

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1171 of 2014**

1. Vidhnibai W/o. Sukhdev Aged About 52 Years R/o. Vill. Darhora Banghmar Jharia P.S. Chandoura, Rev. And Civil Distt. Surajpur C.G., Chhattisgarh
2. Sukhdev, Son of Deoram Kodaku, 54 years R/o. Vill. Darhora Banghmar Jharia P.S. Chandoura, Revebye abd Civil Distt. Surajpur Chhattisgarh.

--- Appellants**Versus**

State of Chhattisgarh through Private Secretary Chandoura, Distt.
Surajpur Chhattisgarh

--- Respondent

For the Appellants	:	Mrs. Ranjana Jaiswal, Advocate.
For the Respondent/ State	:	Mr. Avinash Singh, Panel Lawyer.

DB : Hon'ble Shri Justice Goutam Bhaduri, Judge
Hon'ble Shri Justice Arvind Singh Chandel, Judge

Judgment/Order on Board**Per Goutam Bhaduri, J****26.10.2021**

1. The instant appeal is against the Judgment/Order dated 29.09.2014 passed by the learned Additional Sessions Judge, Pratappur, District Surajpur passed in Sessions Trial No. 25 of 2011 whereby the appellants were convicted under section 302/34 of IPC and sentenced to undergo life imprisonment. Further the appellants were also directed to pay a fine of 500/- each, in default of payment of fine, to further undergo Rigorous Imprisonment for 15 days.
2. The case of prosecution is that both the accused, the appellants herein, and the deceased Deolal Kodaku were related to each other.

On 24.10.2010, the dead body of Deolal Kodaku was found in the Courtyard of the appellants. Thereafter, when the postmortem was conducted, the death was found to be homicidal in nature. During the investigation, it was revealed that on 23.10.2010 while the deceased Deolal and his wife Dasharo were coming back from Bhaisamuda market, on the way, at village Darhora, they met the accused-appellants and all they had gone to the house of accused Sukhdev. In the night, the deceased and his wife stayed in the house of appellants and consumed liquor. Next day morning, Dasharo, wife of Deolal went to her house to cook food and thereafter at about 4 p.m., when she again came back to the house of accused the dead body of Deolal was found in the courtyard of the accused-appellants and the marks of burn injuries were present on head, face, both the arms and legs, abdomen of deceased. As per the prosecution case, a dispute about partition of landed property was existing between Sukhdeo Kodaku, appellant and deceased Deolal for a long time. Consequently in such back ground the deceased Deolal was assaulted on his head and several parts of the body were subjected to burns. On the basis of memorandum of the accused, the articles were seized i.e., Scarf (Gamcha), Sarai wood log etc., and after investigation the charge sheet was filed and subsequently they were put to trial by the Sessions Court.

3. During the course of trial, the appellants abjured the guilt and pleaded innocence. The prosecution, in support of its case, examined 15 witnesses namely P.W.1 Parsuram, P.W.2 Krishna, P.W.3 Naan, P.W.4 Raghunath, P.W.5 Mahajan Ram, P.W.6 Shatruhan Porte, P.W.7 Dasharo Bai, P.W.8 Sukhmaniya, P.W.9 Dr. A.K. Vishwakarma,

P.W.10 Lalsay, P.W.11 Ramuram Singh, P.W.12 Janki and P.W.13 K.D. Prabhakar.

4. The learned trial Court after hearing the parties and evaluating the evidence and documents, convicted and sentenced the appellants under section 302 of IPC read with section 34 of IPC.
5. Mrs. Ranjana Jaiswal, learned counsel appearing for the appellant would submit that there is no eye witness in this case and the conviction is based on a presumption as the dead body of deceased Deolal was found at the premises of the appellants. She refers to the statement of Dr.A.K. Vishwakarma, who was examined as P.W.9, and would submit that in cross examination, the Doctor has categorically deposed the fact that the kind of injury which was sustained by the deceased would have been caused by fall on the ground. It is further submitted that as per the prosecution case, the deceased, his wife and both the appellants all had consumed liquor and were in drunken condition and because of over-drinking and intoxication, the deceased fell down in the court-yard where the woods were being burnt. Learned counsel would further submit that no blood stains were found on the seized scarf (*gamcha*) and the postmortem report also did not support the fact that the death was because of Asphyxia or strangulation by scarf. It is, therefore, submitted that the conviction and sentence of the learned Sessions Court cannot be sustained and be set aside.
6. Per contra, learned State Counsel opposes the arguments and submits that the deceased was seen in the company of the accused just before the death, therefore, how the dead body was found in the premises of the appellant has not been explained by the accused.

Referring to the postmortem report given by the Doctor, learned State Counsel would further submit that the death of deceased was because of sub-arachnoid haemorrhage leading to cardio respiratory arrest, which was caused by an assault made on the head. Consequently the offence is clearly made out against the present appellants. Hence, the judgment/order of the learned court below is well merited which does not call for any interference.

7. We have heard learned counsel for the parties at length and have also perused the documents and evidence on record. The dead body of deceased Deolal was found in the premises of the appellants' house (Parchi) which is proved by prosecution vide Ex.P-3 which depicts a map and crime details. The Naxa Panchayat-nama Ex.P-2 also fortifies the same. The statement of P.W.4 Raghunath who had lodged the merg intimation deposed that he saw the dead body of deceased Deolal who was his father-in-law and the body was found in the house of the appellants and on that basis, the merg intimation (Ex.P-7) was lodged. In the cross-examination of this witness P.W.4, the place where the dead-body of Deolal was found i.e., the premises of appellants is not being rebutted. Therefore a strong presumption and the suspicion would come to fore as to what is the explanation by the accused when the dead body of Deolal was found in the courtyard of their house.
8. In order to find the explanation, if any, given by the accused appellant, we have perused the statement made under section 313 of Cr.P.C., before the Court. The entire perusal of the statement would show that no plausible explanation was offered by the accused appellants about the presence of dead-body in their premises. So the circumstances

were against the appellants. In order to find out the evidence, the statement of P.W.7, Dasharo Bai, wife of deceased, was perused. Her statement would be relevant so as to evaluate the past background just before the incident. She has stated that on the date of incident, she along-with deceased, her husband Deolal went to the house of accused appellant, consumed Mahua liquor and also stayed-back in the house. On the next day morning, when they woke up, again Mahua liquor was brought by Vidhni Bai and they all again consumed it. Thereafter she went back to her house to cook food whereas her husband Deolal stayed back in the house of accused. After some time, in between 9 and 10 a.m., again when she came back to the house of appellants, she found the dead body of her husband was lying in the courtyard of accused appellants. The inference of this statement would show that just before the death of Deolal, few hours back, wife of deceased Dasharo Bai (P.W.7) was in the company of accused while Deolal was alive. It is stated for some hours of time, she had gone to her house to cook food while her husband deceased stayed-back in the house of appellants. However, when she again came back from her house, her husband was found dead in the premises of accused. So the theory of last seen together partially comes to fore, but that evidence alone would not be enough to hold the appellants guilty.

9. Dr. A.K. Vishwakarma, who conducted the postmortem of deceased, is examined as P.W.9. He proved the postmortem report as Ex.P.9 wherein he opined that the cause of death was sub-arachnoid hemorrhage leading to cardio-respiratory arrest and it was homicidal in nature. With reference to a query report sought by the police in regard

to cause of burn injuries by fire-wood, the doctor opined that except the injury of abdomen, the injuries on other parts of the body can be sustained by such wood. In cross-examination, the Doctor admits the fact that the kind of injury the deceased sustained on parietal bone can be attributed when a person falls on ground after intoxication. He further admits that the injuries near the chin and eye can also be sustained by fall. He has further deposed that if some injury is caused by a wooden log which was seized, the mark of burn injury can be found. He has also stated that as mentioned in postmortem report, arachnoid hemorrhage can be caused when a person forcefully falls down. He has further stated that if the person is intoxicated and falls back on the floor then any such injury could have been caused whereas in respect of the some burn mark on the abdomen, the same could not be caused by a brazier (Angeti).

10. The statement of doctor though creates an inference which is not a proof beyond doubt, but this fact cannot be ignored that the burden is on accused to explain how the dead body was found in their premises. Before few hours of incident, the deceased was alive that too in the day time, he was found dead. These facts have not been explained. The prosecution has seized half burnt fire wood at the instance of memorandum of the accused by Ex.P-6. The said article was sent for query as to whether the injury could have been caused on the head by such firewood. On a query, the doctor in his statement has stated that from the wooden log which was half burnt, except the injury on the abdomen, other injuries could have been caused. In respect of scarf (*Gamcha*) which was sent by Ex.P-10, it opined that no blood stains were present over the Gamcha. Therefore, reading of the query report

and the postmortem report as also the statement of the doctor would show that the deceased succumbed to head injury and his death was due to sub-arachnoid hemorrhage which resulted into asphyxia and the cardio-respiratory arrest and it was homicidal in nature. However, considering the back ground of the facts and the way the incident happened, this Court has to appreciate and evaluate the fact as to whether such homicidal death was intentional which can be attributed to the appellants or not only on the basis of place of dead body, which is the courtyard of appellant

11. The learned trial Court has convicted the accused appellants u/s 302 of IPC. Therefore, in reference to the conviction, it would be relevant to quote sections 299 & 300 of IPC which demonstrate culpable homicide and murder. It reads 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 case 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.

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 by the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exceptions are subject to the following provisions :

Firstly. - 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”.

12. A plain reading of section 299 of IPC will show that it contain three clauses. In two clauses it is the intention of the offender which is relevant and is the dominant factor and the third clause, the knowledge of the offender is relevant and is dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done -

- (i) with the intention of causing death; or
- (ii) with the intention of causing such bodily injury as is likely to cause death, or
- (iii) With the knowledge that the act is likely to cause death.”

13. If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses *Firstly* to *Fourthly* of Section 300 IPC, it will not amount to murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case, if the offence is such which is covered by clause (i) or (ii) mentioned above, the offender would be liable to be convicted under Section 304 Part-1 IPC as it used the expression “if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death: where intention is the dominant factor. However, if the offence is such which is covered by Clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part 2 IPC because of the use of expression “if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or cause such bodily injury as is likely to cause death: where knowledge is the dominant factor.

14. The evidence of P.W.7 Dasharo Bai, wife of deceased, who was in the last company of her husband (deceased) and the accused appellants would show that the accused and deceased were in the Company of each other, all they had partaken liquor in the house of accused in the last night of incident on 23.10.2010 and thereafter on the next day morning, they again consumed liquor. Till the morning, the deceased

was alive and in the meantime, she went to her house to cook the food and at about 9 to 10 a.m, when the wife again came back she found the dead body of her husband in the premises of the appellants. Therefore, the inference can be drawn that had there been any intention to kill Deolal, it could have been executed at a prior point of time. The circumstances which itself speak would show that there might have been certain quarrel between the accused and deceased and in a spur of moment, some injury might have been caused and eventually it resulted into death. The statement of the doctor is also not a foolproof to draw the inference, but the fact that the accused has failed to explain the cause of death looms large.

15. Under the circumstances, we are inclined to convert the sentence of the appellants u/s 302 IPC (punishment for murder) to 304 Part II (Punishment for culpable homicide not amounting to murder) in absence of intention to cause murder. Accordingly the appeal is partly allowed. Since the appellants are already in custody for more than 10 years, they are liable to be released from custody by holding that the sentence is undergone.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Arvind Singh Chandel)
Judge