

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 753 of 2012**

- Manglu @ Girriha, S/o Sukhram, aged about 35 Years, R/o Bankheta, Katghora, District - Korba C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through – Police Station Pasan, Katghora, Distt. - Korba C.G.

---- Respondent

For Appellant

Mr. Samir Singh, Advocate.

For Respondent/State

Ms. Fouzia Mirza, Additional A.G.

Hon'ble Shri Prashant Kumar Mishra &**Hon'ble Shri Gautam Chourdiya, JJ****Judgment on Board by Justice Gautam Chourdiya****06/08/2020**

1. The appeal is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.07.2012 passed by Additional Sessions Judge, Katghora, District Korba, C.G. in Sessions Trial No.94/2011, whereby the appellant stands convicted for the offence under Section 302 of Indian Penal Code (for short, 'IPC') for committing murder of Javahar Lal and sentenced to undergo rigorous imprisonment for life and fine of Rs.500/-, in default of payment of fine to undergo further rigorous imprisonment for six months.

3. Case of the prosecution, in brief, is that on 07.07.2011 at about 2:00 PM, a complaint Ex.P-1 was lodged by PW-1 Fulmati Bai, wife of deceased, informing the police that on 06.07.2011 at about 7:00 pm, accused/appellant, deceased Javahar Lal and her servant Chakar Dhanuar were having meal in her house. After some time, accused/appellant demanded money from deceased for purchase of liquor but he refused to give him money due to which quarrel took place between them and accused/appellant assaulted upon the deceased by means of axe, as a result of which deceased sustained injury on his head. Thereafter, accused/appellant also threatened her/Fulmati Bai to kill but she somehow escaped and ran away from there and went to the house of one Budhu Majhwar. On the same day i.e. 07.07.2011 at about 2:10 PM, she went to the police station and lodged the FIR Ex.P-2 against the accused/appellant. Inquest on the dead body was conducted vide Ex.P-5 and the body was sent for postmortem. The postmortem examination was conducted on 08.07.2011 by PW-13 Dr. P.R. Nand who gave his report vide Ex.P-19 and noticed one injury on the body of the deceased:-

1. Incision injury seen on skull at centro-superio-anterior part skull (right side of fore head) measuring about 5 cm x 2 cm x 3 cm in length. Blood clotted around the injury. Rigor Mortis is not seen. Injury can be seen caused by sharp and hard object. No other injury is seen on body. Stool is passed on clothes.

The Doctor has opined that the cause of death was

injury of vital organ due to hypovolumic shock (loss of blood) and the death was homicidal in nature and the death caused within 24-72 hours prior to postmortem examination.

4. During Investigation, appellant's memorandum statement was recorded vide Ex.P-8, consequent to which an Axe (Tangia) was recovered from his possession vide Ex.P-9. Spot Map Ex.P-3 was prepared by PW-11 Vishram Singh Maravi, (I.O.) and spot map Ex.P-10 was prepared by PW-12 Rajesh Chouhan, Patwari. Plain soil, blood stained soil and one yellow colour *Gamcha* (a piece of cloth) were seized from the place of occurrence vide Ex.P-7. Accused/appellant was arrested on 07.07.2011 vide Ex.P-12. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Sections 450 and 302 of IPC.
5. The trial Court framed charges under Sections 450 and 302 of IPC against the accused/appellant which were denied by him and he prayed for trial. The prosecution examined 13 witnesses in support of its case i.e. PW-1 Fulmati Bai, PW-2 Mahaveer Singh Kanwar, PW-3 Santlal Kaivart, PW-4 Budduram, PW-5 Chakar, PW-6 Nandlal, PW-7 Smt. Fitkan Bai, PW-8 Vinod Manjhar, PW-9 Asherus Tirki, PW-10 B.S. Rajput, PW-11 Vishram Singh Maravi, PW-12 Rajesh Chouhan and PW-13 Dr. P.R. Nand. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.

6. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
7. Learned counsel for the appellant submits that in this case trial Court has wrongly convicted and sentenced the appellant only looking to the statement of PW-1 Fulmati Bai, wife of the deceased. He also submits that PW-1 Fulmati Bai is not an eye-witness in this case and looking to her conduct that she did not inform the incident to anyone, her statement also becomes doubtful and does not support the prosecution case. He also submits that PW-5 Chakar Dhanwar, who is the servant of PW-1 Fulmati Bai, has turned hostile and not supported the prosecution case. He further submits that there is no direct or indirect evidence on record proving the complicity of the appellant in the murder of the deceased. Therefore, the appellant deserves to be acquitted of the charge leveled against him.
8. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
9. We have heard learned counsel for the parties and perused the material available on record.
10. As per inquest (Ex.P-5) on the dead body of the deceased and the postmortem report (Ex.P-19), one injury was found on the body of

the deceased and his death was homicidal in nature. The above fact has not been disputed by the counsel for the parties.

11. The most crucial witness of the prosecution is PW-1 Fulmati Bai who is none other than the wife of the deceased. She has supported the prosecution case by deposing that on the date of incident, PW-5 Chakar Dhanwar, appellant and deceased were having meal in her house and after some time accused/appellant demanded money from her husband i.e. deceased for purchase of liquor but he refused to give him money. Then, appellant got angry and assaulted upon the deceased by means of axe on his head. Thereafter, appellant also threatened her not to disclose the said fact to anybody. After that, she went to the house of Budduram where marriage ceremony was going on and due to fear she slept there. In the next morning, she called one Nandlal and told him about the incident and at that time her husband/deceased was alive. Then, she and Nandlal went to the village Kotwar and Sarpanch and informed them about the incident and when they reached there they found that deceased had died. This witness has remained firm in her statement during cross-examination. She has also proved the merg intimation Ex.P-1, FIR Ex.P-2, spot map Ex.P-3 and inquest Ex.P-5.

12. PW-2 Mahaveer Singh Kanwar has partly supported the statement of PW-1 Fulmati Bai and stated that PW-1 Fulmati Bai had informed him about the incident that accused/appellant demanded money from her husband/deceased for purchase of liquor but deceased refused to give him money due to which appellant assaulted upon the deceased by means of axe on his head. This witness has though

admitted his signatures on the inquest report vide Ex.P-5, memorandum statement of appellant vide Ex.P-8, and seizure memos vide Exs. P-7 and P-9 but did not fully support the prosecution case and turned hostile.

13. PW-3 Santlal Kaivart, PW-4 Budduram, PW-5 Chakar and PW-6 Nandlal have turned hostile and not supported the prosecution case.

14. PW-7 Smt. Fitkan Bai is the village Kotwar. She has supported the statement of PW-1 Fulmati Bai and stated that when she went to the house of PW-1 Fulmati Bai then the people who were present there told her that there was a scuffle/dispute between appellant and deceased and during scuffle appellant had assaulted upon the deceased by axe on his head, as a result of which deceased died.

15. PW-8 Vinod Manjhar has partly supported the statement of PW-1 Fulmati Bai and stated that PW-1 Fulmati Bai had told him about the incident. Thereafter, he went to her house and saw the dead body of the deceased.

16. PW-9 Asherus Tirki, Police Constable, has stated on 07.07.2011 he had taken the dead body to Community Health Centre, Katghora, for postmortem and after postmortem being done, the dead body was handed over to the relatives of the deceased vide Exs. P-18 and P-19.

17. PW-10 B.S. Rajput is the Assistant Sub-Inspector. He has recorded the memorandum statement of appellant Ex.P-8, proved the seizure memo Ex.P-9 & arrested the accused/appellant Ex.P-12.

18. PW-11 Vishram Singh Maravi is the Station House Officer. He has stated that he recorded the merg intimation Ex.P-1, lodged the FIR

Ex.P-2 against the accused/appellant, reached the place of occurrence, gave notice to the panchas vide Ex.P-4 and prepared inquest on the body of the deceased vide Ex.P-5, prepared the spot map Ex.P-3, sent the body of deceased for postmortem vide Ex.P-19, seized the plain soil, blood stained soil and one yellow colour *Gamcha* (a piece of cloth) vide Ex.P-7, in his presence Patwari has prepared the spot map vide Ex.P-20, prepared the query report Exs. P-21 and P-22 and sent the seized articles for FSL vide Ex.P-23.

19. PW-12 Rajesh Chouhan is the Patwari. He has prepared the spot map Ex.P-10.

20. PW-13 Dr. P.R. Nand conducted the postmortem of deceased vide Ex.P-19 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report.

21. The eye-witness PW-1 Fulmati Bai, wife of the deceased, has categorically stated as to the manner in which the incident took place where the appellant having got enraged on refusal of the deceased to give him money for purchase of liquor, assaulted the deceased by means of axe on his head which ultimately led to his death. Soon after the incident, this witness lodged merg intimation Ex.P-1 and FIR Ex.P-2 against the appellant narrating the incident. In cross-examination, the defence could not elicit anything from this witness which could render her evidence untrustworthy or doubtful. The evidence of this witness gets support from the evidence of PW-7 Smt. Fitkan Bai. This apart PW-2 Mahaveer Singh Kanwar and PW-8 Vinod Manjhwari have also partly supported the evidence of PW-1 Fulmati Bai as observed above. The eye-witness account of PW-1

Fulmati Bai gets further corroboration from the medical evidence of PW-13 Dr. P.R. Nand and the postmortem report Ex.P-19. In view of the above ocular and medical evidence available on record, complicity of the accused/appellant in the crime in question stands proved beyond all reasonable doubt.

22. Now this Court has to see whether the act of the accused/appellant makes him liable for conviction under Section 302 of IPC or it amounts to culpable homicide not amounting to murder making him liable for conviction under Section 304 Part-I or II of IPC.

23. 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.”

24. In the matter of ***Rampal Singh Vs. State of UP, AIR 2012 SCW***

3765 : 2012 (6) Scale 574, where the parties were related, had no animosity, the incident took place over the demolition of constructions made by the accused in his land to prevent throwing of garbage in his land, there was exchange of hot words, the incident took place without any pre-meditation, the accused fired gun on lower part of the deceased, the accused knew that his act might result in death, the accused was held guilty of offence under Section 304 Part-I of IPC.

25. In the case of **Nanak Ram Vs. State of Rajasthan, (2014) 12 SCC 297**, out of nine injuries, only injury no.1, viz, an incised wound of 6 ½" x ½" and deep up to brain on the head was held to be grievous in nature which was sufficient in the ordinary course of nature to cause death of the deceased. The assaults were made at random. Even the previous altercations were verbal and not physical. In the heat of passion upon a sudden quarrel the accused persons had caused injuries on the deceased. That being so Exception 4 to section 300 of IPC was applicable. Hence the accused were convicted under Section 304 Part-I of IPC and sentence of seven years' RI on each of the appellants was held sufficient to meet the ends of justice.
26. In the present case, the evidence goes to show that on the date of incident, appellant and deceased were having meal together and after that appellant demanded money from deceased for purchase of liquor but deceased refused to give him money then accused/appellant got angry and assaulted upon him by axe, as a result of which deceased died. Thus, it appears that there was no premeditation on the part of the appellant to cause death of the

deceased. It so happened on the spur of moment, upon a sudden in quarrel and in the heat of passion when appellant demanded money from the deceased and the deceased refused to give him money. The accused/appellant was not armed with any weapon and the axe used by him for assault was of the PW-5 Chakar Dhanuar as has been admitted by PW-1 Fulmati Bai in cross-examination. As per oral as well as medical evidence, it is clear that the appellant assaulted only once with axe on the head of the deceased and did not repeat the assault or act in a cruel or unusual manner. In these circumstances, the appellant cannot be held responsible for committing murder of the deceased and his act falls in the category of culpable homicide not amounting to murder.

27. It is not in dispute that the appellant assaulted by means of axe only once on head of the deceased which ultimately proved to be his cause of death. Though the assault was made on 06.07.2011 at about 7:00 pm whereas the death took place on 07.07.2011 at about 5:00 am and admittedly no medical aid was provided to the deceased in between by his family members but the fact remains that the death was the direct result of the injury caused by the appellant. In the given facts and circumstances of the case, keeping in view the principles of law laid down in the afore-cited judgments, the manner in which the assault was made, the weapon used for assault and the part of the body chosen for assault, it can safely be inferred that while making such assault he was having intention of causing such bodily injury to the deceased which would result in his death. This being the position, the act committed by the appellant makes him liable for conviction under Section 304 Part-I of IPC. In

the totality of facts and circumstances of the case, this Court is of the opinion that ends of justice would be served if the appellant is sentenced to RI for 10 years while keeping the fine amount of Rs.500/- with default sentence as imposed by the trial Court intact.

28. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-I and is sentenced to undergo R.I. for 10 years. However, the fine amount of Rs.500/- with default sentence imposed on him by the trial Court shall remain intact.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge