

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1107 of 2015**

- Mahetar Yadav S/o Daulat Ram Yadav Aged About 49 Years
R/o Village Khokhsipali, Police Station Sarangarh, Distt.
Raigarh Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Kosir, Distt.
Raigarh Chhattisgarh.

---- Respondent

For Appellant : Shri Shashi Kumar Kushwaha, Advocate
For Respondent/State : Shri Subash Yadav, Dy.G.A.

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

Judgment On Board By Manindra Mohan Shrivastava, J.**08/03/2019**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 28.02.2012 passed by the Additional Sessions Judge Sarangarh, district Raigarh in S.T. No.35/2010 by which the appellant is held guilty for the commission of offence and sentenced as described below:

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life and to pay fine of Rs. 2,000/- with default stipulation.

2. Prosecution story, giving rise to conviction and sentence in this appeal, is that the appellant and deceased were brothers. It is alleged that on 19.07.2010, some altercation took place between him and his wife PW-1, on one side and the deceased on other. It is said that during that quarrel, appellant picked up a wooden plank from nearby a standing bullock cart and gave a blow on the back of head of his brother due to which, his brother Ghasia fell down. Ghasia was taken to hospital and after four days, he succumbed to the injuries and died. Morgue intimation in Ex.P-21 was given to the police, followed by FIR in Ex.P-22 at the instance of PW-1, wife of the deceased. Deceased, when he was initially taken to the hospital, was alive, he was examined by Dr. B.P.Sai, PW-16 who prepared MLC report regarding injury in which one head injury was found. After death, postmortem was conducted by Dr.Sunil Kumar Raje, PW-18 who prepared postmortem report Ex.P-20. As the deceased died due to head injury, in the opinion of the doctor, it was homicidal in nature. Appellant was tried for commission of the offence under Section 302 IPC. Learned trial court, relying mainly on the eyewitness account of PW-1, wife of the deceased and two neighbours PW-3 and 8 and the nature of injury on the head, held the appellant guilty of commission of the offence of murder and imposed sentence of life imprisonment, giving rise to instant appeal.

3. Counsel for the appellant argued that the eyewitness account of PW-1, wife of the deceased and the manner in which the appellant and deceased scuffled and quarreled at the spot, possibility of the

deceased having sustained injury because of collusion while falling on the ground could not be ruled out and the evidence of PW-1 is exaggerated. He would submit that according to PW-1, PW-3 was not seen at the spot. She has not stated regarding presence of PW-8 also therefore, these two witnesses are concocted witnesses. It is next argued that looking to the genesis of the dispute and the consequence of event in which the alleged assault is said to have been given by the appellant to the deceased, it cannot be said that there was any intention to cause death. It was only in a sudden fight, that without premeditation, a wooden plank which was lying outside on the bullock cart, was picked up and used for assault. The appellant did not initially come out with any wooden plank with intention to assault and murder the deceased. There was one single injury on the head, therefore, in these circumstances, even if the prosecution evidence is accepted as it is, the guilt of the appellant would not travel beyond the scope of Section 304 Part II IPC. Appellant has undergone 8 ½ years therefore, in these circumstances, the sentence may be reduced to the period already undergone by him.

4. On the other hand, State counsel would argue that, though, initially quarrel had taken place between the appellant and the deceased, appellant went outside to pull out a wooden plank from a standing bullock cart and then gave a heavy blow on the head of the deceased which only manifests his intention to cause death. The deceased was taken to hospital and despite treatment, could not be saved and ultimately died which proves that the injury was sufficient in ordinary course of nature to cause death. Therefore, in these

circumstances, conviction of the appellant under Section 302 IPC is in accordance with law.

5. We have heard counsel for the parties and perused the record.

6. The assault given by the appellant to the deceased is proved from the ocular testimony of not only his own wife PW-1 but has also corroborated from the eyewitness account given by two independent witnesses PW-3 and PW-8, who are neighbours and nearby residents.

7. Durga Bai, PW-1, wife of the deceased, has deposed that on the date of incident, a quarrel had taken place between her husband and the deceased. The genesis of dispute, as deposed by her, is that appellant and the deceased were residing in two different blocks with a common opening door and there used to be quarrel with regard to exclusive use of the door.

Her evidence is that on the date of incident, the appellant had come and he was hurling abuses then this witness offered that she may be beaten up which was followed by a disgusted call by the deceased also that if the appellant wants to settle score, he may beat him also, so that he may get son and wife both. Thereafter, as deposed by PW-1, the appellant pulled up a wooden plank from a nearby standing bullock cart and gave blow on the back of the head of the deceased due to which he fell down. With regard to this genesis of dispute, overt act, quarrel followed by assault, this witness has remained intact and firm in her evidence.

8. The other two witnesses, PW-3 and PW-8 are independent

witnesses and both of them have stated regarding the incident that quarrel was going on between the two brothers and at that stage, when deceased challenged the appellant that he may be given assault, the appellant suddenly picked a wooden plank from the bullock cart which was standing nearby the place of incident and gave a blow due to which deceased fell down.

We find from the medical evidence that deceased sustained one single head injury which proved to be fatal, because his brain got damaged.

9. The question, however, which would arise for consideration is whether it would come under Section 302 or 304 Part II IPC. For this purpose, when we look at the evidence of PW-1, 3 and 8, we find that the appellant was hurling abuses and then PW-1, wife of the deceased and the deceased both came out and they said that the appellant may assault them to satisfy. Till that time, appellant was not keeping any weapon in his hand. It is not even the case of the prosecution that right from the beginning, appellant was carrying a weapon in his hand. It was only at a later stage of quarrel and scuffle between the two brothers that assault was given. We also find that there was only single blow given by the appellant on the deceased which, unfortunately led to his death. Deceased died after four days in the hospital.

10. Taking into consideration, the cumulative effect of the proved circumstances from the prosecution evidences, we are firmly of the opinion that it is a case covered by Exception 4 that assault was given without premeditation, due to sudden quarrel and fight between

two brothers and it cannot be said that there was intention on the part of the appellant to murder his own brother but he lost self control. Appellant would be liable of commission for offence under Section 304 Part II IPC and not Section 302 IPC. Accordingly, appeal is partly allowed to the extent that the conviction of the appellant is altered to that under Section 304 Part II IPC. Considering the fact that the appellant has undergone 8 ½ years of sentence by now, what appears to be commensurate with the gravity of the offence committed by the appellant therefore, sentence is imposed for the period already undergone by him.

Appeal is accordingly allowed in part. Appellant be set at liberty forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge