

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 405 of 2014**

1. Sarju Ram S/o Rajaram Yadav, aged about -27 year, R/o village Bhadwahi, P.S. Udaypur, District - Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : D.M. Surguja, District Surguja (C.G.)

---- Respondent

For Appellant	:	Shri Ashok Kumar Shukla, Advocate
For Respondent.	:	Shri Santosh Bharat, P.L.

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

Judgment on Board**Per Rajani Dubey, J****10/04/2019**

1. This appeal arises out of the judgment of conviction and order of sentence dated 24.03.2014 passed by the 3rd Additional Sessions Judge, Ambikapur (C.G.), in S.T. No.260/13 whereby and whereunder, the appellant have been held guilty of commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life and fine of Rs.500/-, in default of payment of fine amount to undergo additional R.I. for three months.

2. The prosecution story, in brief, is that, on 16.04.2013 at about 4.00 AM, deceased Kunti Bai, after cutting branches of "Munga" (drumstick) tree, had kept it in the courtyard of her house, which was stolen by someone and she was abusing as to who had stolen it.

Further case of the prosecution is that the act of Kunti Bai made appellant Sarju angry as he (the appellant) was feeling that she was abusing him and both started abusing each other. Harivilas counseled the appellant and Kunti Bai and then he went towards the field. After some time, when he came back, he saw his niece Radha, Rukmani and Pramila crying and body of his daughter-in-law Kunti Bai lying in the courtyard. On being asked, his niece informed that the appellant assaulted Kunti Bai by spade resulting in her death. At the instance of Hari Bilas (PW/5), merger intimation was recorded in Ex.P/6 followed by registration of FIR in Ex.P/5. Inquest on the body of deceased was conducted vide Ex.P/3 and dead body was sent for postmortem examination to Community Health Center, Udaypur, vide Ex.P/10, where Dr. Parth Sarthi Prasad (PW/9) conducted postmortem on the body of deceased who gave his report in Ex.D/2, noticing depressed fracture of skull on left parieto-temporal region in the size of 8 x 3 cm. No other external injury was noticed on the body. The Doctor has opined the cause of death to be cardio respiratory failure due to hemorrhage and damage to vital area of brain.

3. From the spot, blood stained spade was seized, vide Ex.P/4 and the same was subjected to chemical examination, however, there was no FSL report on record to confirm presence of blood thereon. After filing of the charge sheet, the trial Court framed the charges against the accused/appellant under Section 302 IPC.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 09 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in

which, he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

5. The trial Court after considering the material available on record, has convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment. Hence, this appeal.

6. Learned counsel for the appellant submits that important prosecution witness Radha Yadav (PW/2), who has witnessed the incident, has not correctly brought forward the case of the prosecution. He has argued that the prosecution has failed to prove any motive behind the crime and in absence of motive, appellant cannot be held guilty of commission of offence under Section 302 IPC. He would next argue that even according to prosecution case, in a heat of passion and in sudden quarrel accused/appellant gave single blow to the deceased by spade resulting unfortunate death of the deceased. He would also argue that even if the entire prosecution case is taken as it is, at best, the accused/appellant is liable to be convicted under Section 304 Part-II IPC. Last submission of learned counsel for the appellant is that the accused/appellant is in jail for about four years and considering his detention period, his sentence may be reduced to the period already undergone by him.

7. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that eye-witness to the incident Radha Yadav (PW/2) has specifically stated against the appellant as to the manner in which he assaulted the deceased resulting in her death and her evidence inspires full confidence. The trial Court, while convicting and sentencing the appellant, has not committed any illegality

warranting interference by this Court and his conviction is strictly in accordance with law.

8. We have heard learned counsel for the parties and perused the material available on record.

9. Ramavatar (PW/1) is the brother of the deceased. He has stated that his niece Radha (daughter of the deceased), had informed him over telephone that his sister died. He has further stated that when he reached the house of the deceased, he was informed by Radha that the appellant has assaulted the deceased by spade on account of dispute over alleged theft of the branches of drumstick tree. He has further stated that he himself has seen the injury caused by spade and blood was oozing from head, nose and ear. He has also stated that when he reached to village Bhadwahi, the appellant had run away from the spot. In cross-examination, a suggestion that Pramila and Radha had informed him that Shiv Vilas (brother-in-law) (Bahnoi) has assaulted the deceased, has been denied. Further, a suggestion that Shiv Vilas is his brother-in-law and to save him, the applicant is being falsely implicated, has also been denied.

10. Radha Yadav (PW/2) is the child witness aged 12 years and daughter of deceased. She is the eye-witness to the incident. The trial Court, after satisfying itself whether the child witness is able to answer the question put to her rationally, has examined her. She has deposed that she knew the appellant who is her uncle in relation. The day on which her mother died, at that time, her sister Rukmini, Urmila and her younger brother Mahendra were present in the house. She has also deposed that on the date of incident at about 7.00 AM, when her mother

was extracting grass and this witness was giving it to cattle, at the same time, appellant came and assaulted her mother by spade. She has further deposed that her mother had sustained injury on the back of head, she fell down on the ground and died. Thereafter, the appellant ran away from the spot and after one hour, he came back to see the deceased. In para 5 of her examination-in-chief, she has stated that her father had kept branches of drumstick tree in the courtyard, which was stolen by someone, due to which her mother was abusing but the appellant thought that her mother was abusing him and he also started abusing her mother. At the same time, her uncle Ramvilas came there and counseled them and pacified the dispute. This witness also went on to state that, thereafter, her mother was giving food to cattle and this witness was also extending her help to her mother. At that time, the appellant came there and assaulted her mother. She has also stated that she informed the incident to her uncle Ramavatar over telephone, who, after about 2-3 hours, reached her house. This witness has been cross-examined in detail. A suggestion that she informed her uncle that while she was playing in the courtyard, the appellant came and assaulted his mother Kunti, the deceased, and ran away from the spot, has been accepted. In para 13 of her cross-examination, she has specifically deposed that she had disclosed to the police that on the date of incident at about 8.00 AM, when her mother was doing 'Gudakhu' in the courtyard, the appellant came towards the deceased jumping over the wall and assaulted her by spade 2-3 times. This version of this witness finds place in her diary statement (Ex.D/1). A suggestion that she informed Harivilas that his father has killed her mother and fled away

from the spot, has been denied. Further, a suggestion that she is deposing in the Court as tutored by her father, has also been denied.

11. Shiv Vilas (PW/3) is the husband of the deceased and brother of the appellant. He has stated that he had gone to 'Haldibazar' for bringing a calf and, on the date of incident at about 11.00 PM, while he was returning, near village Tara, he came to know about the incident from his cousin Gitaram and uncle Sitaram. He has further stated that when he reached the house, the body of deceased was kept in the courtyard after postmortem. His daughter Radha and Rukmini had informed her that the appellant has assaulted the deceased by spade on account of dispute over alleged theft of drumsticks. He was also informed that the incident took place at about 7-8 AM. In the cross-examination, a suggestion that he had not gone to 'Haldibazar' for bringing calf, has been denied.

12. Manrup (PW/4) who is the witness to inquest and seizure of spade made under Ex.P/3 and P/4 respectively, has been declared hostile. Haribilas (PW/5) is the elder brother of the appellant. He is also witness to FIR (Ex.P/5) and merg intimation (Ex.P/6). He has stated that when he came back after answering the call of nature, he was informed by the daughters of the deceased that the appellant has assaulted their mother. This witness has also been declared hostile.

13. Dr. Parth Sarthi Prasad (PW/9) conducted postmortem examination on the body of deceased and gave his report in Ex.D/02, noticing one depressed fracture of skull on left parieto-temporal region in the size of 8 x 3 cm. No other external injury was noticed on the body. The Doctor has opined the cause of death to be cardio respiratory failure

due to hemorrhagic damage of vital areas of the brain.

14. B.S. Kerketta (PW/6) is the Investigating Officer who has duly supported the prosecution case.

15. Close scrutiny of the evidence, in particular, the unrebutted evidence of eye-witness Radha Yadav (PW/2), daughter of the deceased, makes it clear that on 16.04.2013 at about 4.00 AM, deceased Kunti Bai was abusing unknown person as the branches of drumstick tree, which were kept in the courtyard of her house, were stolen by someone. The appellant felt that the deceased was abusing him and, thereafter, they both started abusing each other and, after some time, appellant came with spade and assaulted the deceased on her head, resulting in her death. The evidence of Radha Yadav (PW/2) also finds corroboration from the evidence of Dr. Parth Sarthi Prasad (PW/9) who conducted postmortem on the body of the deceased and noticed single injury on left parieto temporal region in the size of 8 x 3 cm. That apart, the weapon of offence, spade was also examined by PW/9 and gave his query report in Ex.P/19 opining that the injury sustained by the deceased could have been caused by the said weapon. Thus, from the evidence of Radha Yadav (PW/2) and medical evidence, the complicity of appellant in the crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve her statement.

16. The argument of learned counsel for the appellant that the incident took place all of a sudden without premeditation when deceased was abusing and in that incident, the appellant gave single blow to the deceased by spade, resulting in unfortunate death of the deceased, therefore, the act of the appellant would fall under Exception 4 to Section

300 i.e. culpable homicide not amounting to murder.

17. Exception 4 to Section 300 reads as under :

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which partly offers the provocation or commits the first assault.

18. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person, in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. In the present case, from the evidence, it appears that on a spur of moment, without premeditation, a quarrel took place between the deceased and the appellant in which the appellant gave single blow by spade, resulting in death of the deceased. Further, it has come in the evidence of eye-witness PW/2

that the deceased was abusing unknown person as the branches of drumstick tree were stolen by someone and the appellant felt that the deceased was abusing him, and therefore, he came with spade, acted in a fit of anger and gave single blow by spade on the head of the deceased, which, no doubt, was unpremeditated as there is no evidence that they were having grudge or prior incident of such kind of nature. That apart, postmortem report also shows that the appellant has not acted in cruel manner as only single injury was noticed on the body of the deceased. Thus, considering the facts and circumstances of the case, nature of injury, we are of the opinion that though the appellant had no intention of causing death of the deceased but taking into account the nature and extent of injury inflicted by him on the deceased, which led to her death, it can safely be inferred that the appellant had knowledge that the injury being inflicted by him on the deceased would result in her death. Being so, his act would be covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making him liable for conviction under Section 304 Part-II IPC.

19. In the result, the appeal is partly allowed. Conviction of the appellant under Section 302 IPC is altered to Section 304 Part-II IPC and he is sentenced to undergo R.I. for seven years.

Sd/-

(Manindra Mohan Shrivastava)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE