IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.1400 of 2018

(Arising out of judgment of conviction dated 24.08.2018 and order of sentence dated 29.08.2018 passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa in S.T. Case No.30/2014)

Goma Gope @ Goma, son of Late Ramayan Gope, resident of Village Chota Lagiya, P.O. & P.S. Mufassil, Chaibasa, District Singhbhum (West). **... ... ... Appellant**

Versus

The State of Jharkhand. **... ... ... Respondent**

PRESENT : SRI ANANDA SEN, J.
: SRI PRADEEP KUMAR SRIVASTAVA, J.

For the Appellant : Mrs. Alpana Verma, Advocate
(Amicus Curiae)

For the State : Mr. Tarun Kumar, A.P.P.

J U D G M E N T

By Court, :
24th September, 2026

This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction dated 24.08.2018 and order of sentence dated 29.08.2018 passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa in S.T. Case No.30/2014, whereby and wherein the appellant has been convicted for offence under Sections 302 IPC. He was sentenced to undergo life imprisonment, with a fine of Rs.5,000/-.

2. We have heard Mrs. Alpana Verma, learned *Amicus Curiae* representing the appellant and Mr. Tarun Kumar, learned A.P.P. representing the State, at length, and have gone through the materials available on record.

3. Learned counsel representing the appellant submitted

that the appellant had falsely been implicated in this case, only on the basis of conjectures and surmises. She further submitted that the appellant is facing incarceration since long without any rhymes or reason, thus he deserves to be released from custody after setting aside his judgment of conviction and order of sentence.

4. Learned A.P.P. representing the State, opposes the aforesaid prayer and submitted that the appellant had rightly been convicted in this case, as he had committed murder of his son by a knife and the Police also recovered blood-stained soil and a knife from the place of occurrence.

5. The case of the prosecution on the basis of *fardbeyan* of the informant - Jema Gope (wife of the appellant - Goma Gope @ Goma), is that on the fateful day, the informant was at home and was busy in her domestic work and her husband (appellant herein), was also in the house and had drunk *hariya,* when their son - Pratap Gope (deceased), came to home and told his father that why is he drinking so much *hariya,* which led to an argument between them over the said issue and in the heat of moment, the appellant with a vegetable cutting knife, stabbed the deceased in his stomach causing his intestines to spill out and leading to profuse bleeding, due to which he succumbed to death on spot.

6. On the basis of the *fardbeyan* dated 22.11.2013 of the informant, as per whom, the date of incident was 21.11.2013, an F.I.R. being Mufassil P.S. Case No.120/2013 dated 22.11.2013 was registered under Section 302 IPC; and after investigation, charge-sheet was filed against the appellant.

6.1. Thereafter, cognizance was taken by the Chief Judicial Magistrate, Chaibasa, and the case was committed to the Court of Sessions and ultimately transferred to the Court of Additional Sessions Judge-III, West Singhbhum, at Chaibasa. The case was numbered as S.T. Case No.30/2014. The Court framed charge against the appellant under Section 302 IPC and the trial proceeded.

7. To prove the prosecution case, total eight prosecution witnesses have been examined in this case, whose depositions are as follows :-

7.1. P.W.-1 namely Raghunath Sundi, is the one who had informed the Police about the incident; however, he is not an eye-witness. He deposed that as per the information given by the villagers, he rushed to the house of the appellant and saw the dead body of Pratap Gope (deceased), which bore wound on the stomach. He had signed on the inquest report and the seizure list, which were marked as Ext.-1 and Ext.-2 respectively.

In his cross-examination, he admitted that he had not witnessed the incident except the blood-stained soil and a knife, which were recovered by the Police.

7.2. P.W.-2 namely Ramay Gope, is the brother of the deceased. He had assisted the Police by translating the local language, spoken by his mother while giving *fardbeyan*. He signed on the inquest report, seizure list and the *fardbeyan*, which were marked as Exts.-1/1, 2/1 and 3 respectively.

In his cross-examination, he admitted that he had not

witnessed the incident. He also deposed that the appellant used to drink *haria* and used to remain under its influence.

7.3. P.W.-3 namely Jema Gope (informant), who is wife of the appellant and mother of the deceased, had deposed that at the time of incident she had gone to river and when she returned home, her husband was in an intoxicated condition and her son was telling him to stay quiet, upon which the appellant stabbed the deceased with a knife. She stated that she had not seen as to where is the wound and her son (deceased) told her that the accused stabbed him.

In her cross examination, she deposed that she did not see the appellant killing the deceased with the knife.

7.4. P.W.-4 namely Dr. Brajkishore Pandey, is the Medical Officer, who had conducted the post-mortem on the body of the deceased; and gave several findings, which are as follows:-

> *"The Antemortem findings are as follows:- Rigor mortis was present in all the limbs.*
> *2.* ***External and Internal examination:-***
> *External - Fist closed, clothings over chest and Abdomen teared. Lower ribs on left chest was punctured with outpouching of soft tissues and intestine. Blood (free flowing fresh blood in abdominal cavity) punctured wound where clean cut with margins measuring 5.5x2 c.m. dimention.*
> *Internal - Intestine punctured at two sites with clotted blood at that sites. spleen, liver N.A.D. Lungs N.A.D. Stomach empty. Heart empty.*
> ***Cause of death** :- Hemorrhage due to above injuries caused by penetrating knife.*
> ***Time since Death :-** Less than 24 hours.*
> *The above injuries are sufficient to cause death in ordinary course of life"*

The post-mortem report was prepared and signed by

him and the same was marked as Ext.-3.

In his cross-examination, he also deposed that other sharp cutting instruments may cause the injury rather than the knife mentioned in this case.

7.5. P.W.-5 namely Manki Sundi and P.W.-6 namely Ladura Gope, are the hearsay witnesses, who in their cross-examination had clearly admitted that they had heard about the murder from people.

7.6. P.W.-7 namely Bir Singh Sundi, is also a hearsay witness, as he had deposed that he had heard about the murder from the people.

7.7. P.W.-8 namely Mohan Baitha, is the Investigating Officer, who was posted in Mufassil Police Station, Chaibasa. He deposed that he received information about the murder and after lodging *sanha,* went to the place of occurrence, and conducted investigation. He took the custody of dead body and also prepared seizure list. He also submitted the inquest report. He had taken the re-statement of the informant and statements of other witnesses.

8. Several documentary evidences and material evidences were also produced, which are as follows:-

Documentary Evidences :-

Ext.-1	*Signature of Raghunath Sundi with Carbon copy of Inquest Report.*
Ext.-2	*Signature of Raghunath Sundi in seizure list*
Ext.-3	*Signature of Ramay Gope in Fardbeyan*
Ext.-3/1	*Signature of Raghunath Sundi in Fardbeyan*
Ext.-1/1	*Signature of Ramay Gope in carbon copy of Inquest Report*
Ext.-2/1	*Signature of Ramay Gope in Seizure List*

Ext.-3	*Post mortem report of deceased Pratap Gope*
Ext.-3/2	*Registration in Fardbeyan*
Ext.-4	*F.I.R.*
Ext.-1/2	*Inquest Report*
Ext.-2/2	*Seizure List*

Material Exhibits :-

Ext-A	*Blood-stained soil*
Ext-B	*Vegetable cutting knife*

9. The appellant had been examined under Section 313 Cr.P.C., and he had not pleaded guilty and deposed that his son was going to kill him, but as he bent down, his knife accidentally plunged into his own stomach.

10. The Trial Court after hearing both the parties, on the basis of prosecution evidences as well as exhibited documents / materials available on record, found the appellant guilty and accordingly convicted him under Section 302 IPC, and sentenced him for life imprisonment.

11. The appellant in this Criminal Appeal is assailing the aforesaid judgment of conviction and order of sentence, under Section 302 IPC. The deceased is none, but a twenty years' son of the appellant. The appellant allegedly stabbed the deceased under the influence of *hariya*, as he questioned him for consumption of *hariya.*

12. From the entire evidences of the prosecution witnesses, we find that none of the prosecution witnesses, except the informant, was present at the place of occurrence.

13. To prove the charge under Section 302 IPC, the prosecution has to prove that the death is homicidal amounting to

murder or not. Section 300 IPC defines 'murder', which reads as follows:-

> *"**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.*
>
> *Exception 1-3 ……*
>
> *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's 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.*
>
> *Exception-5 ……."*

14. From the aforesaid Exception-4 of Section 300 IPC, it is clear that there must be an element of premeditation to commit the act. Further, if the act is done on a sudden provocation or fight between the accused and the victim, the culpable homicide is not murder. Further, the most important postulate of this exception is that the assault must happened in the heat of passion and in a spur of moment, to exclude the act from the definition of murder.

15. From perusal of the medical evidence of the Doctor

(P.W.-4) and other evidences, it is evident that there was only one blow of knife, given to the deceased. The assault is not premeditated and it happened on the spur of the moment.

15.1. In the backdrop of the aforesaid, it will not be hasten to add that the prosecution has miserably failed to prove any premeditation on part of the appellant of taking life of the deceased, as the feud occurred in a spur of moment; and as the appellant was intoxicated, under the influence of *hariya,* and when the deceased suddenly came to the house and chided him about consumption of *hariya,* he in a heat of passion, stabbed the knife on the stomach of the deceased, just forgetting that his own son is standing before him and how dangerous the knife blow could be.

16. Considering the aforesaid facts and circumstances of the case, so also the medical report and the proximity of the death with the assault, we are of the opinion that though the case is of culpable homicide, but the same cannot be said to be a murder, thus the case of the appellant falls under Exception-4 of Section 300 IPC. Thus, we hereby convert the conviction from Section 302 IPC to Section 304 Part-II IPC.

16.1. Since the appellant has already remained in custody during trial and he is still in custody, and since the appellant was of 80 years at the time of examination under Section 313 Cr.P.C., as also at the time of filing of this Criminal Appeal, and now, he is aged about 88 years, thus, considering the old age of this appellant and the fact that he was in custody during trial and

faced incarceration of this criminal proceeding for about thirteen years, we convert the sentence to the period which the appellant has already undergone.

16.2. Thus, the impugned judgment of conviction dated 24.08.2018 and order of sentence dated 29.08.2018 passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa in S.T. Case No.30/2014, are modified accordingly.

17. Accordingly, the Criminal Appeal stands **partly allowed.**

17.1. Pending interlocutory application, if any, stands disposed of.

18. The appellant is directed to be released forthwith from custody, if nor required in any other case.

19. Trial Court Record be transmitted back to the Court concerned.

20. Considering the sincere efforts put in by *Amicus Curiae* representing the appellant, we direct the High Court Legal Services Committee (HCLSC), to pay remuneration of Rs.7,500/- to Mrs. Alpana Verma, Advocate (*Amicus Curiae*).

(ANANDA SEN, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

HIGH COURT OF JHARKHAND, RANCHI
Dated:- 24th September, 2026
Prashant
NAFR
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