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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 221 of 2014**

- Sandeep Singh Thakur S/o Late Shri Shiv Singh Thakur Aged About 25 Years R/o. Village & Post – Khauna Mahamaya Para, Out Post-Silyari, Police Station-Dharsinwa, Distt. Raipur (CG)

---- Appellant**In Jail****Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station - Dharsinwa, Distt. Raipur (CG)

---- Respondent

For Appellant	:	Shri Anish Tiwari, Advocate.
For Respondent/State	:	Shri Neeraj Mehta, P.L.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ

Judgment on Board by Justice Gautam Chourdiya**03.03.2020**

Challenge in this appeal is to the legality, validity and propriety of the judgment of conviction and order of sentence dated 5.2.2014 passed by Sessions Judge, Raipur (CG) in ST No.37/2013 whereby the appellant stands convicted under Section 302 of IPC and sentenced to undergo life imprisonment plus fine of Rs.5,000/- with default sentence of five months' additional R.I.

02. Briefly stated, prosecution case is that on 27th October, 2012 at about 11 pm accused/appellant Sandeep Singh assaulted his brother Ishwar Singh Thakur by means of knife on his chest as a result of

which Ishwar Singh died on the spot itself. Unnumbered Merg intimation Ex.P/1 and unnumbered FIR (Ex.P/2) were promptly lodged by Kiran Singh Thakur (PW-1) on 28.10.2012 at Police Chowki-Silyari, Distt. Raipur at 1 am and 1.25 am respectively against the appellant for committing murder of Ishwar Singh on which offence under Section 302 of IPC was registered. Subsequently, numbered merg (Ex.P/16) and numbered FIR (Ex.P/17) were recorded at Police Station - Dharsinva, Distt. Raipur. Inquest on the dead body of the deceased was prepared in presence of witnesses vide Ex.P/3. During investigation, spot map Ex.P/4 was prepared and on the memorandum of the appellant vide Ex.P/8, one bloodstained knife was seized from his possession vide Ex.P/9. From the place of occurrence, plain & bloodstained soil were seized vide Ex.P/10. Likewise, under Ex.P/11 appellant's jeans, vest and shirt having blood like stains were seized. Vide Ex.P/20 the wearing apparels of the deceased were seized.

03. Postmortem on the dead body was conducted on 28.10.2012 by PW-8 Dr. Dayaram Verma vide Ex.P/12 who noticed one stab wound over chest on left side in between 4th & 5th rib little away from midline of size 3 cm x 1 cm upto 10 cm deep. In his opinion, the cause of death was shock as a result of massive internal hemorrhage due to punctured heart by sharp object and the death was homicidal in nature which occurred within 24 hours prior to postmortem examination. As per FSL report (Ex.P/25), blood was found on Articles A, C, D, F, G1, G2 & G3 i.e. soil seized from spot, knife seized from appellant; pant & shirt of the appellant; shirt, pant & underwear of the deceased

respectively. Further, human blood was found on Articles D, F, G1, G2 & G3 i.e. clothes of the appellant and the deceased and blood found on Articles D & F was of Group A. After recording statements of the witnesses and completing the usual investigation, charge sheet under Section 302 of IPC was filed against the appellant followed by framing of charge accordingly by the trial Court, which was denied by him and he prayed for trial.

04. So as to hold the accused/appellant guilty, the prosecution examined 15 witnesses in all. 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. However, no witness in defence was examined by him.

05. 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 appellant as mentioned in para-1 of this judgment.

06. Counsel for the appellants submits that in this case there is no eyewitness to the incident to prove that it is the accused/appellant who committed murder of the deceased. PW-4 Smt. Sulekha Thakur, wife of the deceased, has only stated that upon hearing the sound of quarrel when she came out of the kitchen she saw the appellant pulling out some weapon like thing from the body of her husband/deceased, blood was oozing from the body of the deceased and seeing this she fell unconscious. Except this evidence, there is no incriminating material

available on record connecting the appellant with the crime in question.

Alternatively, he submits that if this Court finally comes to the conclusion that the appellant has caused death of Ishwar Singh Thakur, then considering the facts and the circumstances of the case, the fact that all of a sudden quarrel between place between the appellant and the deceased, who were living together with their families, as the accused was not earning anything, only one stab wound has been caused by the appellant to the deceased, his case would fall within Exception 4 to Section 300 of IPC making him liable for conviction under Section 340 Part-II of IPC only and not under Section 302 of IPC as has been held by the trial Court. Further, considering the fact that the appellant is in jail since 28.10.2012, he may be sentenced to the period already undergone by him.

07. On the other hand, State counsel supporting the impugned judgment has submitted that eyewitness PW-4 Smt. Sulekhs Thakur, wife of the deceased, has specifically stated that upon hearing the sound of quarrel when she came out of the kitchen she saw the appellant taking out weapon like thing from the body of the deceased. The other witnesses have also stated that soon after the incident when they reached the place of occurrence they found the deceased lying dead there with injury on his chest and the appellant was also present there. Further, on the memorandum of the appellant, weapon of offence knife was seized from his possession and as per FSL report, blood was found on the knife as well as wearing apparels of the appellant. As per postmortem report Ex.P/25, stab wound was noticed

on the chest of the appellant which proved to be his cause of death. Therefore, considering the manner in which the assault was made by the appellant on vital part chest of the deceased resulting in his instantaneous death, on the basis of evidence available on record, the trial Court was fully justified in convicting the appellant under Section 302 of IPC which warrants no alteration by this Court.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-4 Smt. Sulekha Thakur, wife of the deceased, has stated that she along with her husband/deceased, brother-in-law appellant Sandeep Thakur, his wife Anju Singh and mother-in-law Rohini Thakur were living together in the same house and that the appellant was not doing any work for the last one year on account of which there used to be quarrel between the appellant and the deceased. On the date of incident, hearing some sound of quarrel when she came out of the kitchen she saw the appellant pulling out weapon like thing from the body of the deceased and blood was oozing from the chest of the deceased. Thereafter, the appellant came out and she fell unconscious and when she regained consciousness she found her husband Ishwar Singh lying on the ground in pool of blood. There is no contradiction or omission in her statement. The incident took place within the premises of the house of this witness and therefore, her presence on the spot appears to be natural and as such, there is no reason to disbelieve this witness.

10. PW-1 Kiran Singh Thakur has also stated that on the date of

incident at about 11 pm Ritesh and Chhatrapal informed him about quarrel between the appellant and the deceased on which when he went to the house of Ishwar Singh and found Ishwar Singh lying on the ground. After examining his pulse, Ishwar Singh was found to be dead and that blood was oozing from his chest. At that time, Ritesh, Sulekha, appellant Sandeep, Rohini Bai were present there and when he asked appellant Sandeep as to what has happened, he (Sandeep) told that he has done nothing. He has proved lodging of Merg intimation Ex.P/1 and FIR (Ex.P/2). He is also a witness to inquest Ex.P/3 and spot map Ex.P/4 and proved the same.

11. PW-2 Vimal Singh Thakur, PW-3 Diwakar Singh Thakur, PW-5 Smt. Usha Thakur, PW-6 Rupendra Verma and PW-7 Chhatrapal Singh Thakur have also corroborated the evidence of PW-4 Smt. Sulekha Thakur by stating that on the date of incident they came to know that the appellant and the deceased were quarrelling upon which they went to the house of the deceased and found him lying on the ground in injured condition with injury on his chest from which blood was oozing and the appellant was also present there. When they asked the appellant about the incident he kept mum. Thus, from the evidence of these witnesses, it is proved that on the date of incident the appellant and the deceased were quarrelling, PW-4 Smt. Sulekha Thakur was present there and the incident took place in the house of the deceased where the appellant and the deceased with their families were living together. It has also come in the evidence of the prosecution witnesses that the appellant was not doing any work for long time on account of which there used to be quarrel between the

appellant and the deceased frequently.

12. Apart from the above ocular evidence, his complicity in the crime in question also stands proved from the memorandum, seizure and FSL report. Pursuant to the memorandum (Ex.P/8) of the appellant, one knife was seized from his possession vide Ex.P/9. PW-6 Rupendra Singh Verma, witness to the memorandum and seizure, has duly supported the prosecution case. Another witness to these documents namely PW-12 Gunwant Ram Sahu has been though declared hostile but admitted his signature on the above documents. This apart, the investigating officer PW-15 D.R. Mandavi has fully supported the prosecution case and there is no reason to disbelieve his statement.

13. Further, as per FSL report (Ex.P/25) blood was found on Articles A, C, D, F, G1, G2 & G3 i.e. soil seized from spot, knife seized from appellant; pant & shirt of the appellant; shirt, pant & underwear of the deceased respectively, and that human blood was found on Articles D, F, G1, G2 & G3 i.e. clothes of the appellant and the deceased and blood found on Articles D & F was of Group A. However, in his statement recorded under Section 313 of CrPC the appellant has not offered any explanation as to how blood was found on the articles seized from him and he only pleaded ignorance about the same.

14. As per evidence PW-8 Dr. Dayaram Verma vide Ex.P/12 who conducted postmortem of the deceased on 28.10.2012 at 1.15 pm vide Ex.P/12 he noticed one stab wound over chest on left side and in his opinion, the cause of death was shock as a result of massive internal hemorrhage due to punctured heart by sharp object and the death was

homicidal in nature which occurred within 24 hours prior to postmortem examination. This witness also examined the weapon of offence knife sent by the police vide Ex.P/15 and in his opinion, it appeared that Ishwar was killed by the said knife.

15 Thus, from the aforesaid eyewitness account of PW-4 Smt. Sulekha Thakur and other prosecution witnesses, medical evidence of PW-8 Dr. Dayaram Verma, seizure of weapon of offence knife from the appellant on his memorandum, FSL report proving presence of blood on the articles seized from the appellant and his non-explanation to the same, it stands proved beyond all reasonable doubt that it is the appellant who caused death of his brother Ishwar Singh by assaulting him with knife on his chest.

16. Now this Court has to see whether the act committed by the appellant makes him liable for conviction under Section 302 of IPC or would fall within any of the exceptions to Section 300 of IPC making him guilty of committing culpable homicide not amounting to murder?

17. In the matter of ***Mahesh Vs. State of M.P., (1996) 10 SCC 668***, the Hon'ble Supreme Court considering the fact that the appellant without any premeditation gave a single blow with *pharsa* on the head of the deceased in a sudden fight when the deceased objected to grazing of cattle by the appellant and he did not act in any cruel or unusual manner, held him guilty under Section 304 Part-I of IPC for his case being covered with Exception 4 to Section 300 of IPC.

18. In the case of ***State of Madhya Pradesh Vs. Abdul Latif***,

(2018) 5 SCC 456 where the accused/husband strangled his wife to death and the High Court of MP altered his conviction from 302 of IPC to 304 Part-I of IPC, the Hon'ble Apex Court observed as under:

“12. It is clear from the evidence on record that the accused came to the house after attending the ‘Milad’ at midnight. The deceased opened the door and, thereafter, the deceased and the accused went to sleep. Suddenly, quarrel took place between them. It is clear from the evidence of PW-1 that the death occurred due to injury Nos. 11 and 12. The other injuries were simple in nature. The evidence of PW-1 shows that the death occurred on account of Asphyxia. The evidence of PW-5 and PW-6 coupled with evidence of PW-1 makes it clear that the incident had occurred all of a sudden, without any premeditation. It is evident that the accused had not taken undue advantage or acted in a cruel or unusual manner. Therefore, the High Court has rightly convicted the accused under [Section 304](#) Part I of IPC. We do not find any infirmity in the judgment of the High Court. The appeal is accordingly dismissed.”

19. In the present case also, from the evidence of the prosecution witnesses it is seen that there used to be frequent quarrel between the appellant and the deceased over the issue of appellant not earning anything as the appellant and the deceased along with their families were living together in the same house. On the date of incident also they were quarrelling with each other as has been stated by PW-1 Kiran Singh Thakur, PW-2 Vimal Singh Thakur, PW-3 Diwakar Singh Thakur, PW-4 Smt. Sulekha Thakur, PW-5 Smt. Usha Thakur, PW-6

Rupendra Verma and PW-7 Chhatrapal Singh Thakur. As per Ex.P/11 the shirt of the appellant, three buttons of which were broken, was seized. Thus, in the given facts and circumstances of the case, the manner in which the incident took place, it appears that the incident took place all of a sudden in the heat of passion, upon a sudden quarrel, without any premeditation on the part of the appellant to commit the offence. The appellant had not taken any undue advantage and did not act in an unusual or cruel manner while assaulting the deceased. Hence the act committed by the appellant would fall within Exception 4 to Section 300 of IPC i.e. culpable homicide not amounting to murder. Though the appellant assaulted the deceased with knife only once but considering the fact that the appellant assaulted with a deadly weapon knife on the vital part chest of the deceased resulting into his instantaneous death, it can safely be inferred that while inflicting such bodily injury on the deceased, though the appellant may not have knowledge that it would lead to his death but certainly would have intention of causing his death. Being so, the act committed by the appellant makes him liable for conviction under Section 304 Part-I of IPC for which the jail sentence of 10 years' RI and fine amount of Rs.5,000/- with default sentence of five months RI appear to be just and proper

20. 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 of IPC and sentenced to RI for 10 years. However, he is directed to pay a fine of Rs.5,000/-, in default whereof to suffer additional RI for five months. If the fine amount imposed by

the trial Court u/s 302 of IPC has already been deposited, the same shall be adjusted accordingly. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/

(Prashant Kumar Mishra)
Judge

Sd/

(Gautam Chourdiya)
Judge