



2025:CGHC:31866-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1014 of 2015

{Arising out of Judgment dated 08.05.2015 in Sessions Case No.10/2015 of the Sessions Judge, Kabirdham (Kawardha)}

Baishakhu S/o Ramdas Baiga, aged about 20 Years, R/o Village Shitalpani, Police Station Chilphi, Civil and Revenue District Kabirdham Chhattisgarh. **... Appellant**

versus

State Of Chhattisgarh, through Police of Police Station Chilphi, Civil and Revenue District Kabirdham Chhattisgarh. **... Respondent.**

For Appellant : Shri Govind Dewangan, Advocate.

For Respondent/State : Shri Vivek Mishra, Panel Lawyer.

**Hon'ble Shri Sanjay K. Agrawal &
Hon'ble Shri Deepak Kumar Tiwari, JJ**

Judgment on Board

(10/07/2025)

Sanjay K. Agrawal, J

1. This Criminal Appeal preferred by the accused/appellant under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and sentence dated dated 08.05.2015 passed by the Sessions Judge, Kabirdham (Kawardha) in



Sessions Case No.10/2015 by which the appellant has been convicted for the offence under Section 302 of the IPC and sentenced to undergo Rigorous Imprisonment for life.

2. Prosecution case, in brief, is that on 29.11.2014 in the night hours at about 11 pm, in the house of the deceased Ramdas Baiga, the accused/appellant assaulted his father Ramdas by hands and fists, as a result of which, his father died, thereby, the appellant committed the offence. It is further case of the prosecution that at the relevant time informant Goutariha (PW-1), nephew of the deceased, was sleeping at his house and when he heard sound of quarrel from the house of the appellant, he reached there and saw that the deceased was lying dead inside the room. When he asked as to how the deceased died, the appellant told him that his father Ramdas was beating his mother Sonkunwar Bai (PW-3), therefore, he assaulted him with hands and fists, as a result of which, his father died. Subsequently, Merg intimation (Ex.-P/1) and FIR (Ex.P/5) was lodged by informant Gautariha (PW-1).
3. The spot map was prepared vide Ex.P/8. Memorandum statement of the accused was recorded vide (Ex.P/3) and nothing was seized from his possession. Inquest was conducted vide Ex.-P/3. The dead body of the deceased was sent for



postmortem examination which was conducted by Dr. Santosh Luniya (PW-6) and he gave his report vide Ex.-P/13 opining that the cause of death is hemorrhage shock due to injury on the vital organs.

4. In order to bring home the charge, the prosecution examined as many as 8 witnesses and exhibited 20 documents.
5. The learned trial Court after appreciating the oral and documentary evidence available on record, convicted and sentenced the appellant as mentioned in the opening paragraph of this judgment, against which, this appeal has been preferred by the appellant/accused questioning the impugned judgment of conviction and order of sentence.
6. Shri Govind Dewangan, learned counsel appearing for the appellant submits that the learned trial Court is absolutely unjustified in convicting the appellant for offence under Section 302 of IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. He submits that at best offence under Section 304 (Part-II) would be made out against the appellant herein because the appellant is said to have assaulted the deceased on spur of moment and he has no intention or premeditation to cause death of the deceased. Therefore, the case of the present appellant falls within the purview of Exception 4 to Section 300 of IPC and the act of the appellants is



culpable homicide not amounting to murder and, therefore, it is a fit case where the conviction of the appellant for offence under Section 302 of IPC can be converted/altered to an offence under Section 304 (Part-II) of IPC and, since the appellant remained in jail for more than 04 years 01 month, therefore, he may be sentenced to the period already undergone by him.

7. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence and would submit that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. In view of the statements of prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted the appellant for offence under Section 302 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 consideration the postmortem report (Ex.P/13), wherein it has been opined that cause of death is hemorrhage shock due to injury on the vital



organs, which is duly proved by the statement of Dr. Santosh Luniya (PW-6). Accordingly, taking into consideration the postmortem report (Ex.P/13) and the statement of Dr. Santosh Luniya (PW-6), who has conducted postmortem on the dead-body of the deceased, we are of the considered opinion 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. We hereby affirm the said finding.

10. In order to base conviction, the trial Court has relied upon the statements of Goutariha (PW-1), Dr. Santosh Luniya (PW-6) and Police Inspector, Hemant Verma (PW-7). Goutariha (PW-1) has categorically stated in his statement that the accused/appellant has informed him that due to quarrel between his mother and father, he has assaulted the deceased by hands and fists, due to which, the deceased fell down. Dr. Santosh Luniya (PW-6) has stated in his statement that injuries suffered by the deceased could be caused by hands and fists. Likewise, Hemant Verma (PW-7), the Police Inspector in his statement stated that during enquiry the appellant informed that his father was beating his mother in a drunken condition and when he did not stop quarreling, the appellant assaulted him by using hands and fists. In their cross-examination, nothing has been elicited to hold that



the appellant has not assaulted the deceased and as such, the finding recorded by the trial Court is based on the statements of aforesaid witnesses and the same is correct finding of fact based on evidence and it is neither perverse nor contrary to the record.

11. The aforesaid finding brings us to the next question for consideration, which is, whether the case of the appellant is covered within Exception 4 to Section 300 of IPC vis-a-vis culpable homicide not amounting to murder and his conviction can be converted to Section 304 Part-I or Part-II of IPC, as contended by learned counsel for the appellant ?
12. The Supreme Court in the matter of Gurmukh Singh v. State of Haryana¹ 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

¹ (2009) 15 SCC 635



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.”

13. The Supreme Court in the matter of Arjun v. State of Chhattisgarh² has elaborately dealt with the issue and observed in paragraphs 20 and 21, which read 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)

² (2017) 3 SCC 247



“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”.

14. 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.



15. In the case at hand Goutariha (PW-1) is the lodger of the FIR (Ex.P-5). He has stated in the FIR that on the date of incident on hearing quarrel between the appellant and his father (deceased), he went to the house of the appellant and saw that the deceased was lying dead. When he enquired from the appellant, the appellant informed that he has assaulted his father with hands and fists and committed his murder as his father (deceased) was quarreling with his mother Sonkwar (PW-3). Though before the Court this witness (PW-1) has turned hostile and not supported the case of the prosecution, however, in cross-examination at Para 4 he has stated that the deceased used to beat his wife after consuming liquor. He has further stated that when he went to the house of the deceased, his wife Sonkunwar (PW-3) informed him that in the previous night the deceased assaulted her after consuming liquor and thereafter, he fell on the ground in a drunken condition. Furthermore, when a query was put to Dr. Santosh Luniya (PW-6) as to whether the death can be caused by hands and fists, he has opined that the injuries sustained by the deceased could be caused by hands, fists and legs. Apart from that, Hemchand Verma (PW-7) who has conducted the investigation has also stated that during the interrogation, the appellant informed that his father i.e. deceased was committing Maar-Peet with his mother and when



the appellant tried to convince his father, sudden quarrel started between them wherein he assaulted his father with hands and fists.

16. From the above evidence, it can be safely inferred that the appellant had no premeditation or intention to cause death of the deceased. However, looking to the injuries sustained by the deceased, it can be said that though the appellant had no intention, but must have had knowledge that such injuries inflicted by him on the body of the deceased may likely to cause death of the deceased and as such, the present case falls within the purview of Exception 4 to 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. Therefore, we are of the opinion that conviction of the appellant under Section 302 of IPC can be altered/converted to Section 304 (Part-II) of IPC.
17. In view of the aforesaid discussion, conviction of the appellant for offence under Section 302 of IPC as well as the sentence of life imprisonment awarded to him by the trial Court is hereby



set aside. Instead thereof, the appellant is convicted for offence under Section 304 Part-II of IPC and, for which, since the appellant remained in jail for more than 04 years 01 months, he is sentenced to the period already undergo by him. Since the appellant is reported to be on bail, he need not to surrender, however, his bail bonds shall remain in force for a further period of six months in view of provision contained under Section 437-A of CrPC.

18. This Criminal Appeal is **partly allowed** to the extent indicated herein-above.
19. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Deepak Kumar Tiwari)
Judge

Ajay