

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1725 of 2019**

1. Bhukmaniya S/o Nan Nageshiya, aged about 55 Years, R/o Village Ambakona, P.S. Bagicha, District Jashpur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through S.H.O. Bagicha, District Jashpur (C.G.)

---- Respondent

For Appellant	:	Shri Anand Kumar Gupta, Advocate.
For Respondent/State	:	Shri Pawan Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Shri Gautam Chourdiya J.****14/01/2020**

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 17/03/2017 passed by Additional Session Judge (F.T.C.) Jashpur, District Jashpur (C.G.) in Session Trial No. 67/2016; whereby the appellant Bhukmaniya stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 302 of Indian Penal Code (in short "IPC")	Life Imprisonment and fine of Rs. 100/- in default of payment of fine additional R.I. for 1 month

- 2) Case of the prosecution in brief is that FIR Ex. P-3 was lodged by PW-01 Karam Sai on 05/04/2015 at around 12:30 PM to the effect that on the date of incident i.e. on 04/04/2015 at around 01:00 AM (at night) accused, their family members and villagers were celebrating Devbandhan festival and all of them had consumed liquor. In the intervening night of 03/04/2015 & 04/04/2015 he heard some commotion from the house of deceased Bhot as deceased Bhot and appellant were quarreling.

On this, Karamsai and other villagers reached the home of the deceased Bhot, they found Bhot was lying outside the home and blood was oozing from nose and ear of Bhot. Wife of Bhot informed that the appellant was using filthy language against her on which the deceased Bhot slapped his father/appellant and due to anger appellant picked up wooden log and assaulted upon head of Bhot as a result of which Bhot sustained injury. Bhot was shifted for treatment at Ambikapur Hospital where he died during treatment on 04/04/2015 at 09:10 Hrs. Spot map is prepared vide Ex. P-4 by I.O. Merg intimation Ex. P-24 is also lodged and inquest report as per Ex. P-2 was prepared in presence of the witnesses. During investigation as per Ex. P-8 memo statement of the accused, one wooden log was seized as per Ex. P-9. Spot Map is prepared as per Ex. P-14 by Patwari PW-8 Parasnath and as per Ex. P-16 Postmortem was conducted by PW-09 Dr. S. Gupta who found mode of death as Coma caused by head injury and death was homicidal in nature. As per FSL report vide Ex. P-26 blood was found on Article A & D, soil seized from the place of occurrence and shirt of deceased.

- 3) After due investigation charge sheet was filed against the appellant/ accused for the offence under section 302 of IPC.
- 4) The Trial Court framed charge against the accused/appellant under section 302 of IPC. The accused/appellant denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 22 witnesses namely PW-01 Karam Sai, PW-02 Pushnath, PW-03 Mansai, PW-04 Amar Sai, PW-05 Dileshwarram, PW-06 Ramlal Nagesh, PW-07 Jainath Baghat (Head Constable), PW-08 Parasnath Yadav (Patwari), PW-09 Dr. Shailendra Gupta, PW-10 Rohitram (Peon), PW-11 Santram Paikra (Head Constable), PW-12 Bhupendra Yadav (Constable), PW-13 Gourishankar Dubey (Inspector), PW-14 Anarkali, PW-15 Krishnaravi, PW-16 Gambhir Sonwani (Inspector/T.I.), PW-17 Narendra Kumar

(Head Constable), PW-18 Madhwa, PW-19 Kundan Pandey (Constable), PW-20 Bandhani Nagesiya, PW-21 Krishna Prasad Kurrey (Constable) and PW-22 Ananiyus Toppo (Constable). The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. No defence witness was examined by the accused in his defence.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above in para 1 of this judgment.
- 7) Learned counsel for the appellant submits no any independent eye witness has supported the prosecution case. PW-14 Anarkali is the wife of deceased Bhot and due to dispute between the appellant and PW-14 Anarkali, he has been falsely implicated in this case. There is no any blood stain found on the wooden log seized from the accused.
- 8) He further submits that at the time of incident the deceased was provoking the appellant and assaulted first and slapped the appellant and therefore, in the heat of passion upon a sudden quarrel without any premeditation, only one injury was caused to the deceased which shows that there was no intention nor any knowledge on the part of the appellant for committing murder of the deceased. Therefore, the offence is not covered under section 302 of IPC but it is covered under section 323 or 325 of IPC. Hence, the appellant may be acquitted or punished with lessor offence.
- 9) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that looking to the injury found on the vital part head, fracture was also found in head, the accused himself started hurling abuses at the wife of deceased, he was the aggressor and assaulted on vital part of

the deceased head with such a force that there was fracture on head which proved to be his caused of death, the learned Trial Court has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.

- 10) Heard counsel for the parties and perused the material available on record.
- 11) PW-14 Anarkali is daughter-in-law of appellant and wife of deceased Bhot. She was at the time of incident at home, therefore, she was a natural witness. PW-14 Anarkali has stated in paras 1 and 2 that on the date of incident her father-in-law/ appellant reached home after consuming liquor and asked about her daughter, then Anarkali replied she has no knowledge about her daughter, then accused/appellant was abusing filthy language and he tried to assault upon PW-14 Anarkali. At that time husband of the Anarkali reached home and told how you are trying to assault upon his daughter-in-law. At that time the accused/appellant picked up wooden log and assaulted upon his son. At that time Uncle-in-law (Kaka Sasur) reached the place of incident and he was informed about the incident. Thereafter, her husband was shifted to Ambikapur Hospital where he died. Inquest notice was prepared as per Ex. P-2 and dead body after postmortem was handed over as per Ex. P-5. There is no major contradiction or omission in her statement.
- 12) As per PW-01 Karam Sai he also stated that when he reached the place of incident after hearing the sound of quarrel he found Bhot (deceased) was lying down on floor in unconscious condition. He also supported the prosecution story that the accused and deceased were quarreling after consuming liquor. He also stated in his deposition that from nose and mouth blood was oozing and deceased was shifted to Ambikapur Hospital and died. He also supported Ex. P-2 Inquest Report and FIR lodged by PW-01 Karam Sai. There is no major contradiction and omission in his statement and in para 6 he also supported the fact as mentioned in FIR Ex. P-3 and stated that appellant

was quarreling in the night after consuming liquor and abusing filthy language, when deceased reached home and tried to restrict his father/appellant, deceased was slapped twice. At that time the appellant picked up wooden log and assaulted on head of deceased. Therefore, there is no reason to disbelieve the statement of PW-01 Karam Sai who has also corroborated the statement of PW-14 Anarkali and proved the prompt FIR Ex. P-3 lodged by him. Spot map Ex. P-4 and Ex. P-14 are duly proved by the prosecution and not disputed by the defence. Therefore, it is proved that the incident happened in house of appellant intervening night of 03/04/2015 and 04/04/2015.

- 13) As per Memo Ex. P-8 one wooden log is also seized from accused and PW-02 Pushnath proved this fact that the accused gave memorandum statement which was recorded by Police as per Ex. P-8.
- 14) PW-03 Mansai also proved Inquest report Ex. P-2 and Ex. P-7 Panchama.
- 15) PW-04 Amar Sai has turned hostile, he heard about the incident that the deceased and appellant were quarreling and PW-01 Karam Sai informed that there was quarrel between the appellant and deceased.
- 16) PW-05 Dileshwar Ram was informed by Karam Sai PW-01 just after the occurrence regarding the quarrel between deceased Bhot and appellant. Thereafter, the deceased was shifted by Ambulance at Ambikapur Hospital where he died.
- 17) PW-06 Ramlal Nagesh has proved the memorandum vide Ex. P-8 and the seizure vide Ex. P-9.
- 18) PW-07 Jainath Bhagat is the witness of inquest.
- 19) PW-08 Parasnath Yadav, Patwari proved the spot map as per Ex. P-13. He received application for preparing spot map and thereafter he prepared spot map as per Ex. P-14.

- 20) PW-09 Dr. Shailendra Gupta conducted postmortem as the body of the deceased and he found only one injury on the occipital region 6cmx01cmx01cm lacerated wound and beneath that injury fracture was found and one abrasion over left shoulder clotted blood and one abrasion of 0.4cmx0.2cm on the left shoulder and that death is due to injury found on the head and it was homicidal in nature. Thus, in view of the statements of eye witness PW-14 Anarkali, PW-01 Karam Sai, the promptly lodged FIR as per Ex. P-3 and the medical evidence of PW-09 Dr. Shailendra Gupta, including the postmortem report Ex. P-16, complicity of the appellant in the crime in question stands proved beyond all reasonable doubt.
- 21) Now this Court has to see whether the act committed by the appellant makes him liable for conviction under section 302 of IPC or for any lesser offence.
- 22) It is not disputed by both the counsel of the parties that at the time of occurrence all family member had consumed liquor (Hadiya, kind of liquor) on occasion of Devbandhi festival and wife of the deceased PW-14 Anarkali informed her husband/ deceased regarding the appellant hurling abuses at her on which deceased Bhot slapped the appellant as admitted by PW-01 Karam Sai who reached there just after the incident and was informed by PW-14 Anarkali. Thus considering the facts and circumstances of the case, the manner in which the incident occurred, it is clear that there was no premeditation or preplan on the part of the appellant to commit the crime in question and the assault was made by the appellant on the deceased upon a sudden quarrel in the heat of passion and out of anger. It has come in the evidence of prosecution witnesses that the appellant was not carrying any weapon with him and during the course of quarrel with the deceased, he picked up a wooden log lying nearby and assaulted with it. From the oral and medical evidence available on record it is also seen that while making assault on the deceased, the appellant did not act in any cruel or unusual manner and assaulted only once.

- 23) At this juncture, it would be appropriate to refer to Sections 299 and 300 of IPC which read as under:-

“299. Culpable homicide. -Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

“300. Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly.- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly.- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

The aforesaid description of the offence of murder in Section 300 IPC is subject to five exceptions. Exceptions 1, 2 and 4 thereof, being relevant for the present purpose, could also be taken note of as under: -

“Exception 1. When culpable homicide is not murder.-

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First.-That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

Exception 2.-Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence."

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 party offers the provocation or commits the first assault.

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- 24) 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 SCC 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 the 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."
- 25) If the facts and circumstances of the present case are examined in light of the aforesaid principles of law, as observed above,

there was no intention on the part of the appellant to cause death of Bhot and in fact the appellant having got enraged on account of deceased slapping him over a disputes/quarrel with his wife of the appellant, picked up a wooden log and assaulted on his head which unfortunately proved to be his cause of death. Though while making assault on the deceased, the appellant was not having any intention to cause his death but looking to the manner in which he assaulted the deceased, the vital part i.e. head chosen for assault, the force with which assault was made resulting in fracture in head which ultimately proved to be his cause of death, it can certainly be inferred that while making such assault the appellant was having knowledge that the bodily injury being caused by him to the deceased would result in his death. Being so, the case of the appellant is covered under exception 4 to Section 300 of IPC and he is liable for conviction under Section 304 Part-II of IPC.

- 26) As regards the sentence, in the totality of facts and circumstances of the case, the nature of dispute between the parties giving rise to the incident in which the deceased died, the age of the appellant, the fact that he is in jail since 06/04/2015 we are of the opinion that the ends of justice would be served if the appellant is sentenced to R.I. for 5 years while keeping the fine amount with default stipulation as imposed by the Trial Court intact.
- 27) In the result, the appeal is allowed in part. The appellant is acquitted of the charge under Section 302 of IPC and instead held guilty under Section 304 Part-II of IPC. The appellant is sentenced to undergo R.I. for 5 years. However, the fine sentence with default stipulation as imposed by the Trial Court shall remain intact.

-Sd/-
(Prashant Kumar Mishra)
Judge

-Sd/-
(Gautam Chourdiya)
Judge