

(2022) 11 CHH CK 0064
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1109 Of 2013

Sharad Kumar Sahu

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 23-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 374(2)

Indian Penal Code, 1860 — Section 300, 302, 304I, 304II, 307

Citation : (2022) 11 CHH CK 0064

Hon'ble Judges : Sanjay K. Agrawal, J; Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Mirza Kaiser Baeg, Anmol Sharma

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant herein assailing the impugned judgment dated 17/09/2013 passed by learned Sessions Judge, Durg in Sessions Trial No. 02/2013 whereby he has been convicted for offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life with fine of Rs. 1000/- and for default in payment of fine, additional S.I. for 6 months.

2. Case of the prosecution, in brief, is that on 29/07/2013 at about 12:30 PM in Krishnanagar, Supela within the ambit of P.S. Supela, the appellant herein assaulted his mother Smt. Neera Bai Sahu with iron pestle on her head due to which she suffered grievous injuries and succumbed to death and he, thereby, committed the aforesaid offence.

3. Further case of the prosecution is that on 29/07/2012 at about 12:30 PM, Assistant Sub-Inspector Ishwar Lal Yadav (P.W.-17), on the basis of the information received by Sukhram Sahu (P.W.-1), husband of the deceased and father of the appellant, went to the District Hospital, Durg and inquired Sukhram

Sahu (P.W.-1) wherein he stated that appellant had given some money as a loan to one Domanlal, who was not returning the money to him. On the day of the incident, at about 12 noon, appellant asked his father Sukhram Sahu (P.W.-1) to take money from Domanlal and bring him to the house. When Sukhram Sahu (P.W.-1) refused, the appellant started abusing him and thereafter, deceased Smt. Neera Bai Sahu, wife of Sukhram Sahu (P.W.-1) and mother of the appellant, tried to intervene and stopped him from abusing his father and out of anger, the appellant assaulted the deceased on her head with iron pestle kept in the house due to which she suffered grievous injuries and thereafter, she was escorted to the District Hospital, Durg by her husband Sukhram Sahu (P.W.-1). On the basis of the said information, dehati nalishi was registered vide Ex. P/1 and thereafter, crime No. 513/2012 was registered against the appellant for offence punishable under Section 307 of IPC vide Ex. P/26. Injured Smt. Neera Bai Sahu was examined by Dr. Ramesh Dutt Sharma (P.W.-8) who found injuries on her head and looking to her serious condition, she was admitted in the hospital and on that basis, MLC report (Ex. P/12) and Bed-head ticket (Ex. P/13) were prepared.

4. Smt. Neera Bai Sahu succumbed to death on the same day at District Hospital, Durg. Thereafter, merg intimation was registered vide Ex. P/19 and after summoning the witnesses vide Ex. P/3, inquest was conducted vide Ex. P/4 and the dead body was subjected to postmortem, which was conducted by Dr. Nohar Prasad Jangde (P.W.-15) and as per the postmortem report (Ex. P/25), cause of death is said to be hemorrhage and shock as a result of head injury and the nature of death is said to be homicidal. Pursuant thereof, memorandum statement of the appellant was recorded vide Ex. P/8A and recovery of iron pestle was made at the instance of the appellant vide Ex. P/9. Moreover, the shirt worn by the appellant which had blood like stains was also seized vide Ex. P/10. The said seized articles were sent for chemical examination and as per FSL report (Ex. P/28), blood was found only on the shirt of the appellant, though origin of blood could not be ascertained. After due investigation, the appellant was charge-sheeted for offence punishable under Section 302 of IPC and it was committed to the Court of Session for trial in accordance with law. The appellant abjured his guilt and entered into defence.

5. In order to bring home the offence, prosecution examined as many as 17 witnesses and brought on record 28 documents. The statement of appellant/accused person was recorded wherein he denied guilt, however, he examined none in his defence but exhibited the statement of Ku. Saraswati Sahu (P.W.-2) under Section 161 CrPC as Ex. D/1.

6. Learned trial Court, after appreciation of oral and documentary evidence on record, holding the death of deceased Smt. Neera Bai Sahu to be homicidal in nature and further holding the appellant to be the perpetrator of the crime in question on the basis of sole testimony of eye-witness Ku. Saraswati Sahu (P.W.-2), proceeded to convict him for offence punishable under Section 302 of

IPC and sentenced him as aforesaid.

7. Mr. Mirza Kesar Baeg, learned counsel for the appellant, would make two-fold submission :-

i) that, merely on the basis of ocular evidence in the form of testimony of Ku. Saraswati Sahu (P.W.-2), who is an interested witness, conviction of the appellant could not have been recorded by the trial Court, as such, the impugned judgment be set aside and he be acquitted of the charge by allowing the instant appeal in toto.

ii) that, even if appellant is held to be the perpetrator of the crime in question, his case would fall within exception 4 to Section 300 of IPC as he did not have any premeditation to cause the death of the deceased and only out of sudden anger and in heat of passion, he assaulted her and as such, his conviction under Section 302 of IPC be altered to Section 304 Part I or II of IPC and the instant appeal be allowed in part and since the appellant is in jail since 30/07/2012, he be sentenced for the period already undergone.

8. Per contra, Mr. Anmol Sharma, learned State counsel, would support the impugned judgment and submit that prosecution has been able to bring home the offence and the trial Court has rightly convicted the appellant for the said offence on the basis of testimony of eye-witness Ku. Saraswati Sahu (P.W.-2), as such, the instant appeal deserves to be dismissed.

9. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

10. The first question for consideration, is whether the death of deceased Smt. Neera Bai Sahu was homicidal in nature ?

11. Learned trial Court has recorded an affirmative finding in this regard holding the death of deceased Smt. Neera Bai Sahu to be homicidal in nature relying upon the postmortem report (Ex. P/25) which has been proved by Dr. Nohar Prasad Jangde (P.W.-15) and in which it has been clearly recorded that the cause of death is due to hemorrhage and shock as a result of fracture of both the parietal bones of the skull. In his statement, when the question as to whether the death of the deceased was homicidal in nature has been asked by the Court, Dr. Nohar Prasad Jangde (P.W.-15) has stated that he cannot surely tell whether the death was homicidal or not, however, he has stated that deceased died due to the injuries suffered by her on her head and he has further stated that the injuries suffered by the deceased could have been caused by a hard and blunt object. We are of the considered opinion that the trial Court has rightly relied upon the statement of Dr. Nohar Prasad Jangde (P.W.-15) as well as the postmortem report (Ex. P/25) to hold the death of deceased to be homicidal in nature. We hereby affirm the said finding recorded by the trial Court, more so, when it has not been seriously questioned by learned counsel for the appellant.

12. The next question for consideration is, whether the appellant is the perpetrator of the crime in question ?

13. Learned trial Court has also recorded an affirmative finding in this regard relying upon the sole testimony of eye-witness Ku. Saraswati Sahu (P.W.-2), daughter of the deceased and sister of the appellant, who has clearly stated that on the date of the incident, at about 12 noon, appellant was asking his father Sukhram Sahu (P.W.-1) to go and take back the money he had lent to one Doman Sahu and he was also abusing his father in this context. Meanwhile, deceased came out from the bathroom and asked the appellant not to abuse his father but the appellant took the iron pestle kept in the house and inflicted two-three blows on the head of the deceased due to which she suffered grievous injuries. Thereafter, she started shouting loudly and after hearing her, neighbors gathered at their house and her father Sukhram Singh (P.W.-1) her sister Ku. Saroj Sahu (P.W.-3) escorted the deceased to the Hospital but she succumbed to death on the same day. Though Ku. Saraswati Sahu (P.W.-2) has been subjected to some length of cross-examination, but nothing could be extracted from her which could show that she has not seen the appellant assaulting the deceased. As such, her testimony, being credible and trustworthy, inspires confidence.

14. Moreover, pursuant to the memorandum statement of the appellant vide Ex. P/8A, recovery of iron pestle has been made vide Ex. P/9 and it has been supported by seizure witness Santosh Shrirangey (P.W.-5). The shirt worn by the appellant at the time of the incident has also been seized vide Ex. P/10 and the iron pestle as well as the shirt of the appellant were sent for chemical examination along with other seized articles and as per the FSL report (Ex. P/28), blood has been found on the shirt worn by the appellant.

15. As such, the testimony of Ku. Saraswati Sahu (P.W.-2) is quite clear, coherent and reliable to hold that appellant is the perpetrator of the crime in question. Even it is well-settled law that on the basis of sole testimony of eye-witness, conviction can be rested, sans any other evidence, provided always, the evidence of eye-witness is absolutely credible. In the instant case, the sole testimony of Ku. Saraswati Sahu (P.W.-2) has also been corroborated by circumstantial evidence of memorandum and seizure. Thus, we are of the considered opinion that learned trial Court has rightly held the appellant to be the perpetrator of the crime in question relying upon the sole testimony of eye-witness Ku. Saraswati Sahu (P.W.-2).

16. Now, the question for consideration is, whether the case of the appellant would fall within Exception 4 to Section 300 of IPC and whether his conviction under Section 302 of IPC can be altered to Section 304 Part I or II of IPC, as contended by learned counsel for the appellant ?

17. At this stage, it would be relevant to notice Exception 4 to Section 300 of IPC, which states as under :-

"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 having taken undue advantage or acted in a cruel or unusual manner.”

18. In the matter of Sukhbir Singh v. State of Haryana (2002) 3 SCC 327, it has been observed by the Supreme Court 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 Sukhir 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.”

19. Thereafter, in the matter of Gurmukh Singh v. State of Haryana (2009) 15 SCC 635, Their Lordships of the Supreme Court have laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused 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 for 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 with 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

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."

20. 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 is 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.

21. In a recent decision rendered by their Lordships of the Supreme Court in the matter of Mohd. Rafiq v. State of M.P. (2021) 10 SCC 706, reliance has been placed upon its earlier decision in the matter of Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444 wherein the considerations that should weigh with Courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined and it has been observed in paragraph 13 as under :-

"13. The considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined in Pulicherla Nagaraju (supra). This court observed that: (SCC pp. 457-58, para 29)

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion

may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

22. 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 its I 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. '18. 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".

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

24. Reverting to the facts of the present case in light of the aforesaid principle of law laid down by Their Lordships of the Supreme Court in *Mohd. Rafiq* (supra) and *Arjun* (supra), it is quite vivid that deceased was mother of the appellant and on the date of the incident, the appellant was abusing his father Sukhram Sahu (P.W.-1) on the premises of taking money back from one Doman Sahu, which he had given as loan and meanwhile, deceased Smt. Neera Bai Sahu came out of the bathroom and stopped the appellant from abusing his father and out of sudden anger and in heat of passion, the appellant picked up the iron pestle kept in the house and assaulted the deceased on her head which goes to show that there was no premeditation on his part to cause the death of the deceased and merely because she intervened in the quarrel that was happening between the appellant and his father Sukhram Sahu (P.W.-1), the appellant assaulted her. However, the appellant inflicted two-three blows on the head of the deceased which shows that he must have had intent as well as knowledge that his act is likely to cause the death of the deceased. Therefore, we are of the considered opinion that conviction of the appellant under Section 302 of IPC can be altered to Section 304 Part I of IPC, as contended by learned counsel for the appellant.

25. In conclusion of the aforesaid discussion, we set aside the conviction of the appellant for offence punishable under Section 302 of IPC and the sentence so awarded by the trial Court and we hereby convict the appellant for offence punishable under Section 304 Part I of IPC and since he is in jail since 30/07/2012 i.e. for more than 10 years, he is sentenced for the period already undergone by him. He be released forthwith, if his detention is not required in any other case.

26. Accordingly, this criminal appeal is allowed to the extent indicated herein-above.