

(2024) 03 CHH CK 0026
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1751 Of 2017

Bharat Dewangan

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

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

Citation : (2024) 03 CHH CK 0026

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

Bench : Division Bench

Advocate : Jeet Patel, Rahul Tamaskar

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal preferred by the appellant under Section 374(2) of Cr.P.C. is directed against the impugned judgment dated 07.10.2017, passed by the Court of learned Sessions Judge, Dhamtari, District-Dhamtari, Chhattisgarh, in Sessions Trial No. 24/2017, by which, the appellant herein has been convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to undergo imprisonment for life with fine of Rs.1,000/- and, in default of payment of fine amount, to undergo additional rigorous imprisonment for one month.

2. The case of the prosecution, in brief, is that on 06.02.2017 at about 10 p.m. Subhas Nagar Dhamtari, the appellant herein under the influence of liquor assaulted his own paralyzed father- Nand Kumar Dewangan (now deceased) by hands and fist, by which, in he suffered grievous injury. When the aforesaid incident was informed to the daughter of the deceased, namely, Rekha (not examined), who used to reside at Dallirajhara, came to her father's house along with her husband and took him at Dallirajhara for treatment. Thereafter, during the course of treatment, on 09.02.2017 the deceased succumbed to the injuries

and died. The matter was reported to the Police, pursuant to which Merg intimation (Ex. P-07) and FIR (Ex. P-17) were registered. Inquest proceedings were conducted vide Ex. P-02 and the dead body of deceased was subjected to postmortem. As per postmortem report (Ex.P/13), conducted by Dr. U.L. Kaushik (PW-6), cause of death of the deceased is syncope and hemorrhagic shock due to injuries on ribs and lungs.

3. After completion of investigation, appellant was charge-sheeted for the aforesaid offence under Section 302 of I.P.C. before the jurisdictional criminal court, which was ultimately committed to the Court of Sessions for hearing and disposal in accordance with law, in which, the appellant abjured his guilt and entered into defence stating that he has not committed any offence and he has been falsely implicated.

4. In order to bring home the offence, prosecution examined as many as 11 witnesses and exhibited 19 documents and the appellant-accused in support of his defence has neither examined any witness nor exhibited any document.

5. The learned trial Court after appreciating the oral and documentary evidence available on record, convicted the appellant / accused for the offence as mentioned in the opening paragraph of the judgment, against which this appeal has been preferred by the appellant questioning the impugned judgment of conviction and order of sentence.

6. Learned counsel for the appellant would submit that as per PM report (Ex.P/13), duly proved by Dr. U.L. Kaushik (PW-6), the injuries found on the body of the deceased were not sufficient in ordinary course to cause his death, therefore, the case of the appellant would not fall within the purview of Section 300 Thirdly of IPC, as his act is culpable homicidal not amounting to murder and, more particularly, when the deceased died on 09.02.2017 during the course of his treatment in the hospital at Dallirajhara i.e. after 03 days from the date of incident. As such, in light of the decision of the Supreme Court in the matter of Nankaunoo v. State of Uttar Pradesh (2016) 3 SCC 317, the conviction of the appellant for offence under Section 302 of IPC can be altered/converted to an offence under Section 304 (Part-I of Part-II) of IPC and since the appellant is in jail from 07.03.2017 i.e. more than 7 years, he be sentenced for the period already undergone by him. Hence, the present appeal deserves to be allowed in full or in part.

7. Mr. Rahul Tamaskar, learned State counsel, would support the impugned judgment and submit that the prosecution has been able to bring home the offence beyond reasonable doubt and considering the nature of offence, the trial Court has rightly convicted the appellant for offence under Section 302 of I.P.C. He further submits that, it is not a case wherein the offence can be converted to Section 304 Part-II of I.P.C. and, as such, the 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 question for consideration is as to whether the death of deceased Nand Kumar Dewangan was homicidal in nature, which has been answered by the trial Court in affirmative relying upon the post-mortem report Ex. P-13 proved by Dr. U.L. Kaushik (PW-6), according to which, cause of death has been stated to be hemorrhagic shock due to fracture/dislocation of multiple ribs as well puncturing of lungs and death was homicidal in nature, which in our considered opinion is a correct finding of fact based on evidence available on record and it is neither perverse nor contrary to the record. Accordingly, we hereby affirm the said finding.

10. Now the question for consideration is as to whether the appellant has assaulted the deceased or not, which the learned trial Court has recorded in affirmative by relying upon the statements of Rameshwar Dewangan (PW-1) and Kewal Singh Sahu (PW-11), who are the eye-witnesses to the incident. Both the said witnesses have clearly seen the incident and stated before the Court that on the date and time of the offence, the appellant assaulted his own paralyzed father by means of hands and fit, due to which, he suffered grievous injuries. Both the said witnesses were subjected to lengthy cross-examination by the prosecution, but nothing could be extracted from them to hold that they have not seen the incident or telling lie before the Court in order to falsely implicate the appellant herein. As such, on the basis of statements to aforesaid eye-witnesses it is quite clear that it is the appellant herein who assaulted the deceased, due to which, he suffered grievous injuries and died later on during the course of his treatment in the hospital. Thus, the trial Court, in our considered opinion, has rightly recorded the finding that it is the appellant who assaulted Nand Kumar Dewangan (deceased) by means of hands and fit, due to which, he suffered grievous injuries and died. We hereby affirmed the said finding.

11. The aforesaid finding brings us to the next question for consideration, which is, whether the act of the appellant is culpable homicide not amounting to murder and would not attract Section 300 Thirdly of IPC and, therefore, his conviction can be converted to Section 304 (Part-I or Part-II) of IPC, as contended by learned counsel for the appellant?

12. In the instant case, Dr. U.L. Kaushik (PW-6), who has conducted postmortem of the dead-body of the deceased has found following injuries over the body of the deceased i.e. fracture/dislocation of ribs and puncturing of lungs.

13. The Supreme Court in the matter of Nankaunoo (supra), held in paragraphs 12 & 13 as under :

12. The emphasis in clause three of Section 300 IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of

the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place.

13. Keeping in view the above principles, when we examine the facts of the present case, the deceased sustained gunshot wound of entry 1½? x 1½? on the back and inner part of left thigh, six gunshot wounds of exit each 1/3? x 1/3? in size in front and middle left thigh. Due to the occurrence in the morning at the barber shop of the deceased, the appellant emerged from the northern side of the grove carrying pistol in his hand and fired at the deceased. The weapon used and the manner in which attack was made and the injury was inflicted due to premeditation clearly establish that the appellant intended to cause the injury. Once it is established that the accused intentionally inflicted the injury, then the offence would be murder, if it is sufficient in the ordinary course of nature to cause the death. We find substance in the contention of the learned counsel for the appellant the injury was on the inner part of left thigh, which is the non-vital organ. Having regard to the facts and circumstances of the case that the gunshot injury was caused in the inner part of left thigh, the sufficiency of injury to cause death must be proved and cannot be inferred from the fact that death has taken place. But the prosecution has not elicited from the doctors that the gunshot injury on the inner part of left thigh caused rupture of any important blood vessel and that it was sufficient in the ordinary course of nature to cause the death. Keeping in view the situs and nature of injury and in the absence of evidence elicited from the doctor that the said injury was sufficient in the ordinary course of nature to cause death, we are of the view that it is a fit case where the conviction of the appellant under Section 302 IPC should be under Section 304 Part 1 IPC.

14. Following the principles of law laid down in the matter of Nankaunoo (supra), it is quite vivid in the instant case though as per the statement of Dr. U.L. Kaushik (PW-6), the appellant assaulted the deceased by means of hand and fit, due to which, deceased's ribs were dislocated/fractured and his lungs were also punctured, but he has not stated at any point of time that the said injuries were sufficient in the ordinary course of nature to cause death. Therefore, Keeping in view the situs and nature of injury, in absence of evidence given by the doctor that the said injuries were sufficient to cause death, we are of the considered opinion that the principles of law laid down in Nankaunoo (supra) will apply to the facts of the present case, more particularly when the deceased died on 09.02.2017 during the course of his treatment in the hospital at Dallirajhara i.e. after 03 days from the date of incident. As such, we are of the considered opinion that the act of the appellant herein is culpable homicide not amounting to murder and would not fall within the purview of Section 300 Thirdly of IPC. However, looking to the injuries sustained by the deceased, though the appellant had no intention, but he must have had knowledge that such injuries inflicted by

him on the body of the deceased would likely to cause his death and, therefore, the conviction of the appellant for offence under Section 302 of IPC can be altered/converted to Section 304 (Part-II) of IPC.

15. 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 and the injuries caused by him were not sufficient in the ordinary course of nature to cause death, the appellant is convicted for offence punishable under Section 304 Part-II of IPC and, since he remained in jail from 07.03.2017 i.e. for more than 07 years, he is sentenced to the period already undergone by him. However, the fine sentence and default stipulation imposed by the learned trial Court shall remain intact. Consequently, the appellant be released from jail forthwith, if not required in any other matter/crime.

16. In the result, this criminal appeal is partly allowed to the extent indicated herein-above.

17. Let a certified copy of this judgment along with the original record be transmitted forthwith to the trial Court concerned and to the Superintendent of Jail where he is lodged and suffering jail sentence, for information and necessary action, if any.