

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1035 of 2012**

Raysingh, S/o Prem Singh, Aged About 50 Years R/o Bandhavpara, P.S.
Bango, Distt. Korba, At Present R/o Sonhat ,Distt. Korea (CG) ... **Appellant**

Versus

State Of Chhattisgarh, P.S. Sonhat ,Distt. Korea, Chhattisgarh
....**Respondent**

For Appellant	:	Ms. Meenu Banerjee, Advocate
For State	:	Mr. Anand Verma, Dy. G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board by Manindra Mohan Shrivastava, J.

21.01.2019

Heard.

1. This case has been repeated in the final hearing list but we find that nobody is appearing for the appellant. Ms. Meenu Banerjee, one of the Panel Lawyer in the Legal Aid, who is present in the Court, was requested to assist the Court by appearing on behalf of the appellant.

2. This appeal is directed against impugned judgment of conviction and order of sentence dated 13.09.2012 passed by learned Session Judge Korea (Baikunthpur), District Korea (CG) in Sessions Trial No.83/2011, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Imprisonment for life and fine of Rs.1000/-, in default of which, additional R.I. for 3 months.

3. The prosecution story, as is revealed from the FIR (Ex.P/1) lodged by

Kalash Ram (PW1) is that while the grandson of Savitri (the deceased) was playing in the heap of sand stored for the purposes of construction near a hostel, the attendant (Chowkidar) came there and started abusing the child Mukesh/ grandson of Savitri as to why he was plying in the sand which led to dispute between the appellant and Savitri and it is said that at this stage, the appellant abused and asked them to leave the site, pushed them and picked up an iron rod and assaulted on the head of Savitri, due to which, Savitri fell down. On this report, an offence under Section 294, 506, 307 of IPC was registered against the appellant. Later on, Savitri died. The police filed charge-sheet against the appellant on the allegation of commission of offence of murder. The appellant was charged of commission of offence under Section 302 of IPC. The appellant abjured guilt and was put to trial. In order to prove its case, the prosecution examined number of witnesses, particularly Kalash Ram (PW1), Shyamlal (PW2), Mukesh (PW3), Rambai (PW4), Somari Bai (PW5), Raghuwansh (PW6) to prove that the appellant assaulted Savitri with the help of an iron rod, due to which, Savitri fell down and died. This evidence was relied upon by the Trial Court and taking into consideration the medical evidence of homicidal death caused due to assault on the head, the appellant was convicted for commission of offence under Section 302 of IPC.

4. Ms. Meenu Banerjee, counsel appearing for the appellant argued that even if the entire case of the prosecution is taken as it is and the evidence of the prosecution witnesses are accepted on its face value, no case for commission of offence under Section 302 of IPC is made out because the incident happened all of a sudden, without any motive or intention and it was only in the heat of passion without any premeditation, assault was given in the background of a dispute which arose on account of deceased's grandson playing in the heap of dust collected near the site of construction where the appellant was working as Chowkidar. There is only single injury. The appellant had already undergone more than 7½ years of imprisonment. Therefore, in these circumstances, the conviction of the appellant is altered one to Section 304-II of IPC and sentence may be imposed for the period already undergone.

5. On the other hand, learned State counsel opposes and submits that though the evidence shows that the dispute arose all of a sudden, the very act of the appellant in giving assault on the head of the deceased with the help of an iron rod manifests his intention to kill.

6. We have heard learned counsel for the parties and perused the records.
7. Kalash Ram (PW1), Shyamlal (PW2), Mukesh (PW3), Rambai (PW4), Somari Bai (PW5) are said to be eyewitnesses.
8. Kalash Ram (PW1), the FIR informant states that he had worked as labour in the matter of construction of a hostel and while the work was going on, construction material was lying around, a child came and started playing in the heap of sand, which was objected to by the appellant. At that time, Savitri came in and while she was taking the child away, the appellant gave an assault on her head, due to which, she fell down. Though Shyamlal (PW2) claims to be an eyewitness giving the same genesis of dispute, he admits that he was not present at that spot and he has not seen the incident but whatever he has narrated is on the basis of what has been stated to him by others.
9. Mukesh (PW3) is a child witness and he appears to be directly concerned with the incident because he was found playing in the heap of sand which was objected to by the appellant and due to which, dispute arose between the appellant and deceased Savitri. The child witness states that while he was playing in the heap of sand, the appellant came in and stopped him and when his grandmother was taking him away, the appellant came in and gave an assault on the head and other parts. Rambai (PW4) also states that while construction work was going on, Mukesh, her grandson, had come and was playing on the heap of sand which was objected to by the appellant and then a dispute arose between the appellant and Savitri and when the appellant warned her to leave the place, failing which, he would assault and then, when Savitri was about to go back, assault was given. In her cross-examination, she has admitted that the construction work of fastening of rod on the roof was going on. Somari Bai (PW5) has also given similar evidence of dispute arising on account of appellant taking objection to the child playing in the heap of sand and a dispute arising between the appellant and Savitri on this trivial issue, followed by the assault. This witness has also admitted that work of construction was going on. Though, Raghuwansh (PW6) has also been cited as an eyewitness, in his cross-examination, he admits that he reached at the spot after Savitri had sustained injury.
10. The aforesaid evidence led by the prosecution, itself, proves that the

incident of quarrel took place, all of a sudden, actuated by the reason that the deceased's grandson was playing at the site of construction which was objected to by the appellant, who was working as security guard at the site of construction and there were abuses hurled and quarrel took place and then a blow was given by the appellant. It appears that the appellant picked up an iron rod, which was lying at the spot as it was construction site where certain construction was going on and gave one single blow on the head of Savitri. Savitiri sustained one single injury on her head is proved from the evidence of Dr. Sushil Ekka (PW15), who has deposed that one injury was found on the head which resulted in hemorrhage leading to death.

11. In the totality of the circumstances what we find that the appellant, who hardly knew the deceased and had nothing to do with her, had entered into a quarrel because the deceased's grandson was playing on the site of construction and appellant being security guard, was objecting to him which led to certain dispute and assault. We do not find that the appellant had otherwise acted in a cruel or unusual manner.

12. In view of the above, we are of the considered opinion that the evidence led by the prosecution warrant conviction of the appellant only for commission of offence of culpable homicidal not amounting to murder as it was without any premeditation and a sudden fight. The appellant has already undergone 7½ years of sentence. The appeal is partly allowed. The conviction of the appellant is altered to one under Section 304-II of IPC and the jail sentence imposed for the period already undergone by him. The appellant be set at liberty.

13. On production of certified copy of this order by learned counsel for the appellant, counsel for the appellant shall be entitled to payment of appropriate fee at the scheduled rate fixed by the Legal Aid Committee of the High Court.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge