted for committing offence under Section 304 Part-II of IPC. He is sentenced to undergo RI for five years. The fine amount imposed by the trial Court with default stipulation shall remain intact.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge

Akhilesh