

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 579 of 2013**

- Ratan Sahu, son of Gend Ram Sahu, aged 38 years, resident of village Temri, Thana Nandghat, District Bemetara (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station, Nandghat, District Bemetara (C.G.)

---- Respondent

For Appellant : Shri C.K. Kesharwani, Advocate.
For Respondent/State: Shri Santosh Bharat, P.L.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt Justice Rajani Dubey

Judgment On Board**02.04.2019****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 04.05.2013 passed by Additional Sessions Judge, Bemetara (C.G.), in Sessions Trial No.198/2006 whereby and whereunder, the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced as described below:-

Conviction	Sentence
Under Section 302 IPC	Life imprisonment with fine of Rs.5,000/-, in default of payment of fine amount, additional R.I. for six months.

02. The prosecution story as unfolded from the records of the case, is that one Malik Ram died in the hospital and a merg intimation was received from hospital in Ex.P/12 by Police Station City Kotwali, Bilaspur. A Merg inquiry was made and Kartik (PW/6), brother of the deceased, lodged FIR in Ex.P/10 in the police station, in which, it was recorded that in a quarrel between the deceased and the appellant, the appellant poured petrol on the deceased and set him on fire, resulting in his death. Inquest was prepared and the dead body was sent for postmortem examination. Dr. Umesh Mandle (PW/16) conducted postmortem on the body of the deceased and found that the deceased died due to burn injuries. The investigation eventually culminated in filing of a charge sheet against the appellant on the allegation of commission of offence under Section 302 IPC. Upon framing of charge, alleging commission of murder of Malik Ram, the appellant abjured guilt and demanded trial. In order to prove its case, the prosecution mainly relied upon eye-witness account of Avinash Shukla (PW/10), the evidence of extra-judicial confession and oral dying declaration of Kartik (PW/6) as also the evidence of Smt. Brij Bai (PW/18) and Moolchand Yadu (PW/19) that the deceased was set on fire and murdered by the appellant.

03. Assailing correctness and validity of the impugned

judgment of conviction and order of sentence, the learned counsel for the appellant argued that the prosecution story is extremely doubtful as the evidence of Shri T.R. Sahu (PW/10) is liable to be disbelieved. He would argue that from the evidence of other prosecution witnesses, it has come that prior to alleged incident, deceased had consumed liquor along with Santosh Kumar Dubey (PW/9) and Avish Shukla (PW/10) and it has also come that there was quarrel amongst them. Out of these colleagues of the deceased, Santosh Kumar Dubey (PW/9) has not supported the case of the prosecution and turned hostile. As the allegation of quarrel is there between the deceased and Avish Shukla (PW/10), the evidence of PW/10 as eye-witness is not reliable. He would next argue that the evidence of Kartik (PW/6), brother of the deceased, that the appellant informed him and gave extra-judicial confession that he had set his brother Malik Ram on fire is highly improbable. It is also argued that the evidence of Kartik (PW/6) that his brother Malik Ram had given dying declaration before him is liable to be disbelieved because Malik Ram had sustained extensive burn injuries and it was not possible for him to speak. It is also argued that present is a case where the prosecution has not come out with any strong motive as to why the appellant would go to the extent of setting the deceased on fire. Therefore, the entire case of the prosecution is highly doubtful and, therefore, the appellant deserves to be acquitted by giving benefit of doubt.

04. On the other hand, learned State counsel argued that the case of the prosecution is proved from the evidence of Avish Shukla (PW/10), who is the eye-witness of the incident, and has clearly stated that a quarrel had taken place between the deceased and the appellant where after, the appellant went to his house, came with petrol and poured it on the deceased and set him on fire. He would argue that even though, there is no reason to doubt the testimony of Avish Shukla (PW/10), his evidence finds sufficient corroboration from the evidence of Kartik (PW/6), Smt. Brij Bai (PW/18) and Moolchand Yadu (PW/19). He would further argue that the suggestion given to some of the prosecution witnesses that there was some quarrel between the deceased and Avish Shukla (PW/10), even if admitted, carries a very low degree of evidentiary value because, it is only hearsay in nature and they have not stated as to who informed them. Therefore, that by itself, could not lead to any doubt on the prosecution story.

05. We have heard learned counsel for the parties and perused the record.

06. Homicidal death of Malik Ram is substantially not in dispute in view of the evidence of Dr. Umesh Mandle (PW/16) who conducted postmortem and proved his postmortem report in Ex.P/19. The Doctor has deposed before the trial Court that he had conducted postmortem and 80% of the

body of the deceased was found to be burnt. He has given an opinion that the cause of death was syncope and shock as a result of burn injuries and its complication. Nothing could be elicited in his cross-examination to doubt the nature and extent of injuries and cause of death.

07. The prosecution has relied upon the evidence of Avish Shukla (PW/10) as the eye-witness of the incident. PW/10 has stated that there was a quarrel between the appellant and the deceased because in the matter of dispute between Avish Shukla (PW/10) and the appellant, deceased Malik Ram had intervened. Due to this intervention, the appellant became angry and then he went to his house. He has further deposed that, thereafter, when he along with Santosh Dubey (PW/9) and Malik Ram (deceased) were sitting near a culvert on the main road, Ratan (the appellant) came hurling abuses and this witness started leaving the place of quarrel and from a distance of about 10-15 steps he saw that Ratan took out petrol in a container and poured it on Malik Ram. When Malik Ram started running away, he threw the burning stick and set Malik Ram on fire. This witness has been subjected to detailed cross-examination. In the cross-examination, it has been elicited that on the date of incident, Santosh Dubey, deceased Malik Ram and this witness (PW/10) all were sitting together and were consuming liquor. On this statement, this witness, however, has not remained firm because he has, later

on, disputed consumption of liquor. A suggestion that deceased Malik Ram was set on fire by this witness has been denied. It has also been elicited from his cross-examination that to his knowledge, in the past, he had not seen any dispute between the appellant and the deceased.

08. Learned counsel for the appellant sought to create doubt on the credibility of this witness by stating that T.R. Sahu (PW/8) - Head Constable, and even the wife of the deceased Smt. Paremin Bai (PW/17) have admitted suggestion that a quarrel had also taken place between the deceased and Avish Shukla (PW/10), the eye-witness. As far as this aspect of the matter is concerned, we find that such suggestions have been given to those witnesses, however, those witnesses do not say as to on what basis, they said that they had learnt about such quarrel between the deceased and the appellant. They have not disclosed the name of any person.

Even then, since a doubt is being raised on the credibility of the evidence of Avish Shukla (PW/10), on this count, we tried to look for corroboration to the statement of PW/10, which we find in the evidence of Kartik (PW/6), the brother of the deceased. He is the FIR informant, and in the FIR itself, it has been clearly stated by him that the appellant set the deceased on fire. This witness has stated in his evidence that in the night, the appellant himself came to his house and confessed before him that he had poured petrol and set his

brother Malik Ram on fire where after, this witness went to the spot and when Malik Ram was being taken to hospital, Malik Ram stated that Ratan, the appellant, had set him on fire. This witness has been subjected to cross-examination, quite a detailed one, but we could not find any serious contradiction and omission particularly with regard to disclosure of the involvement of the appellant by himself, as also, by deceased Malik Ram. In the diary statement also, this witness has clearly stated that Ratan Sahu came to him at night and confessed that he had set his brother on fire and further that his brother Malik Ram stated that he was set on fire by the appellant. Therefore, the corroboration, if any necessary, to the statement of the eye-witness account of Avish Shukla (PW/10), is found in the evidence of Kartik (PW/6).

09. Not only this, Smt. Brij Bai (PW/18), the wife of Kartik (PW/6), has also stated that in the night when the appellant came and met her husband, he confessed that he had set his brother on fire. This witness, therefore, corroborates the statement of Kartik (PW/6). Moolchand Yadu (PW/19) is another witness, who says that when Malik Ram was being taken to hospital, he was abusing the appellant.

10. If we take into consideration all these evidence, it is proved beyond reasonable doubt that it is the appellant and the appellant alone who poured petrol and set the deceased on fire. Learned counsel for the appellant submitted that even

according to the prosecution witnesses, it cannot be said that there was any strong motive because at the spot a dispute suddenly cropped up and, therefore, in any case, the conviction of the appellant under Section 302 IPC would not be made out and, at the most, it could only be a case of commission of offence of culpable homicide not amounting to murder, punishable under Section 304 IPC.

11. He would also submit that even according to the prosecution witnesses, the appellant had accompanied the deceased and his brother Kartik (PW/6) and other persons to hospital, which shows that whatever he had done, was in a heat of anger without any premeditation and intention to cause death. Therefore, for this reason also the conviction under Section 302 IPC would not be maintainable.

12. We have given our anxious consideration to the submission of learned counsel for the appellant, but we find ourselves unable to accept this submission. This is for two reasons.

Firstly, it is not a case that when at the spot, the appellant and the deceased started quarreling and all of a sudden, without premeditation and in a heat of moment, some injuries was caused, which resulted in death. The evidence of Avish Shukla (PW/10) is that after a quarrel had taken place between the appellant and the deceased, the appellant went to his house and after sometime, he returned with a container

of petrol in his hand and then he threw it upon the deceased and set him on fire. There is nothing to show that it was a case of any grave provocation that the appellant lost his control. It was a simple quarrel. Therefore, what followed thereafter, was only with preparation and intention. This act of the appellant leaves no manner of doubt that he had come with an intention of setting the deceased on fire. This act on the part of the appellant of pouring petrol and setting the deceased on fire manifests his intention. True, it is, that, later on, he might have realised that he committed a mistake. But that would not change the circumstances of the case and the intention which he carried at the time of actual commission of criminal overt act.

13. Learned counsel for the appellant lastly submitted that looking to the entire circumstances, the quantum of sentence may be reduced to the period already undergone because he has already undergone about 8 years of imprisonment.

Once we have held that it is not a case of conviction under Section 304 but under Section 302 IPC, we are left with no option but to impose minimum sentence of life imprisonment, which shall carry meaning defined under Section 57 of IPC. Certainly, the appellant will be entitled to all kind of remission, which are admissible to him under the law.

14. In view of our above consideration, we do not find any

ground to interfere with the judgment of conviction and order of sentence. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge

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