

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 48 of 2018**

- Bolo @ Baldev S/o Dhansingh, Aged About 25 Years Caste Mahara, Occupation Agriculturist R/o Mailbeda P.S. Karpawand District Bastar Chhattisgarh.

**---- Appellant**

**In Jail**

**Versus**

- State Of Chhattisgarh Through Aarakshi Kendra Karpawand District Bastar Chhattisgarh

**---- Respondent**

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|----------------|---|------------------------------------|
| For Appellant  | : | Shri Santosh Bharat, Advocate.     |
| For Respondent | : | Shri Shreshta Gupta, Panel Lawyer. |

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**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**18/10/2021**

Challenge in this appeal filed under Section 374(2) of CrPC is to the judgment of conviction and order of sentence dated 28.12.2017 passed by Sessions Judge, Bastar at Jagdalpur (CG) whereby the appellant stands convicted under Section 304 Part-II of IPC and sentenced to undergo RI for 07 years.

02. Facts in brief of the case are that there was some dispute between the appellant and Mansingh, Sukhdas regarding wages. On 20.7.2017 in between 7.30 pm and 8 pm when Mansingh and Sukhdas demanded their wages, the appellant quarreled with them and beat Sukhdas with hands and fists, as a result of which Sukhdas died on the next day. During investigation, inquest Ex.P/6 over the dead body was

prepared, postmortem Ex.P/10 was conducted, site plan Ex.P/16 was prepared and statements of the witnesses were recorded.

03. After filing of charge sheet under Section 302 of IPC, the trial Court framed charge under Section 302 of IPC against the appellant, which was abjured by him and he prayed for trial.

04. The prosecution in support of its case examined as many as 15 witnesses. Statement of the appellant was recorded under Section 313 of CrPC where he denied the circumstances appearing against him and pleaded innocence. However, no witness was examined in defence.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record convicted and sentenced the appellant by the impugned judgment.

06. Learned counsel for the appellant submits that the impugned judgment suffers from the legal and factual infirmities and as such not sustainable in law. The trial Court has not properly appreciated the oral and documentary evidence available on record. There are material contradictions and omissions in the statements of the witnesses which have been overlooked by the trial Court. There was no motive on the part of the appellant to cause death of the deceased and even if the entire prosecution case is taken as it is, offence under Section 304 Part-II is not made out against the appellant.

Alternatively, it is submitted that if this Court ultimately comes to the conclusion that the conviction under Section 304 Part-II is proper, then considering the facts and circumstances of the case, the fact that the incident took place in the year 2017 over a trivial dispute of money

transaction, no fatal assault was made by the appellant, no weapon was used for making assault, the appellant was 25 years of age at the time of incident, his sentence may be reduced suitably.

07. On the other hand, learned counsel for the State supports the impugned judgment and submits that the trial Court after due appreciation of the evidence on record has rightly convicted and sentenced the appellant, which needs no interference by this Court.

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

09. So far as homicidal death of deceased Sukhdas is concerned, from the evidence of autopsy surgeon PW-10 Dr. Rishabh Sao, it is clear that he noticed abrasion over right upper back of size 10 x 4 cm, abrasion over left upper back of size 3 x 2 cm, blood clot in stomach and in his opinion that cause of death was multiple injuries over back region and abdomen and cardio-respiratory arrest and it was homicidal in nature. Defence could not elicit anything from the autopsy surgeon which could suggest that the death was not homicidal. Therefore, it stands proved beyond all reasonable doubt that the death of Sukhdas was homicidal in nature.

10. PW-4 Mansingh, eyewitness to the incident, has stated that on the date of incident when he along with the deceased went to the house of the appellant for demanding their wages, the appellant slapped deceased Sukhdas and he (PW-4) fled from there out of fear. Further, this witness has stated that the appellant beat the deceased with hands and fists and when he intervened, he was chased by the appellant with a club, therefore, he fled from there.

11. Complainant Bajnath PW-01 states that on being informed by Mansingh about the incident when he went to the house of the appellant, he found his father deceased Sukhdas lying on the courtyard and he took him to his house but he died next day. PW-2 Sindhu, brother of the deceased, is a hearsay witness. PW-3 Smt. Sukaldai, wife of the deceased, states that her husband/deceased informed her that he was beaten by the appellant. PW-5 Kamla @ Kamalwati Nag, PW-7 Jagtu, PW-15 Lakhiram are hearsay witnesses.

12. Thus, from the un rebutted evidence of eyewitness Mansingh (PW-04), which finds due corroboration from the FIR (Ex.P/2) and evidence of other witnesses as also the medical evidence in the form of postmortem report Ex.P/10 and evidence of the autopsy surgeon (PW-10), it is clear that on the date of incident it is the appellant who beat the deceased with hands and fists to such an extent that it resulted in death of the deceased on the next day. Therefore, complicity of the appellant in the crime in question stands proved beyond all reasonable doubt.

13. Now this Court has to see whether the act of the appellant makes him liable for conviction under Section 304 Part-II of IPC or any lesser offence.

14. 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.”

15. In the matter of ***Kala Singh @ Gurnam Singh Vs. State of Punjab*** (decided on 21<sup>st</sup> September, 2021, Criminal Appeal Nos.1040-1041 of 2021), there was a sudden fight between the appellant Kala Singh and the deceased as the deceased had stolen a pigeon of the appellant and the co-accused (Kehar Singh) hit the deceased with a rod on the head resulting in his death. Co-accused was convicted under Section 302 and 201 of IPC whereas appellant was convicted under Section 302/34 and 201 of IPC and sentenced to life imprisonment and RI for three years respectively. In appeal, High Court having found that the scuffle had taken place on the spur of moment in a sudden fight in the heat of passion upon a sudden quarrel and as such, not a premeditated act, modified the conviction from 302 to 304 Part-I of IPC and imposed of 12 years' RI and fine of Rs.10,000/- with default sentence of six months.

The Hon'ble Supreme Court held that it was not a premeditated

one and as there was no intention on the part of the appellant and co-accused either to cause death or cause such bodily injury as is likely to cause death, as such the High Court ought not to have convicted the appellant for the offence under Section 304 Part-I of the IPC and modifying the same into Section 304 Part-II of IPC, reduced the sentence from 12 years to 07 years' RI while maintaining the fine sentence imposed by the High Court.

16. In the present case, it is not in dispute that the incident occurred when the deceased along with Mansingh PW-04 went to the house of the appellant for demanding his wages and the appellant refused to give the same. Over this issue, there was some hot talk between the deceased and the appellant, when the deceased attempted to assault on the appellant, then the appellant slapped the deceased and thereafter, started beating him with hands and fists. Thus, it is clear that the incident took place all of a sudden in the heat of passion upon a sudden quarrel. No weapon was used by the appellant for making assault and no undue advantage was taken by him while making assault. As such, it is evident that while assaulting the deceased, the appellant did not have any intention of causing such bodily injury as would result in his death but had knowledge that by making such assault, the deceased would die. In these circumstances, the trial Court was fully justified in holding the appellant guilty under Section 304 Part-II of IPC.

17. As regards the quantum of sentence, considering the facts and circumstances of the case, the manner in which the assault was made, no weapon was used by the appellant for making assault, the incident took place all of a sudden in the heat of passion, at the time of incident

the appellant was 25 years of age, he is in jail since 22.7.2017, this Court is of the opinion that the ends of justice would be served if his sentence is reduced from 07 years to 05 years' RI and he is directed to pay a fine of Rs.5000/- with default sentence of three months.

18. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Section 304 Part-II of IPC, his sentence is reduced from 07 years to 05 years' RI. However, he is also sentenced to fine of Rs.5000/-, in default of which he shall suffer additional RI for three months. The impugned judgment stands modified to the above extent.

Sd/

**(Gautam Chourdiya)**

**Judge**

Khan