

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.104 of 2017**

- Umesh Nagesiya, S/o Budau Ram Nagesiya, Aged About 19 Years, R/o Village Hukrakona, Police Station Bagicha, District Jashpur, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh, Through the Station House Officer, Police Station Bagicha, District Jashpur, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri A. N. Bhakta, Advocate
Shri Neeraj Mehta, PL

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Shri Prashant Kumar Mishra J.****17/12/2019**

1. The appeal is posted for hearing on application for suspension of sentence and grant of bail. However, with the consent of learned counsel for the parties, we have heard the appeal finally.
2. Appellant has been convicted under Section 302 of IPC for committing murder of the deceased Kendlu at about 4 pm on 24.10.2014 and has been sentenced to undergo RI for life with fine of Rs.500/-, additional RI for one year in default of payment of fine amount.

3. The prosecution case, as appearing from the material available on record, is that on the date of incident, the villagers were celebrating Deepawali festival and in course of the said celebration, almost entire household in the village had consumed liquor. The appellant was returning from the house of one of his relative and when he reached near the house of Ramsewak, his sister Nirmala was standing outside the house. Seeing Nirmala, PW-3 Abhimanyu @ Mannu said something to her jokingly, which was not liked by Nirmala and on this, dispute started between the appellant and Abhimanyu @ Mannu. The deceased intervened, on which the appellant assaulted the deceased by means of club causing injuries over his head. The deceased fell unconscious and subsequently succumbed to the injuries.
4. In the postmortem examination, the report whereof has been filed as Annexure-P-10, the deceased was found to have sustained haematoma in scalp over left parietal region and fracture on left and right parietal bone. Haematoma was also present in between skull bone and meninges over left parietal region. The cause of death was reported on account of head injury. Mode of death coma. After usual investigation including recording of memorandum statement vide Ex-P-5 and seizure of club from the appellant vide Ex-P-6, charge sheet was filed against the appellant. In course of trial, the prosecution examined 23 witnesses to bring home the charges. The appellant abjured the guilt, pleaded innocence and false implication. On the basis of evidence on record, the Trial Judge has convicted the appellant

for committing offence under Section 302 of IPC.

5. We have heard learned counsel for the parties and perused the record.
6. PW-1 Sovind Sai, PW-2 Shannu @ Shatruhan, PW-3 Abhimanyu @ Mannu, PW-4 Birbal Ram and PW-8 Sukhmait Bai are the eye witnesses to the crime. All of them have supported the prosecution by stating that at the time of incident, the appellant Umesh came out of the house of Ramsewak and caused one club blow over the head of the deceased. PW-3 Abhimanyu @ Mannu admits that there was a quarrel between him and the appellant Umesh near the house of Ramsewak. PW-5 Somaram is also an eye witness. He says that the appellant and Ramsewak were quarreling and at that time, the appellant had altercation with the deceased, whereupon he inflicted one club blow over the head of the deceased. He also admits that there was murmuring in the village that PW-3 Abhimanyu @ Mannu and the deceased were abusing the appellant Umesh. PW-7 Govind Ram states that PW-3 Abhimanyu @ Mannu and the appellant were quarreling and at that time, the deceased Kendlu intervened for which the appellant assaulted him. Although this witness would admit that he has not seen the incident, but PW-8 Sukhmait Bai, who is the wife of PW-3 Abhimanyu @ Mannu, also admits that her husband had made some comments on Nirmala, sister of Ramsewak, therefore a dispute/quarrel started between her husband and Ramsewak. On the basis of this evidence, the story that the dispute mainly occurred between the appellant and PW-3

Abhimanyu @ Mannu or Ramsewak, in which the deceased intervened, appears to be the real cause of the entire incident.

7. Whatever be the genesis of the incident, it is clear that the eye witnesses have remained firm in attributing the fatal assault being caused by the appellant and the nature of injury was the only cause for causing death of the deceased, as has been proved by PW-12 Dr. Sanjay Singh, who conducted the autopsy.
8. We are now required to consider as to what offence the appellant has committed in the given set of facts. Before proceeding to discuss the evidence, it would be important to bear in mind as to when an offence under Section 302 of IPC can be converted into an offence under Section 300 Part-I or Part-II of IPC. The law as to when offence under Section 302 of IPC can be converted into under Section 300 Part-I or Part-II of IPC is now well settled.
9. 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.”

10. In a 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."

11. As is clear from the statement of witnesses, the date of incident was the next day after Deepawali. PW-15 Sushila, wife of deceased Kendlu, admits that the villagers were drunk because of celebration, although she says that the deceased was not drunk. The incident occurred at about 4 pm and the deceased was unconscious immediately after sustaining the assault, but he was not taken for treatment to Ambikapur immediately for want of conveyance. PW-15 Sushila also admits that the deceased was taken to Ambikapur at 11 am, the next morning. There is no apparent motive for causing murder of deceased Kendlu. The evidence suggests that he intervened in the fight between the appellant and PW-3 Abhimanyu @ Mannu or Ramsewak, thus there was no direct fight between the appellant and the deceased. The appellant has caused only one club blow over the head of the deceased. PW-12 Dr. Sanjay Singh admits that except the head injury, he did not find any other injury over the person of the deceased. He admits that the head injury sustained by the deceased was caused by only one blow. The incident appears to have happened in the heat of passion without premeditation. The appellant assaulted the deceased because he intervened in the fight between the appellant and PW-3 Abhimanyu @ Mannu. Thus, there was no intention to cause death of the deceased Kendlu, though the appellant had the

knowledge that assaulting the deceased over his head may cause his death. The offence would clearly fall within the 4th exception to Section 300 of IPC. The appellant is thus guilty of committing offence under Section 304 Part-II of IPC. Accordingly, we allow the appeal in part. Appellant's conviction under Section 302 of IPC is set aside and instead he is convicted for committing offence under Section 304 Part -II of IPC. The appellant is in jail since 24.11.2014 i.e. for more than 5 years. Considering the entire facts and circumstances of the case, we consider the jail sentence suffered by the appellant to be sufficient for his conviction under Section 304 Part-II of IPC. Accordingly, we convict the appellant for the period already undergone by him. The appellant is in jail since 24.11.2014. He 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