
(2024) 01 CHH CK 0040

Chhattisgarh High Court

Case No: Criminal Appeal No. 497 Of 201 7

Manohar Das Bairagi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Jan. 12, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 313, 374(2)
- Indian Penal Code, 1860 - Section 34, 300, 302, 304I, 304II

Hon'ble Judges: Sanjay K. Agrawal, J; Sanjay Kumar Jaiswal, J

Bench: Division Bench

Advocate: Utkal Pradhan, Samir Uraon

Final Decision: Partly Allowed

Judgement

Sanjay K. Agrawal, J

(1) This criminal appeal filed by the appellant-accused under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and

order of sentence dated 23.12.2016, passed by the Court of learned Sessions Judge, Korba, District-Korba (C.G.) in Sessions Trial No. 50/2016,

whereby the appellant-accused has been convicted for offence under Section 302 of IPC and sentenced to undergo life imprisonment with fine of

Rs.1000/- and, in default of payment of fine, to further undergo additional rigorous imprisonment for one year.

(2) The case of the prosecution, in brief, is that on 11.03.2016 in the afternoon, the appellant and his son namely Santosh Das Bairagi (now acquitted),

both assaulted Sakun Bai, wife of the appellant and the mother of Santosh Das Bairagi, by means of bricks and hammer, by which she suffered

grievous injuries and died, thereby, committed the offence under Section 302 of IPC.

(3) The further case of the prosecution, in nutshell, is that on the date of the incident i.e. 11.03.2016 in the afternoon Sakun Bai (now deceased) called

her husband (appellant) and son (Santosh Das Bairagi) to take meals, then appellant and his son came in anger and started quarreling with Sakun Bai

(deceased) and in the heat of passion, appellant and his son (now acquitted) is said to have assaulted her (deceased) with the help of bricks and

hammer, by which she suffered grievous injuries and died. This incident was witnessed by Monika Bairagi (PW-2), daughter of the appellant herein.

Thereafter, the matter was reported by Monika Bairagi (PW-2) to the police. Marg intimation was registered vide Ex.P/19 and FIR was registered

vide Ex.P/20 against the appellant-accused. Inquest proceedings were conducted vide Ex.P/06. The dead-body of deceased was sent for postmortem

examination and in the postmortem examination report (Ex.P/15), Dr. Kumar Pushpesh (PW-05) opined that the cause of death seems to be

respiratory cardio-arrest, which is due to injury on vital organ and nature of death is homicidal. Thereafter, appellant-accused was arrested vide

Ex.P/22 and his memorandum statement was recorded (Ex.P/08) pursuant to which, seizure of articles (Exs.P/10 & 12) were made and sent for

chemical examination to FSL. In the FSL report (Ex.P-28) human blood was found on bricks (Article-A) and on clothes (Article-F) of the appellant

herein.

(4) The prosecution in order to prove its case examined as many as 07 witnesses and exhibited 29 documents. Statement of the appellant under

Section 313 of CrPC was recorded wherein he denied guilt, however, he examined none in his defence and did not bring any document in his support

either.

(5) The learned trial Court after appreciating the oral and documentary evidence available on record proceeded to convict the appellant herein for

offence under Section 302 of IPC and sentenced him as mentioned herein-above against which this appeal has been preferred by the appellant-

accused herein questioning the impugned judgment of conviction and order of sentence, however, Santosh Das Bairagi has been acquitted of the

charge punishable under Section 302/34 of IPC giving the benefit of doubt,

(6) Mr. Utaki Pradhan, learned counsel for the appellant, submits that taking the case of the prosecution as it is, only offence under Section 304 Part-

II of IPC is made out against the appellant, as the appellant has no motive to cause death of the deceased. Thus, the case of the present appellant falls

within the purview of Exception 4 to Section 300 of IPC and the act of the appellant is culpable homicide not amounting to murder and, therefore, it is

a fit case where the conviction of the appellant can be converted/alterd to an offence under Section 304 Part-II of IPC and, further, since the

appellant is in jail since 12.03.2016 i.e. more than 07 years, taking into consideration the period he has already undergone, the appellant-accused be

released from jail forthwith. Hence, the present appeal deserves to be partly allowed.

(7) Per-contra, Mr. Samir Uraon, learned State counsel, supported the impugned judgment of conviction and order of sentence and submits that the

prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. The learned trial Court has rightly convicted the

appellant for offence under Section 302 of IPC. Exception 04 to Section 300 of IPC is not attracted in this case and it is not a case where conviction

of the appellant under Section 302 of IPC requires to be altered to Section 304 Part-II of IPC, thus, the present appeal deserves to be dismissed.

(8) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost

circumspection.

(9) The first and foremost question is as to whether the death of the deceased was homicidal in nature, which the learned trial Court has recorded in

affirmative by taking into consideration the oral and documentary evidence available on record and particularly considering the postmortem report

(Ex.P/15) which is duly proved by the evidence of Dr. Kumar Pushpesh (PW-05). Accordingly, taking into consideration the postmortem report

(Ex.P/15) and the statement of Dr. Kumar Pushpesh (PW-05), we are of the considered opinion that the learned trial Court is absolutely justified in

holding that the death of the deceased is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor

contrary to the record. Accordingly, we hereby affirmed the said finding.

(10) Now the next question would be whether the accused-appellant herein is the author of the crime in question ?

(11) In the instant case, considering the statement of Monika Bairagi (PW-2) who is an eye-witness and pursuant the memorandum statement (Ex.P-

8) of the appellant-accused the weapon of offence i.e. bricks and hammer have been seized which were sent for chemical examination to FSL and in

the FSL report (Ex.P-28) human blood was found on bricks, we hereby accept the finding recorded by the trial Court that it is the appellant-accused

who assaulted Sakun Bai (deceased) by which she suffered grievous injuries and died. As such, the finding recorded by the trial Court that the

appellant has caused the injuries upon the deceased is based on evidence available on record and accordingly, we hereby affirm the finding recorded

by the learned trial Court that the appellant-accused is the author of the crime in question.

(12) The aforesaid finding brings us to the next question for consideration, which is, whether the trial Court has rightly convicted the appellant for

offence punishable under Section 302 of IPC or his case is covered with Exception 4 of Section 300 of IPC vis-a-vis culpable homicide not amounting

to murder and, thus, his conviction can be converted to Section 304 Part II of IPC, as contended by learned counsel for the appellant ?

(13) It is apparent from the FIR (Ex.P/20) and marg inquiry that at the time when the incident took place, the appellant-accused had assaulted Sakun

Bai (deceased) by means of bricks and hammer on a dispute of meals, due to which deceased suffered grievous injuries and she died.

(14) The Supreme Court in the matter of Sukhbir Singh v. State of Haryana (2002) 3 SCC 327 has observed as under:-

“21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir

Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden

quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304

(Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside

and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and

sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous

imprisonment for one year.”

(15) The Supreme Court in the matter of Gurmukh Singh v. State of Haryana (2009) 15 SCC 635 has laid down certain factors which are to be taken

into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of IPC, which state as

under :-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors

are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors 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 premeditation 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;
- (m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the

accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence,

in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in

view while convicting and sentencing the accused.

(16) Likewise, in the matter of State v. Sanjeev Nanda (2012) 8 SCC 450, their Lordships of the Supreme Court have held that once knowledge that it

is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or

with fine or with both. It has further been held that 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.

(17) Further, the Supreme Court in the matter of Arjun v. State of Chhattisgarh (2017) 3 SCC 247 has elaborately dealt with the issue and observed in

paragraphs 20 and 21, which reads as under :-

“20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh

[(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under : (SCC p. 220, para 7)

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was

done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not

relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive

factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of

course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the

moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided

he has not acted cruelly.”

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances

Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

“9. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's

having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within

Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not

defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in

this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or

more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It

is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of

Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender

has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provisions means

“unfair advantage”.

(18) In the matter of Arjun (supra), the Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of

IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II

IPC.

(19) Further, the Supreme Court in the matter of Rambir vs. State (NCT of Delhi) (2019) 6 SCC 122 has laid down four ingredients which should be

tested for bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

(i) There must be a sudden fight;

(ii) There was no premeditation;

(iii) The act was committed in a heat of passion; and

(iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.”

(20) Reverting to the facts of the present case in light of above principles of law laid down by their Lordships of Supreme Court, it is quite vivid that

there was no premeditation on the part of the appellant to cause the death of the deceased, but it appears from the statement of Monika Bairagi (PW-

2), daughter of the appellant and the deceased, that Sakun Bai (deceased) was pressurizing the appellant to take his meals due to which dispute arose

between them and out of sudden anger and in heat of passion, the appellant is said to have assaulted the deceased by bricks and hammer, due to

which deceased suffered injury and died. However, looking to the injuries sustained by deceased, as recorded by Dr. Kumar Pushpesh (PW-05),

which have been caused to the deceased, the appellant must have had the knowledge that such injuries inflicted by him on the body of the deceased

would likely to cause her death, as such, this is a case which would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the

appellant herein completely satisfies the four necessary ingredients of Exception 4 to Section 300 IPC i.e. (i) there must be a sudden fight; (ii) there

was no premeditation; (iii) the act was committed in a heat of passion and (iv) the appellant had not taken any undue advantage or acted in a cruel or

unusual manner and, therefore, the conviction of the appellant under Section 302 of IPC can be altered/converted to Section 304 Part-II of IPC.

(21) In view of the aforesaid discussion, the conviction of the appellant for offence punishable under Section 302 of IPC as well as the sentence of life

imprisonment awarded to him by the learned trial Court is hereby set aside. Considering that there was no premeditation on the part of the appellant to

cause death of the deceased, but the injuries caused by him were sufficient in the ordinary course of nature to cause death, the appellant is convicted

for offence punishable under Section 304 Part II of IPC. The appellant is reported to be in jail since 12.03.2016 i.e. more than 07 years, taking into

consideration the period he has already undergone, we award him sentence already undergone by him, however, the fine amount imposed by the

learned trial Court shall remain intact. Accordingly, the appellant be released from jail forthwith, if not required in any other case.

(22) This criminal appeal is partly allowed to the extent indicated herein-above.

(23) Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned and to the Superintendent of Jail

where he lodged and suffering jail sentence, forthwith for necessary information and action, if any.