

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 972 of 2012**

- Ravishankar @ Banti S/o Sarju Yadav Aged About 25 Years R/o Shiv Nagar, Basantpur, Ps - Basantpur, Rajnandgaon, Dist. Rajnandgaon C.G.

----Appellant**Versus**

- State of C.G. Through District Magistrate Rajnandgaon, C.G.

---- Respondent

For Appellant

Shri Rajendra Tripathi, Advocate.

For Respondent/State

Shri Chitendra Singh, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Shri Prashant Kumar Mishra J.

20/08/2019

1. The appellant would call in question the legality and validity of the judgment dated 07.08.2012 passed by Sessions Judge, Rajnandgaon, C.G. in ST No.52/2011 whereby he stands convicted under Section 302 IPC for committing murder of deceased Krishna Yadav at about 5:30 am on 17.04.2011 and sentenced to undergo imprisonment for life, fine of Rs.5,000/-, in default thereof to suffer additional RI for one year.
2. Deceased Krishna Yadav had an affair with Anjali Yadav PW-10, sister of the appellant Ravi Shankar @ Banti. At the time of occurrence deceased had called Anjali Yadav near Chowpati and when they happened to meet at that place, appellant Ravi Shankar @ Banti, co-accused Radheshyam @ Radhe @ Sheshnarayan (now acquitted)

and juvenile accused **(A)** also reached there and started quarrelling with the deceased. The accused persons removed the keys of the motorcycle of the deceased and looted his mobile phone on which he started running away on foot. But the accused persons caught hold of him at the Gaurav Path and started assaulting him. The deceased somehow shielded himself and went towards forest depot but the accused persons also came to the forest depot and picked up wooden plank and assaulted over the person of the deceased. It is said that Ravi Shankar @ Banti and the acquitted co-accused assaulted the deceased and the incident was witnessed by PW-1 Jagat Ram Yadav, watchman of the Forest Department, who was on duty in the forest depot. PW-1 Jagat Ram Yadav lodged Dehati Merg Ex.P-1 at 6:45 am and Dehati Nalishi Ex.P-2 at 6:30 am. In both the documents he informed the police about the incident saying that he has seen the occurrence. PW-1 is also a witness to the memorandum statements of accused/appellant Ravi Shankar @ Banti, accused Radheshayam @ Radhe @ Sheshnarayan and juvenile accused **(A)** vide Ex.P-8, Ex.P-10 and Ex.P-12 respectively. Pursuant to memorandum of accused/appellant Ravi Shankar @ Banti (Ex.P-8), one mobile phone was seized vide Ex.P-9 and memorandum of accused Radheshayam @ Radhe @ Sheshnarayan (Ex.P-10), led to recovery of key of motorcycle Hero Honda vide Ex.P-11.

3. Based on the eyewitness account of PW-1 Jagat Ram Yadav, the trial Court has convicted the appellant.
4. Shri Rajendra Tripathi, learned counsel for the appellant would submit that complete reading of the statement of PW-1 Jagat Ram Yadav would reveal that he has not seen the incident, therefore, there being

no other convincing evidence, the appellant is entitled to be acquitted of the charge. In the alternative, he would submit that the act committed by the appellant would fall under the fourth exception to Section 300 of IPC and as such, at the most he can be held guilty under Section 304 Part-II of IPC.

5. Shri Chitendra Singh, learned Panel Lawyer for the State would submit that PW-1 has lodged prompt FIR and has remained firm in his evidence, therefore, no interference with the impugned judgment of conviction is called for.
6. Heard learned counsel for the parties and perused the material available on record.
7. PW-1 Jagat Ram Yadav, who immediately informed the police by lodging the Dehati Merg intimation and Dehati Nalishi, would clearly state that when he was brushing his teeth in the forest depot, the deceased reached there, soon thereafter the accused persons also entered the depot chasing him and picked up wooden-raft and started assaulting the deceased. In his Court statement he would clearly state that assault was made by the appellant Ravi Shankar @ Banti alone and not by Radheshayam @ Radhe @ Sheshnarayan, who was present at the place of occurrence but did not make any assault.
8. PW-17 Dr. Fulendra Ukey has conducted autopsy and submitted his report vide Ex.P-20(A) finding three injuries over the person of the deceased in the following manner:-

1. Lacerated wound with loosed skull bone over forehead.
2. Lacerated wound over center of skull with loss of skull bone.

3. Depressed fracture of skull at occipital area with intact skin.

The deceased died of shock due to head injury and nature of death was homicidal.

9. Thus, in view of the eyewitness account rendered by PW-1 and the medical expert's opinion, it is fully proved by the prosecution that the appellant has inflicted injuries by means of wooden-raft causing homicidal death of the deceased.

10. The prosecution has examined 16 more witnesses including PW-10 Ku. Anjali Yadav but there is no need to refer to the statement of all the witnesses as they have mainly participated at different stages of the investigation. PW-10 Ku. Anjali Yadav has turned hostile.

11. We are now required to consider whether the act committed by the appellant would attract Section 302 IPC or would be covered by any of the exceptions to Section 300 IPC for conviction under Section 304 Part-I or Part-II of IPC.

12. The Hon'ble Supreme Court in the matter of **Lavghanbhai Devjibhai Vasava Vs. State of Gujarat** {(2018) 4 SCC 329} has referred to its earlier decision in the matter of **Dhirendra Kumar Vs. State of Uttarakhand** {2015 SCC 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 the 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.”

13. In the case in hand, the evidence available in the record would suggest that PW-10 Ku. Anjali Yadav, sister of the appellant, had an affair with the deceased and at the time of occurrence, the deceased had called Anjali Yadav near Chowpati where the accused persons also reached. Seeing Anjali Yadav with the deceased the accused persons having got enraged started quarreling with and manhandling the deceased. When the deceased run away from there and entered the forest depot, the accused persons also reached there and picked up wooden-raft to cause fatal injuries. The accused persons were thus not armed with any lethal weapon. There was no pre-meditation for commission of offence but the same happened when the appellant saw his sister in the company of the deceased and got enraged and provoked. The incident has occurred on the spur of moment in the heat of passion as the appellant was not ready to accept his sister's affair with the deceased. It is not a case where the appellant wanted to take revenge by eliminating the deceased. The entire event appears to have happened within a span of 5 to 10 minutes. It is also to be seen that the appellant has not acted in a cruel or unusual manner while committing the offence. The appellant is a young boy aged about 26 years, therefore, considering all relevant aspects of the matter, we are of the considered view that the act committed by the appellant would fall within fourth exception to Section 300 IPC, making him liable for conviction under Section 304 Part-II of IPC. Accordingly, the appellant is convicted under Section 304 Part-II of IPC.

14. The appellant is in jail since 17.04.2011 i.e. for more than 8 years and

4 months. The sentence already undergone by the appellant appears to be adequate for the offence committed by him, therefore, he is sentenced to the period already undergone.

15. In the result, the appeal stands allowed in part. The appellant's conviction under Section 302 IPC is set aside and instead, he is held guilty under Section 304 Part-II of IPC and sentenced to the period already undergone. The fine sentence as imposed by the trial Court shall remain intact. The appellant is reported to be in jail, therefore, he is directed to be released forthwith, if not required to be detained in connection with any other offence on his furnishing bail bonds for a sum of Rs.25,000/- with two equivalent sureties to the satisfaction of the trial Court for his appearance before the trial Court as and when required. The bail bonds so furnished shall remain in force for a period of six months from today in view of provisions of Section 437A Cr.PC.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge