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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1618 of 2017**

- Renuka Kiran Gabel, aged about 28 years, wife of Shri Mithlesh Gabel, R/o village Bundeli, Police Station- Malkharauda, District : Janjgir- Champa (CG)

----Appellant**Versus**

- The State of Chhattisgarh, Through the Police Station-Malkharauda, District : Janjgir Champa (CG)

---- Respondent

For Appellant

Ms. Madhunisha Singh, Advocate.

For Respondent/State

Shri Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra,**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Gautam Chourdiya****19/02/2020**

1. This appeal has been filed by the appellant Renuka Kiran Gabel being aggrieved by the judgment dated 23.9.2017 passed by the Second Additional Sessions Judge, Sakti, District Janjgir Champa(CG) in ST No.26/2016 whereby and whereunder the appellant stands convicted under Section 302 of the IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 1 month.
2. Brief facts of the case are that on 21.4.2016 Shantibai lodged FIR Ex.P27 in Police Station Malkharoda and Dehati Nalishi Ex. P21 in Police Chowki, Adbhar, District Janjgir Champa that the accused/ appellant who is her daughter in law, has assaulted her with a Danda (bamboo stick) at about 11.00 am saying that she is eating without

doing any work “*baithe baithe khati ho*” and she has also assaulted Milbai on her head and other parts of her body, due to which Milbai died. Milbai was suffering from paralysis since last 3 years and was unable to walk. Due to fear Shantibai ran away from the spot and narrated the incident to the villagers. At about 4.00 pm, Bhanupratap and Shyam Kumar went to the house of Milbai and saw that Milbai was lying dead. The Investigating Officer reached to the place of occurrence. Dehati Nalishi was recorded vide Ex.P21 and merg intimation was also recorded vide Ex.P22 on the same day. FIR was lodged vide Ex.P27. On the next day, after summoning witnesses vide Ex.P2, inquest on the dead body of the deceased was prepared vide Ex.P3. The dead body was sent to C.H.C. Malkharoda for postmortem vide Ex.P16. The postmortem was conducted by Dr. Hemant Kumar Sahu(PW7) and he found following injuries :

- (i). Bledding from mouth with clotted blood. Abrasion below right lip in the size of 2 cm x 2 cm
- (ii). Contusion and swelling over right side of the face in the size of 2” x 2” and abrasion in the size of 2 cm x 2 cm
- (iii) Contusion on chin in the size of 1/2” x 1/2”
- (iv) Contusion on left arm in the size of 2” x 2”
- (v) Contusion on right side of chest upper in the size of 2” x 2”, lateral 2” x 1”
- (vi) Contusion on right forearm in the size of 2” x 2”
- (vii) Contusion on right wrist in the size of 2” x 1”, post 2” x 1” with abrasion in the size of 3 cm x 2 cm
- (viii) Contusion on right forearm in the size of 2” x 1”

He opined that the cause of death was cardio respiratory failure as a result of shock due to above mentioned injuries and mode of death was homicidal. During investigation, spot map was prepared vide Ex. P23. Patwari prepared map vide Ex.P13. Memorandum of the accused/appellant was recorded vide Ex.P4. As per memorandum, one bamboo stick/danda was seized vide Ex. P5 from the possession of the appellant. Plain soil and blood stained soil was also seized vide Ex.P7. One purple colour sari was seized from the appellant vide Ex.P6. Clothes of the deceased were seized vide Ex.P27. Shantibai (PW10) was also examined by Dr.K.L.Uraon (PW12) and he noticed that she was complaining pain on back and both thighs, but no injury was found on her body.

3. After recording statements of the witnesses, charge sheet was filed against appellant under Sections 302 and 323 of the IPC. The trial Court framed charges against the accused/appellant. The accused/appellant denied the charges levelled against her and prayed for trial.
4. So as to hold the appellant guilty prosecution has examined as many as 14 witnesses, namely- Bhanupratap (PW1), Jitendra Gabel(PW2), Ashwani Kumar(PW3), Ramkumar Gabel(PW4), Khoj Kumari(PW5), Radhelal Yadav (PW6), Dr. Hemant Kumar(PW7), Amendra Kumar(PW8), Shyam Kumar(PW9), Shantibai (PW10), Sumant Singh Kanwar(PW11), Dr. K.L. Uraon(PW12), Vinod Kumar Kashyap(PW13) and Anand Soni (PW14).
5. The accused/appellant was examined under Section 313 of the Cr.P.C., in which, she denied the circumstances appearing against her

and stated that she has been falsely implicated in the case by complainant Shantibai due to greed of property. However, no defence witness has been examined by her. After completion of trial, the appellant was convicted and sentenced as mentioned in para 1 of this judgment.

6. Learned counsel for the appellant submits that there is no eye witness to the incident and the appellant has been convicted on the basis of circumstantial evidence. Shantibai (PW10) is the witness of assault and the deceased did not die in front of her and there is no evidence that the appellant has assaulted the deceased. Milbai(since deceased) and Shantibai(PW10) both are mothers-in-law of the appellant and they were living with the appellant. The appellant was simply saying them "*baithe baithe khati ho*" and assaulted the deceased with Danda and also assaulted Shantibai(PW10), but Shantibai ran away from the spot due to fear and as Milbai was suffering from paralysis and was unable to move, she could not resist or go anywhere. She submits that the appellant had no intention to commit murder of the deceased (Milbai) or on account of greed to obtain the property she has assaulted the deceased. The deceased was living with the appellant and she was taking care of her and over a trivial issue, she has assaulted the deceased, but the deceased has not died instantly. The incident had taken place at about 11.00 am and Bhanupratap and Shyam Kumar saw the deceased in dead condition at about 4.00 pm. She further submits that the injuries found over the body of the deceased were simple in nature and no fracture or grievous injury was found and the deceased was aged about 88 years and she died due

to shock as a result of cardio respiratory failure and not due to the assault with Danda by the appellant. In FSL no blood stains were found over the Danda. Therefore, prosecution has not proved its case beyond reasonable doubt and an offence under Section 302 of the IPC would not be made out and the appellant would be liable for conviction for some lesser offence, at the most under Section 304 Part-II of IPC.

7. On the other hand, learned Panel Lawyer appearing for the State opposed the arguments advanced on behalf of the appellant and submits that the appellant has caused injury to the deceased on vital part and due to shock, she died. He submits that evidence of the witnesses Bhanupratap(PW1), Jitendra Gabel(PW2) and Shantibai (PW10) is sufficient to hold the conviction of the appellant and the learned Court below has rightly convicted and sentenced the appellant as aforementioned.
8. We have heard learned counsel for the parties, perused the judgment impugned and the evidence on record.
9. Shantibai(PW10) is mother-in-law of the appellant and they were living together and she is a witness of assault and the deceased has not died in her presence. She has stated that on the date of incident she was present in the house and when the appellant assaulted the deceased, she tried to intervene, but she also assaulted her with Danda then she fled from the spot and narrated the incident to the villagers. When the villagers reached home, they found that Milbai had died. Thereafter, she lodged Dehati Nalishi Ex.P21. Merg intimation

Ex.P22 and Spot map Ex.P23 and P13 were prepared in her presence. She also stated in para 4 that since 3-4 years Milbai was suffering from paralysis and appellant was not giving her food and beating her.

10. Bhanupratap (PW1) has also deposed that Shantibai informed him that appellant Renuka has assaulted Milbai and she died. He further stated in para 17 that when he reached the home of the appellant, she was present at home. He proved memorandum and seizure from the appellant. Jitendra Gabel(PW2) is son-in-law of the deceased Milbai and Shantibai (PW10). He has stated that the accused/appellant was always disputing that Milbai and Shantibai are eating without doing any work saying that "*Baithe baithe khati ho*". He stated that on the date of incident, on receiving information from Bhanupratap he went to village Bundeli and found that Milibai was lying dead on the cot and there were injuries on her body. Thereafter, Shantibai (PW10) informed him that the at about 11.00 am when Milbai was sleeping on her cot, the appellant has assaulted her with Danda and when she intervened, she also assaulted her. Ramkumar Gabel(PW4) is another son-in-law of the deceased Milbai and Shantibai(PW10) and he also deposed in the same manner as stated by Jitendra Gabel (PW2).
11. Shyam Kumar (PW9) is the witness of memorandum (Ex.P4) and seizures(Exs.P5 and P6). He was informed by Bhanupratap that mother-in-law of the appellant has died. Then he went to see the deceased and found that she was lying dead. He is witness of memorandum and seizure. Sumant Singh Kanwar (PW11) is Constable. He has proved Dehati Nalishi (Ex.P21), Merg intimation

(Ex.P25) and MLC report (Ex.P26) by which Shantibai (PW10) was sent for medical examination. Dr. K.L.Uraon (PW12) has examined Shantibai(PW10) and stated that she was complaining pain on her back and both thighs, but no injury was found on her body. He proved MLC report (Ex.P26). Vinod Kumar Kashyap (PW13) and Anand Soni (PW14) are Sub-Inspectors. Vindo Kumar Kashyap(PW13) has lodged FIR (Ex.P27). Anand Soni(PW14) has lodged Dehati Nalishi (Ex.P21) and Merg intimation (Ex.P22). He has proved inquest (Ex.P3) and seizure of plain soil and blood stained soil (Ex.P7). He has also recorded memorandum statement of the appellant (Ex.P4) and seized the bamboo stick and sari from the possession of the appellant vide Ex.P5 and P6.

12. Deceased-Milbai was first wife of Punam Lal and Shantibai(PW10) is second wife of Punam Lal. Milbai was issueless and Shantibai (PW10) has 4 daughters and 1 son. Appellant Renuka Kiran is daughter in law of Shantibai and she was living with Milbai and Shantibai(PW10) in the same house. The appellant had assaulted the deceased saying that she is eating without doing any work. The incident has occurred on 21.4.2016 at about 11 to 12 O'clock and deceased was found dead by the villagers at 4.00 pm. There is a very short time span between 11.00 am and 4.00 pm i.e. assaulting the deceased by the appellant and death of the deceased, therefore, possibility of any other person coming and committing murder of the deceased is not possible nor there is any evidence that any other person was seen by any one. The deceased has died after being assaulted by the appellant with Danda. She was suffering from paralysis since last 3-4 years and was

unable to walk herself. From the evidence of other witnesses it is evident that there was no enmity of Milbai in the village so that she can be murdered by anyone. As the deceased was unable to move and do any work, the appellant was aggrieved and she was always disputing and saying that “*Baithe baithe khati ho*” and assaulted the deceased. Though the deceased had sustained injuries, but in FSL, blood stains were not found on the articles Sari of the appellant 'D' and clothes of the deceased 'E1 and E2', which proved that she died as a result of shock and cardio respiratory failure. The deceased was aged about 88 years, therefore, being sick and infirm, she could not bear the assault of the Danda and died after some time. There is no reason to disbelieve the testimony of Shanibai (PW10) who has witnessed the incident and was also assaulted by the appellant. There are no contradiction and omissions in her statement. She has also denied this fact that on account of property dispute, the appellant has been falsely implicated in this case.

13. Now, we shall consider whether the act of the appellant resulting into death of Milbai makes her liable for offence under Section 302 of IPC or any lesser offence.
14. In the judgment rendered by Hon'ble the Supreme Court in the matter of **Khuman Singh And Others Vs. State of M.P. (2005) 9 SCC 714**, the following has been observed in paragraphs 10, 11 and 12 :

“10. Keeping these principles in mind and applying them to the facts of this case we find that the occurrence took place suddenly. There was no premeditation on the part of the appellants and the quarrel really arose from a trivial issue.

The parties had danced all night and nothing untoward had happened except this small incident. Thereafter they proceeded towards their respective villages. It is not the case of the prosecution that the appellants were armed with deadly weapons. Some of them were carrying *lathis*, as are usually carried by the tribals in that part of the State, and had not made any special preparation for the assault. Some others had just picked up stones when the deceased was overpowered, and assaulted him. It is, no doubt, true that they assaulted the deceased in such a manner that the deceased suffered several fractures, but the injury which caused the death of the deceased was the one suffered by him on account of the rib bone puncturing the liver. We are convinced that this injury was not intended by the appellants, and the injury suffered by the deceased on his liver was at best accidental. We therefore, hold that Section 300 "thirdly" IPC is not attracted, and it cannot be said that the appellants intended to cause any injury to the liver which perhaps proved fatal. There is no evidence to suggest that any of the other injuries suffered by him was sufficient to cause death in the ordinary course of nature.

11. The question then is under which provision of IPC the appellants should be punished. Counsel for the State submits that even if the case does not fall under Section 300 "thirdly" IPC it would certainly fall under Section 304 Part II IPC. Even if we say that the appellants had no intention to cause death they certainly knew that such bodily injury was likely to cause death. He, therefore, submits that even if the appellants may not be found guilty of culpable homicide amounting to murder, they are certainly guilty of culpable homicide not amounting to murder punishable under Section 304 Part II IPC.

12. Having considered all the relevant facts we are satisfied that the appellants are guilty of the offence punishable under

Section 304 Part II IPC. We, therefore, set aside their conviction under Section 302 IPC and instead convict them under Section 304 Part II IPC and sentence them to five years' rigorous imprisonment. Learned counsel for the appellant submitted that the offence will fall under Section 326 IPC and not under Section 304 Part II IPC because the injury caused by the appellants resulted in fracture of the bones. It is true that in such borderline cases it is possible to hold either way. However, in the facts and circumstances of this case the conviction should appropriately be one under Section 304 Part II IPC. In any event, it would make no difference to the sentence, having regard to the facts of the case.

15. In the present case, it is not disputed that the appellant had made assault on the deceased and she sustained simple injuries. However, no fracture or grievous injury was found over the body of the deceased. She died due to old age and shock as a result of cardio respiratory failure and the injuries sustained and the appellant had no intention to commit murder of the deceased. On a small issue of not doing any work, the appellant has assaulted the deceased and Shantibai(PW10) with a Danda/ bamboo stick, which is simply kept by the villagers in house in which the deceased sustained simple injuries, however, no blood stains were found on the Danda. This shows that there was no preparation or premeditation on the part of the appellant to cause death of the deceased. However, knowledge can well be attributed to the appellant that while making assault on the deceased, an old paralytic lady of 88 years, she was aware that such bodily injury was likely to cause her death. We are of the view that in the above facts and circumstances of the case, offence under Section 302 IPC

would not be made out and the appellant would be liable for conviction under Part II of Section 304 IPC.

16. So far as sentence is concerned the Division Bench of this Court in the matter of **Santosh Kumar & Another V/s. State of CG**. Reported in **2015 (5) CG. L.J. 417 (DB)** in para 13 referring to the judgment of the Hon'ble Supreme Court in the matter of **Gurmukh Singh V/s. State of Haryana, (2009) 15 SCC 635** observed as to what are the necessary factors to be considered for awarding appropriate sentence to the accused. Para 13 of the said judgment reads as under:-

“13. The need for appropriate sentencing under section 302 I.P.C. or section 304 Part II of I.P.C. in the given facts of a case was considered in Gurmukh Singh V/s. State of Haryana as follows:-

“3. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:-

- a) Motive or previous enmity;*
- b) Whether the incident had taken place on the spur of the moment;*
- c) The intention/knowledge of the accused while inflicting the blow or injury;*
- d) Whether the death ensued instantaneously or the victim died after several days;*
- e) The gravity, dimension and nature of injury;*
- f) The age and general health condition of the accused;*
- g) Whether the injury was caused without premeditation in a sudden fight;*
- h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*
- i) The criminal background and adverse history of the accused;*
- j) whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;*
- k) Number of other criminal cases pending against the accused;*
- l) Incident occurred within the family members or close relations;*
- m) The conduct and behaviour of the accused had taken the*

injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.”

17. For the foregoing reasons, the appeal is partly allowed. The conviction and sentence awarded to the appellant under Section 302 IPC are set-aside. Instead thereof, the appellant is convicted for commission of culpable homicide not amounting to murder under Section 304 Part II IPC. Keeping in view the necessary factors laid down in **Gurumukh Singh (supra)** by the Hon'ble Supreme Court as to the sentence part, the appellant is sentenced to R.I. for 5 years and fine of Rs.500/- with default sentence of one month S.I. Fine amount already deposited shall be adjusted accordingly.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge