

(2024) 01 CHH CK 0071

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 213 Of 2017????

Vijay Kumar Agariya

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 10-01-2024

Acts Referred:

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

Citation : (2024) 01 CHH CK 0071

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

Bench : Division Bench

Advocate : Rishi Rahul Soni, Ashish Tiwari

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal preferred under Section 374(2) of Cr.P.C. is directed against the impugned judgment dated 22.12.2016, passed by the Sessions Judge, Ambikapur, District Sarguja, in Sessions Trial No.75/2016, by which, the appellant herein has been convicted for the offence under Section 302 of Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs.2000/-, in default of payment of fine, 6 months additional rigorous imprisonment.

2. Case of the prosecution, in brief, is that on 12.04.2016 at about 10:00 a.m. to 12:35 p.m. at village Bargai, Police Station Darima, District Sarguja, the appellant assaulted his friend Namsingh (now deceased) by hand & fist and by danda, by which he suffered grievous injuries and died. The matter was reported to the police and deceased was escorted to the hospital where he was declared died. The merg intimation was recorded vide Ex.P-13, FIR was registered vide Ex.P-22, inquest was conducted vide Ex.P-2 and dead body of deceased Namsingh was subjected to post-mortem, which was conducted by Dr. Ashok Kumar Toppo (PW-12), who proved the post-mortem report vide Ex.P-14/A & Ex.

P-14/B, in which cause of death was stated to be cardio respiratory arrest due to multiple internal organ injury and its complications and death was homicidal in nature. Pursuant to memorandum statement of the appellant Ex.P-18, danda was seized from the possession of appellant vide Ex.P-19, which was sent for chemical examination to FSL along-with other seized articles and as per the FSL report Ex.P-26 & Ex.P-26A, blood has been found on the danda and other seized articles. After due 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.

3. In order to bring home the offence, prosecution examined as many as 17 witnesses and exhibited 28 documents and the appellant-accused in support of his defence has not examined any witness but has exhibited one document Ex.D-1.

4. The trial Court, after appreciation of oral and documentary evidence on record, convicted the appellant herein for the offence under Section 302 of Indian Penal Code and sentenced him to undergo life imprisonment against which the present appeal has been preferred.

5. Mr. Rishi Rahul Soni, learned counsel for the appellant would submit that considering 10 injuries suffered by deceased which were abrasions in different part of the body and most of the abrasions are in non-vital part of the body, therefore, clause Thirdly of Section 300 of IPC would not attract. In that view of the matter, taking into the prosecution case as it is, only the offence under Section 304 Part-II of IPC is made out in view of the decision of the Supreme Court in the matter of Nankaunoo v. State of Uttar Pradesh (2016) 3 SCC 317. Therefore, the conviction of the appellant under Section 302 of I.P.C. be converted to Section 304 Part-II of I.P.C. and the appellant be sentenced for the period already undergone, as he is in jail since 15.04.2016 and the appeal be allowed in part.

6. Mr. Ashish Tiwari, learned State counsel would submit that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellant for the offence under Section 302 of I.P.C. He further submits that it is not the case where the sentence of the appellant can be converted to Part-II of Section 304 of I.P.C. and, as such, the instant appeal deserves to be dismissed.

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

8. The first question for consideration as to whether the death of deceased Namsingh was homicidal in nature, has been answered by the trial Court in

affirmative relying upon the post-mortem report Ex.P-14/A & Ex.P-14/B proved by Dr. Ashok Kumar Toppo (PW-12), which in our considered opinion is a correct finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and accordingly, we hereby affirm the said finding.

9. Now, the next question is, whether the appellant had caused the death of deceased Namsingh ?

10. Considering the statements of Smt. Nankunwar (PW-3), Smt. Malti (PW-4) and Ku. Reema Singh (PW-13), who are the eye-witnesses, nothing has been extracted to hold that they have not seen the incident and pursuant to the memorandum statement of the appellant Ex.P-18, danda has been seized vide Ex.P-19, on which blood has been found as per the FSL report Ex.P-26, we are of the considered opinion that the finding recorded by the trial Court that appellant had caused the death of deceased Namsingh is correct finding of fact based on evidence available on record and accordingly, we affirm the said finding.

11. Now, whether the appellant's case deserves to be converted under Section 304 Part-II of I.P.C., as according to learned counsel for the appellant, clause Thirdly of Section 300 of IPC would not attract ?

12. It would be appropriate to notice the statement of Dr. Ashok Kumar Toppo (PW-12), who had conducted the post-mortem and reported the injuries over the body of deceased :-

13. A careful perusal of the aforesaid report would show that eight injuries were abrasion and two injuries were contusion and most of the injuries are in non-vital parts of the body and though fracture on ribs were found and in the right temporo-parietal region, blood was found clotted, but Dr. Ashok Kumar Toppo (PW-12) did not say that the injuries caused by the appellant and suffered by deceased were sufficient to cause death in the ordinary course of nature in order to attract clause Thirdly of Section 300 of I.P.C.

14. In view of the above, it would be appropriate to notice the decision of the Supreme Court in the matter of Nankaunoo (supra), in which their Lordships in paragraph 12 & 13 held 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.

15. Reverting to the facts of the case in light of the decision of the Supreme Court and in the opinion of Dr. Ashok Kumar Toppo (PW-12), at the most, abrasions were found in non-vital parts of the body and the prosecution has not extracted from the Doctor that the injuries which were abrasions and contusions were sufficient in the ordinary course of nature to cause death. 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 view that it is a fit case where the conviction of the appellant under Section 302 of IPC should be under Section 304 Part-I of IPC.

16. In the result, the conviction of the appellant under Section 302 of IPC is modified as conviction under Section 304 Part-II of IPC and the appellant is sentenced to undergo six years' rigorous imprisonment, which he had already suffered as he is in jail from 15.04.2016; however, the fine amount imposed by the trial Court shall remain intact. Accordingly, the appeal is partly allowed and we direct that the appellant be released forthwith from jail, unless he is required in any other offence.

17. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned for necessary information and action, if any. A certified copy of the judgment may also be sent to the concerned Jail Superintendent forthwith wherein the appellant is suffering the jail sentence.