

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 750 of 2015**

- Bilas Singh @ Belas Ram S/o Karam Singh Kanwar, Aged About 26 Years, Occupation Agriculture, R/o Village Bargai, Police Station Darima, Civil And Rev. Distt. Surguja Chhattisgarh. , Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Darima, District Surguja Chhattisgarh. , Chhattisgarh

---- Respondent

For Appellant	Mr. Shobhit Koshta and Ms. Iturani Mukherjee, Advocates
For Respondent/State	Mr. Vikas Shrivastava, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Order On Board By****Prashant Kumar Mishra, J****2/7/2019**

1. Heard.
2. The appellant stands convicted under Section 302 of IPC. He was sent for trial on the allegation that in the morning of 10.9.2014, he was found committing theft of paddy from the

house of the deceased, which was seen by his wife PW-1 Koshila Kanwar and PW-5 Rampati. When the deceased returned from the agricultural field in the afternoon, PW-1 Koshila Kanwar informed the deceased about the act of commission of theft by the appellant. At this point of time, the appellant was outside the house of the deceased. The deceased went out of his house and started questioning the appellant as to why he was committing theft of paddy. PW-1 Koshila Kanwar also started questioning the appellant, on which, firstly, the appellant pushed PW-1 Koshila Kanwar and when she moved herself behind, the appellant pushed the deceased and threw him over the ground and pressed his neck and chest by legs. The deceased died instantly. Since no weapon was used in committing the offence, there is no memorandum of statement or recovery from the appellant.

3. The postmortem was conducted by PW-4 Janeshwar Singh, who submitted his report- Exp/5 opining that the mode of death is shock caused by extensive internal haemorrhage due to blunt injury over chest leading to cardio-respiratory arrest and the death is homicidal in nature. The Autopsy Surgeon found one abrasion over right knee and left knee each and contusion over clavicular notch of chest. In the internal examination, the right and left lungs were found to have multiple contusions over upper lobe and lower lobe.
4. With the above medical evidence, eye witnesses PW-1 Koshila Kanwar and PW-5 Rampati, wife and daughter respectively of

the deceased have deposed that the appellant threw the deceased over the ground and pressed his neck and chest from his legs. The trial Court has believed the statements of these two eye-witnesses, which are supported by the medical evidence, to convict the appellant for commission of offence under Section 302 of IPC.

5. Learned counsel for the appellant would argue that the eye-witnesses are interested witnesses, therefore, their statements cannot be believed. In the alternative, he would argue that even if the entire prosecution case is believed, an offence under Section 302 of IPC is not made out and at best, the appellant can be held guilty for committing culpable homicide not amounting to murder.
6. Learned counsel for the State would oppose the submissions. He would support the impugned judgment rendered by the trial Court.
7. Since the entire case of the prosecution is based on the eye-witness testimony of PW-1 Koshila Kanwar and PW-5 Rampati and the postmortem report proved by PW-4 Dr. Janeshwar Singh, we have carefully scrutinised the evidence.
8. The FIR having been registered immediately after the incident and the eye-witnesses having been examined soon thereafter as there is no evidence that they were examined after substantial length of time, the eye-witness account rendered by PW-1 Koshila Kanwar and PW-5 Rampati does not appear to be

concocted and unworthy of credit. They are the persons who are supposed to be in the house in the natural course of events being closely related to the deceased as his wife and daughter. They are not the chance witnesses nor having any enmity against the appellant so that they would falsely implicate him. There is no material contradictions or omissions in their depositions raising doubt over their presence on the spot.

9. The conviction under Section 302 of IPC recorded by the trial Court based on the statements of the above two eye witnesses and the Medical Expert having opined the death to be homicidal in nature, does not call for any interference.
10. We are now inclined to consider the alternative submission raised by learned counsel for the appellant to the effect that the offence would be one amounting to culpable homicide not amounting to murder.
11. The law as to when offence under Section 302 of IPC can be converted into one under Section 304 Part-I or Part-II of IPC is now well settled.
12. 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.”

13. In an extremely 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."

14. In the case at hand, the evidence available on record would clearly indicate that there is no previous enmity between the appellant and the deceased. The incident happened on a trivial issue of committing theft of paddy. At the time of the incident, the appellant had not entered the house of the deceased but it was the deceased who came out of his house to raise an issue of theft of paddy by the appellant. The appellant was not armed with any weapon neither he picked up any weapon or even a stick to assault the deceased. The appellant only pressed the

neck and chest of the deceased by his legs. Even the two eye-witnesses would not state that the appellant was doing the act with an intention to commit murder nor there is evidence that the appellant was uttering or threatening the deceased that 'he will be killed today'. All this evidence would demonstrate that not only the incident happened at the spur of moment and without premeditation but the appellant had not committed murder. The appellant may have knowledge that if the neck is pressed for a longer period or the assault is made over chest beneath which lies vital parts of the internal organs of the body, the death may occur. It is also to be seen that the appellant has not acted in a cruel or gruesome manner as there is no statement by the eye-witnesses that the assault was committed for too long or it was repeated several times. Therefore, in the absence of any severe external injury nor even bleeding from any part of the body, the offence committed by the appellant would be covered under Section 304 Part-II of IPC.

15. Accordingly, we allow the appeal in part and set-aside the conviction under Section 302 of IPC and instead convict the appellant for committing offence under Section 304 Part-II of IPC. The appellant is presently in jail. He was arrested on 11.9.2014. Thus, he has remained in jail for a period of about 4 years 10 months i.e. nearly 5 years. Therefore, we sentence the appellant for the period already undergone.

16. The appellant be released forthwith if not required in any other case, 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 as required under Section 437A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(Gautam Chourdiya)

Judge

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