

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 471 of 2012

- Bhaglu S/o Pachche Baiga, aged about 55 years, R/o Bandha (Berkholapara), PS Bhoramdeo, Distt. Kabirdham (CG).

--- Appellant.

Versus

- State Of Chhattisgarh, through Station In-charge, PS Bhoramdeo, District Kabirdham (CG)

--- Respondent.

For the Appellant	:-	Mr. Dharmesh Shrivastava, Adv.
For the State	:-	Mr. Raghvendra Pradhan, PL.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Manindra Mohan Shrivastava, J.

26.08.2021

This appeal is directed against the judgment of conviction and order of sentence dated 31.03.2012 passed by learned Sessions Judge, Kabirdham (Kawardha) in Sessions Trial No.56/2011, whereby and whereunder the appellant has been held guilty for the offence under Section 302 IPC and sentenced to undergo Life Imprisonment with fine of Rs.3000/-, plus default stipulation.

2. Prosecution story, as unfolded from the judgment of conviction and order of sentence is that an incident happened on 11.07.2011 in respect of which, Merg intimation was recorded in the Police Station on the same day at about 21 hours in PS Bhoremdeo on the basis of which, information is said to be given by Pachche Baiga (PW-1). It was followed by FIR in Ex.P-8 on the report of the same person. In the Merg intimation and FIR it was recorded that on the date of incident, the appellant and the deceased, who were real brothers along with their father, arrived at the house of one Sunau in connection with a ceremony. It was stated that when deceased Chaitu reached and extended wish to elders, his brother Bhaglu – the appellant objected as

to why he came there and abused him and did not accept the wish due to which deceased Chaitu got enraged and assaulted appellant Bhaglu on his face with fists blow where-after the appellant, out of anger, picked up a wooden stump lying there and gave a blow on the head of Chaitu resulting in injury and later on, Chaitu died. Offence under Section 302 IPC was registered against the appellant on the basis of the said information and inquest over dead body was prepared and sent for postmortem which was conducted by doctor (PW-7). The doctor found that there was internal injury of clotting of blood, though no external injury was found. According to the doctor, cause of death was internal injury as a result of assault by a heavy object but it could not be said whether it was homicidal or not. After completion of usual investigation, charge-sheet was filed before the competent jurisdictional Magistrate who in-turn, committed the case for trial to the Court of Sessions. The trial Court on the basis of the material contained in the charge-sheet framed charges against the appellant alleging commission of offence of murder of Chaitu – the real brother of the appellant. The appellant having abjured guilt was put to trial and the prosecution, in order to prove its case, examined as many as 8 witnesses. Accused was thereafter examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. The appellant stated that he does not know about the incident and in fact, he had not gone to the house of Sunau and he came to know about the incident later on. He also stated that wife of deceased Chaitu has falsely implicated him. No defence witness was examined.

3. Learned trial Court, relying upon the evidence of the prosecution witness particularly the eye witness account of the incident, as stated

by Mankunwar (PW-2) – wife of the deceased, held the appellant guilty of commission of offence of murder of Chaitu and imposed life imprisonment.

4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would submit that the conviction is founded on the sole testimony of Mankunwar (PW-2) – wife of the deceased whereas, all other prosecution witnesses, who were cited as eye witnesses, including the father of the deceased, have not supported the prosecution case and have clearly stated that in fact, Chaitu had come in drunken condition and he fell down and sustained injuries because of fall and possibly because of said injury he may have died. It is further submitted that PW-2 is not reliable because she is the wife of the deceased secondly, according to her, appellant had given 3-4 assault whereas no injury has been found on the head and there is only clotting of blood inside. Thirdly, in her cross-examination she has admitted that when she along-with her husband reached the house of Sunau, she went inside and her husband sat along with other elders outside, that means she had entered inside and therefore, there was no occasion for her to witness the incident. Her evidence also elicits that deceased Chaitu was not taken to hospital. Learned counsel for the appellant would also argue that this witness has clearly admitted that there was no dispute between the brother nor any quarrel had taken place in the past and their relations were cordial. None of the other prosecution witnesses has stated anywhere that there existed any dispute between the appellant and his brother Chaitu. Thus, there is no motive why the appellant would intent to kill his own brother. He would further highlight that wooden stump has not been found to be stained with blood also.

5. The alternative submission of learned counsel for the appellant is that, even if, it is held that the appellant assaulted the deceased with the help of wooden stump on his head, absence of superficial injury shows that not much force was given but unfortunately, it led to clotting of blood inside which became fatal. The wooden stump is said to be hardly weighing 1 Kg. It is said to be picked up at the spot by the appellant. The contents of the Merg intimation and the FIR and even the memorandum of the appellant, which is the story of the prosecution, and is also hinted by the wife of the appellant herself in her evidence, is that when Chaitu reached the house of Sunau, there was some altercation between him and his brother – the appellant and at that stage, accused hurled abuses and then Chaitu gave fists blow on the face of the appellant and then, as a reaction, out of anger the appellant is said to have picked up a wooden stump lying there and given a blow which was not so much as to cause any injury on the head though, it led to internal injury of blood clotting. These materials emerging from the case of the prosecution itself make out a case of alteration of conviction to that under Section 304-II IPC, as there was no intention to cause death and the incident happened all of a sudden during sudden quarrel, fight and heat of passion. He would lastly submit that the appellant has undergone 10 years of jail sentence by now.

6. On the other hand, learned State counsel submits that, even though, other prosecution witnesses have not supported the prosecution case but in the Merg intimation and FIR, which was lodged soon after the incident, as also the evidence of Mankunwar (PW-2) – wife of the deceased, who is the eye witness, it has come that appellant assaulted the deceased with the help of wooden stump on head due to which deceased died later on, therefore, a clear case is made out. He

would submit that discrepancies in the evidence of Mankuwanr (PW-2) would not make her evidence totally unreliable particularly when nothing has been elicited in her cross-examination as to why she would falsely implicate her own brother-in-law. He would next submit that even if, the contents of the Merg intimation, FIR and memorandum are taken as it is, there was not much fight at the spot and there was no occasion for the appellant to pick up a wooden stump and choose the head as the part of the body to assault. This clearly shows that at the spot, the appellant had developed intention to kill his own brother, may be out of an anger, therefore, the conviction does not warrant any interference.

7. We have heard learned counsel for the parties and perused the records as also the impugned judgment.

8. The Merg intimation (Ex.P-1) is said to have been lodged in the police station by Pachche Baiga (PW-1) who is the father of the appellant and the deceased both. Though, this witness in his evidence states that he came to the police station and informed the police regarding death and his thumb impression was obtained, his evidence is that while he was present in the house of Sunau in connection with a ceremony, Chaitu arrived in drunken state and fell down and fainted but he has nowhere stated that the appellant assaulted the deceased. He has been declared hostile and even after being examined by the prosecution, he has denied that he had given any such statement while lodging Merg intimation and FIR. The FIR is also recorded in the police station at the instance of Pachche Baiga (PW-1) which also contains the story as stated in the Merg, which was promptly lodged soon after the incident. In both the documents, the story is that when he went to attend the ceremony in the house of Sunau; appellant, deceased and

their father (PW-1) reached there, there was some altercation between the appellant and the deceased and appellant, later on, when did not respond to the wish extended by the deceased and abused, where-after the deceased gave fists blow on the face of the appellant and then, appellant picked up a wooden stump which was lying there, to assault the deceased on his head where-after, deceased fell down and fainted.

9. Though, the prosecution came out with more than one eye witnesses, only Mankunwar (PW-2) supported the prosecution case. She has stated that when she, along with her husband went to the house of Sunau to attend a ceremony, her husband extended wish to all the persons present there and when Chaitu extended wish to the appellant, the appellant turned his face around and took objection as to why Chaitu had come and abused him, picked up wooden stump and started assaulting her husband Chaitu and gave 3-4 blows on the head due to which, Chaitu fell down and fainted. In the cross-examination, this witness states that Pachche (PW-1) is her father-in-law, Sunau (PW-3) is her maternal uncle and Baghel (PW-4) is her brother-in-law. She states that she along with her husband reached at about 3 PM and after reaching there, she went inside whereas her husband stayed outside and sat alongwith other elder members of the family. According to her, her husband, Sunau Pachche and Baghel were sitting in the front of house of Sunau and engaged in conversation. She has denied suggestion that her husband sustained injury because of fall in a state of intoxication. However, she states that as her husband used to remain idle for 4-5 hours after taking liquor, he was not immediately taken hospital. She also admits that there was no dispute or any incident of previous quarrel between her husband and the deceased.

From the evidence of this witness, as stated in her examination-in-chief, an assault was given by the appellant when deceased wished him. Though in her cross-examination, she states that she had gone inside the house and her husband stayed out of the house and sat along with others to chat, she has stated that the appellant given 3-4 blows on the head. The evidence of the doctor does not show any superficial injury on the head of the deceased and for that reason the wooden stump has also not been found to be stained with any blood in the report of the FSL.

10. In the memorandum of the appellant as also the story as stated in the FIR and Merg intimation, it emerges that when the deceased came to the house of Sunau where the appellant and other persons were already present, on wish extended by the deceased to the appellant, the appellant objected to arrival of the deceased and abused him due to which, deceased gave him fists blow on the face and then the appellant picked up a wooden stump which was lying there and assaulted the deceased on his head. The other prosecution witnesses, namely Pacche (PW-1) – father of the deceased, Sunau (PW-3) who is the maternal uncle of PW-2 and Baghel (PW-4) who is brother of the deceased and appellant both and son of Pacche (PW-1) have not supported the prosecution case and all of them have stated in their evidence that deceased had come in intoxicated condition and he fell down and sustained injuries.

11. The evidence of Mankunwar (PW-2) that appellant assaulted her husband on the head cannot be discarded because in the cross-examination, nothing has been elicited as to why she would falsely implicate the appellant who is her own brother-in-law. One the peculiar

circumstance of the case is that all other persons who were said to be present were relatives of the deceased and the appellant both, being brother, father and uncle. Mankunwar (PW-2) stated that she had gone inside the house and her husband stayed outside and sat along with others members and started chatting. Moreover, she claims to have seen the appellant giving 3-4 blows to the deceased though there is no external injury found on the head.

12. Considering the evidence and entire material discussed above in its totality, it is doubtful whether Mankunwar had seen the entire incident right from the beginning and therefore, what has been stated in the FIR, Merg intimation and the memorandum which is the case of the prosecution itself, becomes probable because the assault on the deceased was preceded by sudden fight at the spot between the appellant and his brother Chaitu. It is said that when Chaitu reached, he wished the appellant but the appellant objected to his arrival and abused him to which deceased reacted by giving fists blow on the face of the appellant. At that stage, out of an anger and all of a sudden, the appellant picked up a wooden stump which was lying there. It is not the case of the prosecution nor the evidence suggests that the appellant had come with any weapon in his hands. Even according to the evidence of the prosecution witness PW-2, the appellant picked up a wooden stump which was lying there therefore, what emerges as plausible and possible story is that out of sudden quarrel and sudden fight the appellant without any premeditation, much-less intention to cause death, assaulted his brother with the help of wooden stump. The wooden stump is said to be about 1 Kg weight. Moreover, it appears that the blow given by the appellant was not with much force otherwise, some external injury would have been caused but there was no

external injury. But unfortunately, as the assault was given in the head, blood clotted inside the head and that resulted in the death of Chaitu. It is difficult to hold that in these circumstances particularly, when there is no motive for any assault but the incident is said to have happened all of a sudden, it would be a 'murder'.

13. Therefore, in our considered opinion the criminal overt act of the appellant would only amount culpable homicide not amounting to murder by application of exception 4 of Section 300. Since we find that there was no intention which could be attributed, the appellant is liable to convicted only under Section 304-II IPC. The appellant has undergone more than 10 years of jail sentence by now which is more than maximum sentence that could be awarded under Section 304-II IPC.

In the result, the appeal is partly allowed, conviction of the appellant is altered to that under Section 304-II IPC. As the appellant has undergone maximum awardable sentence under Section 304-II, he be released forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay