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**(2018) 09 CHH CK 0456**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 956 Of 2014

Khulas Ram Rathiya

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Sept. 29, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 302, 304
- Code Of Criminal Procedure, 1973 - Section 374(2)

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** A.N. Bhakta, Vivek Bhakta, Anil S. Pandey

**Final Decision:** Partly Allowed

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**Judgement**

Sanjay K. Agrawal, J

1. This criminal appeal is directed against the judgment of conviction recorded and sentence awarded by the learned Sessions Judge by which the

appellant has been convicted for offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and further sentenced to fine

of ₹ 1,000/- and in default, to further undergo RI for one year.

2. The case of the prosecution, in brief, is that the appellant / accused murdered his father on 28-4-2014 at 8 p.m. by wooden stick. It is the further

case of the prosecution that the appellant's father & mother, on the date of incident, were residing in their house and the accused came

intoxicated in his house and asked for food to which his mother Sanmati (PW-1) replied, it is not ready and it will take time, then the accused further

said that it be prepared quickly and thereafter, his father deceased Gandaram started roasting tomatoes which took some time by which the appellant

became very angry and picked up the wooden stick that is used by his father (deceased) and caused a blow on the head of the deceased by which he

suffered severe injury and died on the spot. Unregistered morgue vide Ex.P-2 at the instance of Rajkumar Rathiya (PW-2) was recorded on 29-4-

2014 at 9 a.m. at Police Chowki Rairumakhurd, Police Station Dharamjaigarh and thereafter, morgue intimation was registered by Manaram Rathiya

(PW-2). FIR was registered on 29-4-2014 by Silmani Toppo (PW-9) for offence under Section 302 of the IPC. Inquest was conducted vide Ex.P-9 on

29-4-2014. Postmortem was conducted vide Ex.P-22 by Dr. B.L. Bhagat (PW-8) and cause of death was reported to be head injury by hard and blunt

object. Pursuant to memorandum Ex.P-13, lathi was seized.

3. The accused / appellant was charge-sheeted for offence under Section 302 of the IPC and he abjured the guilt and entered into witness. Nine

witnesses have been examined by the prosecution and 24 documents were exhibited.

4. The trial Court after appreciating oral and documentary evidence on record, convicted the appellant under Section 302 of the IPC and sentenced for

the period aforesaid against which this appeal under Â Â Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred.

5. Mr. Vivek Bhakta, learned counsel appearing for the appellant / accused, submits that he is not disputing the homicidal nature of death of the

deceased as well as the involvement of the accused appellant in the incident. He further submits that the appellant in sudden quarrel caused single

blow to the deceased by lathi as such, offence under Section 302 of the IPC would not be made out and act of the appellant would fall under Section

304 Part-II of the IPC. He would rely upon a decision of the Supreme Court in the matter of Gurmukh Singh v. State of Haryana (2009) 15 SCC 635

Â to buttress his submission.

6. On the other hand, Mr. Anil S. Pandey, learned Government Advocate would support the impugned judgment.

7. We have heard learned counsel for the parties and considered their rival submissions and also went through the original records of the trial Court

with utmost circumspection and carefully as well.

8. The question for consideration would be, whether the learned Sessions Judge is justified in convicting the appellant for offence under Section 302 of the IPC and whether it would fall under Section 304 Part-II of the IPC.

9. Section 304 Part-I and Part-II of the IPC 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.

10. In Gurmukh Singh (supra), the Supreme Court considered some factors which are required to be taken into consideration before awarding appropriate sentence to the accused which are as under:-

(a) Motive or previous enmity;

(b) Whether the incident had taken place on the spur of the moment;

(c) The intention/knowledge of the accused while inflicting the blow or injury;

(d) Whether the death ensued instantaneously or the victim died after several days;

(e) The gravity, dimension and nature of injury;

(f) The age and general health condition of the accused;

(g) Whether the injury was caused without pre-meditation in a sudden fight;

(h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

(i) The criminal background and adverse history of the accused;

(j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

(k) Number of other criminal cases pending against the accused;

(l) Incident occurred within the family members or close relations; and

(m) The conduct and behaviour of the accused after the incident.

11. Reverting to the facts of the present case in light of the principles of law laid down in the aforesaid case (supra), it is apparent from the record that

the appellant, who was drunk, on account of being late in getting food (dinner), became angry and picked up lathi and caused lathi blow to his father,

who was admittedly aged about 60 years and died on the spot which has been eye-witnessed by appellant's mother Sanmati (PW-1). She has clearly

deposed against the appellant and as such, clear cut evidence is available on record against the appellant. It is also apparent from the record that the

deceased was aged person and he was unable to walk without support of wooden stick by which he was assaulted by his son, the appellant herein.

Autopsy surgeon Dr. B.L. Bhagat (PW-8) has stated that the injury on the head of the deceased could have been caused by danda. Therefore, the

finding recorded by the learned Sessions Judge that the appellant has assaulted the deceased by wooden stick due to which the deceased sustained

head injury and succumbed to death, is a finding of fact based on the evidence available on record.

12. Now, the question is, whether the offence would fall under Section 304 Part-II of the IPC or it is under Section 302 of the IPC as held by the

learned Sessions Judge?

13. It is not in dispute that the appellant herein has assaulted his father by wooden stick of his father, as on that day the appellant came intoxicated and

asked for food (dinner), but it was not ready and then he asked his father to roast tomatoes, but food could not be prepared quickly by which he

became angry and picked up his father's wooden stick and assaulted his father by it which is apparent from the statement of the appellant's mother

and the wife of the deceased - Sanmati (PW-1). The aforesaid sequence of events shows that there is no preparation or premeditation on the part of

the appellant to commit murder of his father. Though the blows are said to be three blows on the head of the deceased, but Dr. B.L. Bhagat (PW-8)

has opined that out of the three injuries sustained by the deceased one is severe in nature and other two injuries are simple in nature. All this makes it

clear that the appellant had no intention to commit murder of his father and all that happened in sudden quarrel between father and son in which the son, the appellant herein, became enraged and in heat of passion, he picked up the wooden stick of his father, the deceased herein, and gave blow on the head / skull of the deceased.

14. In view of the aforesaid facts and testimony of Sanmati (PW-1), wife of the deceased, we are satisfied that intention of the appellant to commit the murder of the deceased cannot be inferred, but we are also satisfied that it was likely to cause death, however, the knowledge of the appellant that his above act was likely to cause the death of his father cannot be ruled out.

15. Taking into consideration the principles of law laid down by Their Lordships of the Supreme Court in Gurmukh Singh (supra), we are satisfied that in the instant case, the appellant's act would fall under Â Â Section 304 Part-II of the IPC and it would not fall under Section 302 of the IPC.

Accordingly, the appeal is partly allowed. Conviction and sentences of the appellant under Section 302 of the IPC are set aside and instead thereof, he is convicted under Section 304 Part-II of the IPC and sentenced to RI for seven years and fine of ₹ 1,000/-. The appellant is in jail since 30-4-2014. He will be entitled to set-off of the period already undergone by him.