

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.1857 of 2018

Gohar Singh Gond S/o Dhaniram Gond, aged about 36 years, R/o Imlipara Kot, P.S. Surajpur, District Surguja, Chhattisgarh

---- Appellant
(In Jail)

Versus

State of Chhattisgarh Through Aarakshi Kendra Surajpur,
District Sarguja (CG)

---- Respondent

For Appellant:	Mr.Vipin Singh, Advocate
For Respondent/State:	Mr.Animesh Tiwari, Deputy Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board
(08.11.2021)

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment of conviction recorded for offence punishable under Section 302 of the IPC and sentence awarded under Section 302 of the IPC i.e. imprisonment for life and fine of ₹100/-, in default of payment of fine, to further undergo rigorous imprisonment for five days by the Second Additional Sessions Judge (F.T.C.), Surajpur by the impugned judgment dated 22.11.2006 in Sessions Trial No.84/2006.
2. Case of the prosecution, in brief, is that on 24.11.2005 at 8 a.m. the appellant assaulted Pawaro Bai (since deceased) on her head / back part of her body by

bamboo-stick by which she suffered grievous injuries and succumbed to death and thereby committed the offence under Section 302 of the IPC.

3. Further case of the prosecution is that on 24.11.2005 Heera Lal (PW-5), son of deceased Pawaro Bai, lodged a complaint on 24.11.2005 vide Ex.P-11 at Police Station Surajpur and thereafter F.I.R. (Ex.P-4) was registered on the same day at 15.30 p.m. against one Gohar Singh, appellant herein for offence under Section 302 of the IPC in Crime No.302/2005. Investigating officer M.S.Rathiya (PW-11) proceeded for the scene of occurrence and after summoning the witnesses vide Ex.P/1, prepared an inquest of the dead body of the deceased vide Ex.P/2. Statements of the witnesses were recorded under Section 161 of the CrPC. Dead body of the deceased was sent for postmortem to Primary Health Center, Surajpur, where Dr.Smt.Sashi Tirki (PW-9) conducted postmortem on body of deceased Pawaro Bai and submitted her report vide Ex.P-9 in which she noticed five injuries, out of which, four injuries were simple in nature and injury No.5 was grievous in nature, which was sufficient to cause death. Cause of death was shock due to excessive hemorrhage and death was homicidal in nature. The appellant was arrested by investigating officer M.S. Rathiya (PW-11) and on his memorandum statement Ex.P-6, bamboo-stick was recovered from the appellant vide Ex.P-7 in presence of Hiran Singh and Hardev Narayan (PW-6). Patwari Amresh Kumar Singh

(PW-12) also prepared spot map vide Ex.P-14 and panchnama vide Ex.P-15. After completion of investigation, charge-sheet was filed against the appellant / accused and it was committed to the trial Court / Court of Session. The appellant herein abjured the guilt and entered into defence.

4. In order to bring home the above-stated offence, the prosecution examined as many as 12 witnesses and exhibited 16 documents, whereas the accused / appellant examined 3 defence witnesses in his support.
5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 22.11.2006, convicted the appellant for offence under Section 302 of the IPC and sentence him as aforementioned, against which, this criminal appeal has been preferred by the appellant / accused.
6. Mr.Vipin Singh, learned counsel for the appellant / accused, would submit that the prosecution witnesses particularly Silochani (PW-2) and Smt.Bahalo Bai (PW-3) both are daughters-in-law of deceased Pawaro Bai and thereby they are interested witnesses. Similarly, Heera Lal (PW-5) is son of deceased Pawaro Bai. All being interested witness, their testimonies could not have been relied upon to base conviction for offence under Section 302 of the IPC. Even otherwise, Silochani (PW-2) and Smt.Bahalo Bai (PW-3) have clearly stated that they have not seen the appellant assaulting the

deceased. Therefore, conviction recorded and sentence awarded is bad and liable to be set-aside. Alternatively, he would submit that the deceased was aged about 55 years & weak woman and since she was abusing the appellant, therefore, the appellant is said to have assaulted the deceased and four injuries were simple in nature and are said to have been caused on back side of body of the deceased and only one injury is said to have been caused on head of the deceased. Considering the nature of injuries, it can safely be inferred that there was no intention to cause death. Even otherwise, offence under Section 302 of the IPC is said to have been found proved by this Court, it would fall within the ambit of Section 304 Part-II of the IPC. The appellant is in jail since 26.11.2005 i.e. more than fifteen years. Therefore, sentence to the period already undergone be awarded and he be released by granting the appeal in part.

7. On the other hand, Mr.Animesh Tiwari, learned Deputy Advocate General, for the respondent / State, while opposing the submissions made by learned counsel for the appellant, would submit that learned trial Court has fairly and objectively considered the testimonies of Silochani (PW-2) and Smt.Bahalo Bai (PW-3) and rightly reached to the conclusion that the deceased was assaulted by the appellant by which she suffered grievous injury on her head as opined by Dr.Smt.Shashi Tirki (PW-9) and succumbed to death and has rightly

convicted the appellant under Section 302 of the IPC. While replying other submission, Mr. Animesh Tiwari, learned Deputy Advocate General, would submit that since the appellant caused injury on head of the deceased, which is vital part of the body, particularly injury No.5, it cannot be held that there was no intention to cause death and it is not the case where conviction of the appellant can be converted for offence under Section 304 Part-II of the IPC, as such, the appeal deserves to be dismissed.

8. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
9. Conviction of the appellant is solely based on the testimonies of eyewitnesses Silochani (PW-2) and Smt. Bahalo Bai (PW-3). As per prosecution case, on 24.11.2005 at about 8 a.m. the appellant herein assaulted deceased Pawaro Bai by bamboo-stick, which was seized from him vide Ex.P-7, by which she suffered five injuries, out of which, four were simple in nature and one injury was grievous in nature, by which she died.
10. The trial Court has convicted the appellant herein for the aforesaid offence resting his conviction on the basis of testimonies of Silochani (PW-2) and Smt. Bahalo Bai (PW-3), daughters-in-law of deceased Pawaro Bai. It

is admitted fact on record that cattles owned by deceased Pawaro Bai had grazed the agricultural field / crops of the appellant and on that account, the appellant had come to the house of Pawaro Bai and some quarrel took place 4-5 days prior to the date of incident. Thereafter on 24.11.2005 again deceased Pawaro Bai was abusing the appellant herein and in that event, the appellant came to the house of the deceased and assaulted her by bamboo-stick, by which she suffered four injuries on her back portion and one injury on her head, which was grievous in nature and sufficient to cause death. The trial Court has further held that injuries were caused by the appellant and relied upon the testimonies of Silochani (PW-2) and Smt.Bahalo Bai (PW-3) and taken into consideration the medical evidence by Dr.Smt.Shashi Tirki (PW-9) came to the conclusion that death of deceased Pawaro Bai was homicidal in nature. The said finding has not been seriously disputed by learned counsel for the appellant herein. Even otherwise, considering the testimony of Silochani (PW-2), who has clearly stated that on the date of incident the appellant came to the house of the deceased and assaulted her and at that time, she and her sister-in-law (jethani) Smt.Bahalo Bai (PW-3) were present and even in cross-examination she has clearly stated that she has seen the appellant assaulting the deceased. Similarly Smt.Bahalo Bai (PW-3) of her examination-in-chief as well as in cross-examination

has maintained her version that she has seen that the appellant has assaulted the deceased by bamboo-stick, as such, the fact that the appellant has assaulted the deceased by bamboo-stick by which she suffered injuries and died is duly established. Merely because Silochani (PW-2) and Smt.Bahalo Bai (PW-3) are closely related to the deceased, their testimonies cannot be discarded, which is duly supported by Dr.Smt.Shashi Tirki (PW-9), as such, it is duly established that death of deceased Pawaro Bai was homicidal in nature and finding in this regard by the trial Court is hereby affirmed.

11.Now coming to the submission of learned counsel for the appellant that since there was no intention to cause death of deceased Pawaro Bai, therefore, conviction of the appellant under Section 302 of the IPC can be converted to Section 304 Part-II of the IPC.

12.It is not in dispute as noticed hereinabove that cattles owned by deceased Pawaro Bai had grazed the agricultural field / crops owned by the appellant and for which some quarrel took place between the appellant and the deceased 4-5 days prior to the date of incident and thereafter on 24.11.2005 the deceased was sitting in her home and abusing the appellant herein, then the appellant came there and caused five injuries and as per medical evidence of Dr.Smt.Shashi Tirki (PW-9), four injuries were simple in nature and injury No.5 being in head was grievous in nature, which was

sufficient to cause death. Dr.Smt.Shashi Tirki (PW-9) has clearly noticed irregular swelling blackish in colour on her upper part of upper occipital region extending upto the vault of scalp. She also found subdural heamotoma in brain and that injury was caused by hard and blunt object and injury is sufficient to cause death.

13.The fact remains that on account of having been caused four injuries on back portion of body of the deceased by the appellant and one injury on head by which she succumbed to death, the question is whether the appellant had any intention to cause death of the deceased as noticed hereinabove.

14.The total life of the dispute between the appellant and the deceased was 4-5 days prior to the date of incident. Admittedly, cattles owned by the deceased had grazed the agricultural field / crops owned by the appellant herein, for which some quarrel took place between them and after 4-5 days of that quarrel, the deceased Pawaro Bai was again abusing the appellant, which was overheard by the appellant, then he came to the house of the deceased and on sudden provocation, he caused four injuries on back portion of her body by bamboo-stick and one injury on her head by which she suffered grievous injuries and died thereafter.

15.At this stage, it would be appropriate to notice Section 304 of the IPC, which states as under:-

"304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, 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,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

To make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death, but there should not be intention to cause death.

16. In the instant case, though bamboo-stick blow was caused by the appellant to the deceased who was infirm and weak woman aged about 55 years, but four blows were caused on back portion of her body and all were simple in nature and incidentally, one blow was caused on her head and head injury was grievous in nature, which was sufficient to cause death and as such, it can safely be inferred that causing injury by bamboo-stick particularly one blow on head was sufficient to cause death, but considering the fact that there was no previous enmity between them except the dispute which was remained only 4-5 days for grazing cattles on the field owned by the appellant, single blow on head came

to be caused by the appellant and further considering that deceased Pawaro Bai was weak and infirm woman, we are of the considered opinion that we are unable to hold that there was intention on the part of the appellant to cause death of deceased Pawaro Bai though he knew that it was likely to cause death, as such, it is the case where conviction of the appellant herein would fall within the meaning of Part-II of offence under Section 304 of the IPC.

17. Accordingly, conviction of the appellant under Section 302 of the IPC is hereby set-aside and instead thereof, he is convicted for offence under Section 304 Part II of the IPC. Since the appellant is in jail from 26.11.2005 i.e. for more than fifteen years, we award the sentence to the period already undergone by him. The appellant is in jail, he be released forthwith, if not required in any other case.

18. The criminal appeal is allowed in part to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-