

(2023) 12 CHH CK 0039
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 849 Of 2023

Mangal Pando

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 300, 302, 320, 323, 325, 506
Code Of Criminal Procedure, 1973 — Section 313, 374(2), 437A

Citation : (2023) 12 CHH CK 0039

Hon'ble Judges : Ramesh Sinha, CJ; Ravindra Kumar Agrawal, J

Bench : Division Bench

Advocate : Jaydeep Singh Yadav, Pushkar Sinha, Wasim Miyan

Final Decision : Partly Allowed

Judgement

Ramesh Sinha, CJ

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment dated 14.02.2023 passed by the Additional Sessions Judge, Baikunthpur, District- Koriya (C.G.) in Sessions Trial No.76/2021, whereby the learned Additional Sessions Judge has convicted the appellants for offence punishable under Section 302 of the Indian Penal Code (hereinafter called as 'IPC') and sentenced to undergo imprisonment for life and fine of Rs.100/-, in default of payment of fine to further undergo RI for 15 days to both the appellants.

2. Case of the prosecution, in brief, is that on the date of the incident i.e. 29.01.2021 at about 3.30 P.M. in village- Temri, Judwanipara, appellant-accused Ashtami Pando in his own house, entered into a quarrel with Rajkumari (daughter of the deceased) along with appellant Mangal Pando for the reason that she residing in his home after coming back from her matrimonial home. During the course of quarrel, Baliram Pando father of Rajkumari intervened and was then abused and beaten by the present appellants by hands and fists. Later,

the FIR was lodged against the present appellants upon the complaint made by the deceased in Crime No.291/2021 for the commission of offence under Section 294, 506, 323 read with Section 34 of the IPC. On 31.01.2021 in midnight, Baliram Pando informed his wife Smt. Sonia and daughter Rajkumari that his stomach is swelling, tongue is twisting and he is experiencing severe pain in the genital area and at around 2.00 A.M., he succumbed to the injuries. Subsequently, on the information of the daughter of the deceased, a merger was registered. Dead body of the deceased was sent for postmortem to the Community Health Center, Patna, District Koriya, where Dr.Mohd.Wasik Asdak (PW-8) conducted postmortem of the deceased and found following injuries:-

Mouth opened, eyes partially opened, liver mortis present over lower back and scapular region, rigor mortis present in both upper & lower limb.

The doctor has opined that the cause of death was haemorrhagic shock due to rupture of spleen (Blood injury) and death was homicidal in nature. After completion of investigation, the appellants were charge-sheeted in the Court of Judicial Magistrate First Class, Baikunthpur, for offences under Sections 294, 506, 323 and 302/34 of the IPC, who in turn, committed the case to the Court of Sessions, Koriya (Baikunthpur), from where the Additional Sessions Judge, Koriya (Baikunthpur) received the case on transfer for trial in accordance with law. The appellants / accused abjured the guilt and entered into defence.

3. In order to bring home the above-stated offences, the prosecution examined as many as 10 witnesses. Statements of the accused/appellants were recorded under Section 313 of the CrPC, in which they denied their guilt and have taken the stand that they have been falsely implicated in this case. However, the accused examined none in their defence, however, exhibited the documents Ex.D-1 and Ex.D-2 in their support.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 14.02.2023, convicted the appellants herein for offence under Section 302 of the IPC and sentenced them as aforementioned.

5. Mr. Jaydeep Singh Yadav & Mr. Pushkar Sinha, learned counsel for the appellants would submit that the appellants are innocent and have been falsely implicated in crime in question. They have neither participated nor committed the above crime and there is no prima facie evidence against the appellants which shows that the appellants are involved in the aforesaid crime and have committed the aforesaid offence. They further submit that no crime has been committed by the appellants and the prosecution has utterly failed to prove the involvement of the appellants and the learned trial Court has convicted the appellants only on the basis of presumption and assumption. They also submit that the appellants have been convicted for offence under Section 302 of the IPC though allegations are absolutely baseless having no foundation. Alternatively, they submit that the deceased died on account of rupture of spleen and therefore, at the most, offence under Section 325 of the IPC would be made out

and the appellants' conviction under Section 302 of the IPC is liable to be set aside. They relied upon the judgments passed by this Court in *Gulab Verma v. State of Chhattisgarh* reported in AIR Online 2019 Chh 700 and *Rahul Das v. State of Chhattisgarh* reported in AIR Online 2023 Chh 81.

6. On the other hand, Mr. Wasim Miyan, learned Panel Lawyer appearing for the respondent/State supports the impugned judgment and submits that the prosecution has proved its case beyond reasonable doubt that the appellants have caused murder of deceased Baliram Pando and the trial Court has rightly convicted and sentenced the appellants for offence punishable under Section 302 of the IPC. As such, the criminal appeal deserves to be dismissed.

7. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. Relationship between the appellants and the deceased is not in dispute as the appellants are nephew of deceased Baliram Pando to whom they have caused injury by hands and fists by which the deceased suffered injury on his stomach because of which spleen was ruptured and consequently, the deceased died as per the statement of Dr. Mohd. Wasik Asdak (PW-8).

9. Ramkumari Pando (PW-2) (daughter of the deceased Baliram) has been examined as PW-2. She has clearly stated the incident took place last year at 3.30 P.M. on Cherta day. On the day of Cherta, she had gone to Ashtami's house to ask for Cherta. When she went there, Mangal's wife Sonamati started assaulting her, so she started screaming, hearing the screaming, her father Baliram came there, the accused Ashtami and Mangal Ram Pando beat him with hands and fists and thereafter ran away from the spot. The said incident took place near the house of accused Ashtami Pando. After that her father slowly came back home. In para 3 of her evidence, she has stated that her father had lodged a report of the incident in Patna Police Station. After lodging the report, her father went to the Community Health Center, where he was not admitted by the doctor. Her father told her to prepare a small amount of rice, but he did not eat even a little. After that her father died at 3.30 in the night. She stated that her father died due to assault made by accused Ashtami and Mangal Ram Pando.

10. Modi in his Medical Jurisprudence under the heading of "Spleen" has given specific opinion that an enlarged spleen becomes softened and brittle. Hence it is liable to rupture from a fall or from violence of a very slight degree. Enlarged spleen may sometimes rupture spontaneously from contraction of the abdominal muscles during the act of sneezing, coughing, vomiting or straining.

11. In Illustration (b) of Clause Fourthly of Section 300 of the IPC, it has been provided that if the offender knowing that the victim is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury and the victim dies in consequence of the blow, the

offender is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if the offender not knowing that the victim is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health and the victim dies, the offender is not guilty of murder.

12. In Medical Jurisprudence of Jhala & Raju, 15 th Edn. Page 288-289, hurt causing rupture of spleen has been held to be an injury / hurt endangering life within the meaning of Clause Eighthly of Section 320 of the IPC which defines grievous hurt and which is as under: -

"320. Grievous hurt.—The following kinds of hurt only are designated as "grievous";

First to Seventhly.—xxx xxx xxx

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

13. The Supreme Court in the matter of Ninaji Raoji Boudha and another v. State of Maharashtra reported in (1976) 2 SCC 117 held as under:-

"12. The evidence on record therefore went to show that the appellants did not have the common intention of giving a beating to Bhonaji when they reached his house for, as has been shown, they found him sitting outside the house on his 'oota' but passed him by in search of Samadhan who was dressing his injuries inside the house. Bhonaji asked Tulsi Ram Chowkidar to make a report and to get ready a bullock cart for going to the police station. It was then that injuries were inflicted on his person by the appellants Ninaji and Raoji. Out of those injuries, one was a forceful blow on the head which caused a depressed fracture and fissures all over, and resulted in the ultimate death of Bhonaji. The other injuries were on the neck (back side), knees on the right elbow of the deceased and were simple injuries. As has been shown, there was no reliable evidence on the record to prove whether the fatal blow on the head was caused by Ninaji or Raoji. The other blows did not fall on any vital part of the body and, in the absence of evidence to establish that their common intention was to cause death, it appears that the appellants had the common intention of causing grievous injury with the lathi and the 'khunt'. They could therefore be convicted of an offence under Section 325 read with Section 34, I.P.C. and not Section 302 read with Section 34, I.P.C. "

14. The Supreme Court in the matter of Shaikh Karimullah alias Babu and others v. State of Andhra Pradesh reported in (2009) 11 SCC 371 has held as under:-

"13. The records clearly show that no charge was framed in terms of Section 34 so far as the appellant is concerned. This position is fairly conceded by learned counsel for the respondent. It is also accepted that except PW 1 who stated that

the appellant assaulted the deceased with a stick, the other purported eyewitnesses stated that the appellant had given fist-blow. Considering the evidence of the witnesses as brought on record the appropriate conviction would be in terms of Section 325 IPC and not Section 302 IPC. Custodial sentence of three years would meet the ends of justice.”

15. This Court in Gulab Verma (supra) has observed as under:-

“11. The appellant having already remained in jail for about five months during trial i.e. from 07.09.2009 to 16.02.2010, thereafter, for about one year and one month from 22.02.2011 to 18.03.2012, has thus undergone sentence of about one year six months. The above sentence already suffered by the appellant is considered adequate for the offence under Section 325 IPC. It is also to be mentioned that at the time of commission of offence, the appellant was aged about 29 years and there is no previous criminal record of the appellant.

12. Accordingly, the appeal is allowed in part and conviction and sentence of the appellant under Section 302 IPC are set aside and instead, he is held guilty under Section 325 IPC and is sentenced to the period already undergone by him.”

16. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid that on the day of Cherta, Rajkumari Pando (PW-2) (daughter of deceased Baliram Pando) had gone to Ashtami's house to ask for Cherta, when she went there, Mangal's wife Sonamati started assaulting her, so Rajkumari started screaming, hearing the screaming, her father Baliram came there, to whom accused Ashtami and Mangal Ram Pando beat with hands and fists, by which he suffered grievous injury i.e. rupture of spleen and as a result of which he died. Since the appellants have neither intention nor knowledge that causing injury by hands & fists is likely to cause death, considering the injury caused by the appellants by which spleen was ruptured, the case would be covered under Clause Eighthly of Section 320 of the IPC, as the said hurt has endangered the life of the deceased and he suffered death. The appellants cannot be convicted for offence under Section 302 of the IPC considering the manner in which the appellants assaulted the deceased and they can safely be held guilty of voluntarily causing grievous hurt to the deceased, which unfortunately resulted in his death. Accordingly, they are liable to be convicted under Section 325 of the IPC.

17. In the result, the criminal appeal is allowed in part. While acquitting the appellants of the charge under Section 302 of the IPC, they are convicted under Section 325 of the IPC and sentenced to the period already undergone by them as the appellants were in jail since 31.01.2021 till today, thereby they remained in jail for 02 years 10 months and 12 days. They be set at liberty, if no longer required in any other criminal case.

18. The appellant is directed to file personal bond and two sureties in the like amount to the satisfaction of the Court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.

19. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.