

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 1179 of 2014

1. Navdharam Koshley, S/o Late Chunnuram Koshley, aged about 27 years, R/o village Suwataal, PS Sarangarh, Dist. Raigarh, Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through District Magistrate, Raigarh, Dist. Raigarh Chhattisgarh.

---- Respondent

For AppellantShri Maneesh Sharma & Shri
Trivikram Nayak, Advocate

For Respondent/State

Shri Ashish Gupta, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.Judgment on BoardByPrashant Kumar Mishra, J.14-10-2019

1. The appeal is posted for hearing on I.A.No.1 for suspension of sentence and grant of bail to the appellant, however, with the consent of learned counsel for the parties, we have heard the appeal itself on merits.

2. Challenge in this appeal is to the conviction under Section 302 of the Indian Penal Code (for short 'the IPC') and sentence of life imprisonment awarded to the appellant for committing murder of his father namely; Chunnuram Koshley (since deceased) at about 7.00 pm on 2-9-2013. The First Information Report (FIR) (Ex.P/5) was lodged by PW-5 Peela Babu (brother of the deceased) at about 21.30 hours on the date of incident itself stating that they had purchased fertilizer about 5 days back for which the appellant was raising dispute demanding his share of the fertilizer. When the appellant and PW-5 Peela Babu were in altercation, the deceased moved out of the house and at this point of time the appellant brought out Axe from his house and chased the deceased towards the *gali* and assaulted him from blunt side of the Axe and its wooden handle, due to which the deceased fell unconscious and died subsequently. After conducting postmortem by PW-1 Dr. B.P. Say, the report of which is (Ex.P/1) and recording statement of witnesses the charge sheet was filed. In the postmortem report Dr. B.P. Sai (PW-1) found the following injuries on the person of the deceased :

- Bruise 4 x 3 cm on the right forehead.
- Bruise 3 x 2 cm on the right shoulder; reddish in colour.

- Bruise 2.5 x 1.5 cm on the right elbow; reddish in colour.
 - Bruise 4 x 3 cm on the left forearm; reddish in colour.
 - Bruise 5.5 x 3 cm with fracture of 4th & 5th rib.
 - Bruise 12 x 5 cm with abrasion 10 x 0.25 cm on the backside of left lateral to lumbar spine.
 - Rigor mortis present on both upper and lower limbs.
3. In course of trial, the prosecution examined 15 witnesses to bring home the charges which includes the eyewitnesses PW-4 Amrit Bai, PW-5 Peela Babu, PW-7 Deepak Jangde, PW-8 Mulchand Ratre & PW-11 Khageshwar Jangde. The trial Judge has relied on the statement of PW-4 Amrit Bai (wife of the deceased and mother of the appellant) to convict the appellant as aforestated.
4. Shri Maneesh Sharma, learned counsel appearing for the appellant, would submit that the other eye witnesses having not supported the case of prosecution, the statement of PW-4 Amrit Bai becomes doubtful, therefore, the appellant is entitled to be acquitted. In the alternative, learned counsel would submit that at the best the offence would fall under Section 304 Part II of the IPC.

5. Shri Ashish Gupta, learned Panel Lawyer, appearing for the State, *per contra*, would support the impugned conviction and sentence imposed on the appellant.
6. Since the prosecution case mainly rests on the evidence of eyewitnesses, we shall restrict our consideration to the statements of above named eyewitnesses. PW-4 Amrit Bai, is the widow of the deceased and, as such, she is the mother of the appellant. She has deposed that the agricultural land belonging to the family has been partitioned, yet the appellant was raising dispute in respect of distribution of fertilizer. Since, Peela Babu (PW-5) had purchased fertilizer prior to the incident the appellant was raising dispute, therefore, he dragged the deceased by catching hold of him through a towel and assaulted him through the blunt side of the Axe and its wooden handle. Presence of this witness (PW-4 Amrit Bai) on the place of occurrence is very natural and there is nothing in her cross-examination which would discredit her statement.
7. PW-5 Peela Babu has supported the prosecution in his examination-in-chief, but has diluted his statement in his cross-examination. In any case he admits that there was a dispute and altercation between the appellant and the deceased.

8. The other eyewitnesses namely; PW-7 Deepak Jangde, PW-8 Mulchand Ratre & PW-11 Khageshwar Jangde have turned hostile and they have not supported the case of the prosecution.
9. Considering the prompt FIR wherein presence of PW-4 Amrit Bai at the place of occurrence has also been mentioned, we have no hesitation in holding that PW-4 Amrit Bai is a reliable and trustworthy witness and conviction can rests solely on her evidence for the reason that it is quality of evidence, which matters and not the quantity. Accordingly, we hold that it is the appellant whose assault on the person of the deceased has caused death.
10. We are now required to consider as to the offence which would be attracted on the basis of obtaining facts and circumstances including the evidence.
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 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*** reported in ***(2019) 6 SCC 122***, the following has been held in para 18 :

“18. 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 *Surinder Kumar v. State (UT of*

Chandigarh), 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, the 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 the 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 was 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.”

Also see : *Hardev Bhanji Joshi v State of Gujarat {1992 Supp (2) SCC 561}*.

14. In the case at hand, the appellant and the deceased are related as son and father. There appears dispute about sharing of fertilizer, which was obtained by the deceased or by PW-5 Peela Babu from the local Cooperative Society. The appellant was demanding his share of fertilizer and due to this a dispute arose between them and thereafter, the appellant assaulted the deceased through the blunt side of the Axe and its wooden handle. Had the appellant intended to commit the murder he would have used the sharp edge of the Axe. Instead of doing that he caused injuries through the blunt side of the Axe. The injuries sustained by the deceased were bruises on different parts of the body albeit resulting in causing fracture of 4th & 5th rib, which, in turn, ruptured the heart. From the statement of eyewitness PW-4 Amrit Bai it does not appear that the appellant intended to commit murder of the deceased though he had the knowledge that causing injuries through the blunt side of the Axe may endanger the life of the deceased.
15. Considering the evidence of PW-4 Amrit Bai and other relevant aspects of the matter including the nature of injuries, we are inclined to hold that the offence committed by the appellant would fall under Section 304 Part II of the IPC.

16. Accordingly, we allow the appeal in part. Conviction and sentence imposed on the appellant under Section 302 of the IPC are hereby set aside and instead he is convicted under Section 304 Part II of the IPC. The appellant is in jail since 4-8-2013, thus he has already remained in jail for more than six years. The jail sentence already suffered by the appellant appears to be adequate sentence for offence under Section 304 Part II of the IPC, therefore, the appellant is sentenced to period already undergone. He be set at liberty forthwith unless required to be detained in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with a surety in the like sum to the satisfaction of the trial Court. The bail bonds shall remain in operation for a period of 6 months in view of the provisions contained under Section 437-A of the CrPC. He shall appear before the higher court as and when directed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri