

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 805 of 2006**

- Rajkumar, S/o Suklu Ram Satnami, Aged about 25 years, R/o Navagaon, Police Station – Gunderdehi, Distt : Durg (C.G.)

---- Appellant/Accused

Versus

- State of Chhattisgarh, Through – Police Station Gunderdehi, Durg, Distt : Durg (C.G.)

---- Respondent

For Appellant : Mr. Abhishek Sharma, Advocate.
For Respondent/State : Mr. Rahul Jha, Govt. Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

20/10/2020

1. The matter is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 16.10.2006 passed by 8th Additional Sessions Judge (F.T.C.), Durg in Sessions Trial No. 32/2006, convicting the accused/appellant for the offence punishable under Section 304 Part II of the Indian Penal Code (henceforth "IPC") and sentencing him to undergo rigorous imprisonment for three years.
3. Case of the prosecution, in brief, is that on 15.11.2005,

complainant- Ramkumar, after leaving his children with his mother- Dashari Bai, went alongwith his wife for cutting the paddy crop. When he came back to his house at about 3.30 pm, he saw his mother lying on the ground and complaining chest pain and his brother -Mohan and one neighbor- Jitendra Kumar giving massage to her. On enquiring as to what happened in the house, his mother stated that at about 1.30 pm, a quarrel took place between the grand-daughter of the deceased (Dashari Bai) namely Satyawati with the son of the present accused/appellant namely Vinay Kumar and at that point of time when she (since deceased) intervened, the accused/appellant assaulted on her chest by his elbow and thereafter Omin Bai and Fullo Bai reached at the place of occurrence. On the same day of the incident i.e. on 15.11.2005 at about 7 O'clock Dashri Bai died due to heart attack and as a result, FIR (Ex.P-2) was lodged by complainant Ramkumar against the present accused/appellant – Rajkumar on 16.11.2005. Merg intimation was lodged vide Ex. P/3. Spot map Ex. P/4 was prepared by the Investigating Officer and another spot map Ex. P/5 was prepared by concerned Patwari. Inquest report Ex.P-6 was prepared in presence of two witnesses. Postmortem was conducted by Dr. C. B. Prasad (PW11), who submitted his report vide Ex.P-10. He opined that the cause of death of the deceased is heart attack and earlier, she was suffering from anemia; death occurred after five and half hours of the incident.

4. After usual investigation, charge sheet was filed against the appellant under Section 302 of the Indian Penal Code. Thereafter, the trial Court framed charge under Section 302 of IPC against the

appellant which was denied by him and he prayed for trial.

5. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses namely Smt. Fulkunwar Bai (PW-1), Smt. Binda Bai (PW-2), Ramkumar (PW-3), Smt. Ominbai (PW-4), Mohan (PW-5), Jitendra (PW-6), Ku. Sunita (PW-7), Ku. Satyawati (PW-8), Mannulal (PW-9), Narayan Oti (PW-10) & Dr.C.B. Prasad (PW-11). Statement of the accused under Section 313 of Cr. P. C. was recorded in which he denied the circumstances appearing against him and he took a defence that he has been falsely implicated in the instant case as there is no material available on record against him. However, no defence witness has been examined on behalf of the appellant.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in paragraph two of this judgment.

7. Learned counsel for the accused/appellant would submit that as per the postmortem report (Ex.P-10), there are no internal or external injuries on account of the assault made by accused/appellant by his elbow. He submits that deceased – Dashri Bai was already suffering from anemia; her liver was enlarged and according to the postmortem report (Ex.P-10) given by Dr. C.B. Prasad (PW-11), the deceased died due to heart attack on account of weakness and anemia. He also submits that Smt. Fulkunwar Bai (PW-1), who reached at the place of occurrence at the time of the incident, has not supported the case of the prosecution and has turned hostile. He further submits other prosecution witnesses namely Smt. Binda Bai (PW-2) & Mohan (PW-5)

are not the eyewitnesses to the incident and, therefore, their statements are not reliable for just decision of the case and as such, there is no intention or motive or knowledge on the part of the accused/appellant to cause the death of the deceased and therefore, the trial Court has erred in convicting and sentencing the accused/appellant as aforementioned. He also submits that the incident had occurred way back in the year 2005, the appellant is facing trial since 2006 and he has already remained in jail for a period of 18 days. There is also no criminal antecedent against the appellant, therefore, looking to the age of the appellant, ends of justice would be served, if he is sentenced to the period already undergone by him.

8. Learned Counsel for the State while supporting the case of the prosecution would submit that in the facts and circumstances of the case, the trial Court was absolutely justified in convicting and sentencing the accused/appellant, which does not call for any interference in the instant appeal.

9. I have heard learned counsel appearing for the parties and perused the record of the trial Court and the impugned judgment.

10. It is not disputed by counsel for the parties that the deceased died due to heart attack and according to the postmortem report (Ex.P-10) conducted by Dr. C. B. Prasad (PW11), the deceased was suffering from anemia and there were no internal or external injuries found on the body of the deceased on account of the assault made by accused/appellant by his elbow. He (Doctor) also stated in paragraph 5 of his cross-examination that due to anemia, the deceased suffered

enlargement of liver and died due to heart attack, therefore, the assault made by the accused/appellant is not responsible for her death.

11. Smt. Fulkunwar Bai (PW-1) has stated in her evidence that due to dispute occurred between the children, quarrel took place and at that time, she reached at the place of occurrence and tried to pacify the dispute. She has not supported the case of the prosecution and turned hostile.

12. Smt. Binda Bai (PW02), who is not the eyewitness to the incident, has stated in her evidence that at about 3.30 p.m. when she along with her husband came at her home after cutting the paddy crops, they were informed that due to quarrel between the grand-daughter of deceased and son of the accused/appellant, the accused/appellant assaulted the deceased once by elbow.

13. Ramkumar (PW-3), son of the deceased has lodged the FIR (Ex. P/2) and has also proved the spot map (Ex. P/5)

14. Ku. Satyawati (PW-8), who is the eyewitness to the incident as she was present at the time of incident, has stated in her evidence that when the quarrel took place between the son of the accused and herself, her grand-mother said to the wife of accused regarding dispute and at that point of time, the present accused assaulted her by his elbow.

15. In the matter of **Dnyaneshwar Dagdoba Hivrekar Vs. The State of Maharashtra** reported in **1982, CRI. L. J. 1870**, the Bombay High Court considered the fact that the accused and the deceased were neighbor and friends, after some quarrel accused gave one blow

on head of deceased with small stick weighing only 210 grams, held that it could not be said that the accused had knowledge that blow by such stick would cause death of the deceased and accordingly, set aside his conviction under Section 304 part II of IPC and instead convicted under Section 323 of IPC.

16. From perusal of the entire evidence available on record, it is quite apparent that there are no internal or external injuries found on the body of the deceased. The assault was made by the accused by his elbow, which alone was not sufficient to cause death of the deceased it is apparent that he (appellant) had no intention or knowledge to cause death of the deceased and as such, no injury has been sustained by her, the accused caused voluntary hurt to the deceased. The deceased was suffering from anemia, due to which her liver was enlarged, and she died due to heart attack and evidently, this has no nexus with the assault made by the appellant by elbow.

17. Thus, in my considered opinion, the accused voluntarily caused simple injuries to the deceased and, therefore, offence under Section 304 part II of the IPC is not made against the accused/appellant and instead thereof offence under Section 323 of the IPC is made out against the accused/appellant looking to the facts & circumstances of the case.

18. So far as the sentence part of the appellant is concerned, considering the fact that the incident occurred way back in the year 2005, the appellant is facing trial since 2006, the age of the appellant at the time of incident i.e. 25 years and the fact that the appellant has

already remained in jail for one month and 18 days, he has no criminal antecedents and at present he is on bail, *keeping in view the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone*, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him.

19. In view of the above, the appeal is allowed in part. Conviction of the appellant under Section 304 part II of the IPC is altered to Section 323 of the Indian Penal Code, he is sentenced to the period already undergone by him. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge

Amita