



2025:CGHC:11366-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2272 of 2023

1 - Rajesh Kumar Banchhor S/o Late Shri Ramsurat Banchhor Aged About 26 Years R/o Village Amandon (Ghutarapara), Police Station Pratappur, District Surajpur (C.G.)

... Appellant

versus

1 - State of Chhattisgarh Through Arakshit Kendra Pratappur, District Surajpur (C.G.)

... Respondent

For Appellant : Ms. Nirupama Bajpai, Advocate.

For State/respondent : Mr. Malay Jain, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha , Chief Justice

07-03-2025

1. The present criminal appeal has been filed by the appellant under Section 374(2) of the Cr.P.C. against the impugned judgment of conviction and sentence dated 13-10-2023 passed by the learned Additional Sessions Judge, Pratappur, District Surajpur in Sessions case No.16/2022 whereby the appellant has been convicted for the offence under Section 302 of the IPC and sentenced for life

imprisonment with fine of Rs.100/-, in default of payment of fine further R.I. for 3 years.

2. Brief facts of the case are that the deceased Sukhmaniya Bai is the mother of the appellant. After death of her husband since 15-16 years back, she was residing alone in her house at village Sarhari. The appellant used to go to her house occasionally. On 03-03-2022 one Jivdhan Jaiswal PW-3 gave a merg intimation to the police that the deceased was his friend and he was taking her care since last 10-12 years. Her daughter is residing at her matrimonial house at Ambikapur and her son is residing at Bhutwapara, Amandon. Yesterday evening he had a telephonic call with her and at that time he felt that she was in intoxicated condition. Today morning when he made call to her, she has not replied and then he went to her house, then he saw that she died inside her house on her bed. He called her brothers and then lodged merg intimation which is Ex.-P/6. The inquest Ex.-P/14 was prepared by the Executive Magistrate on 04-03-2022 in presence of witnesses and the dead body was sent for its postmortem to Community Health Center, Pratappur where PW-6 Doctor A.K. Vishwakarma and Doctor Lalit Singh conducted postmortem of the dead body of the deceased and gave postmortem report Ex.-P/9. While conducting the postmortem of the dead body of the deceased the doctor has noticed

(i) multiple contusion:-

(i) over fronto parietal area, 4 x 1 cm.

(ii) over chest somewhat right side, 40 cm x 20 cm (H and

V)

(iii) over tip of right hand finger (first, second, third and fourth) approx. 1.5 cm x 1 cm

(iv) over left face somewhat along lateral side of face

On internal examination subarachnoid hemorrhage on left fronto parietal area was found. After conducting the postmortem the doctor has opined that cause of death is neurogenic shock and nature of death was homicidal.

Broken piece bangles, one toe ring and one woolen cap have been seized from the spot vide seizure memo Ex.-P/4. Spot map Ex.-P/7 was prepared by the police, Ex.-P/10 was prepared by Patwari. The FIR Ex.-P/12 was registered on 04-03-2022 against unknown person for the offence of Section 302 of the IPC. The appellant was arrested on 04-03-2022 and his memorandum statement Ex.-P/2 was recorded in which he disclosed the entire incident and the manner in which he committed murder of the deceased and based on his memorandum statement one Adhar Card of the deceased and Rs.500/- cash have been seized from the appellant vide seizure memo Ex.-P/3. Statement of witnesses under Section 161 of the Cr.P.C. have been recorded and after completion of usual investigation charge sheet was filed before the learned JMFC, Pratappur for the offence under Section 302 of the IPC. The case was committed to the learned trial Court for its trial.

3. The learned trial Court has framed charge against the appellant for the offence under Section 302 of the IPC. He denied the charge and claimed trial.

4. In order to prove the charge against the appellant the prosecution

has examined as many as 10 witnesses. Statement of the appellant under Section 313 of the Cr.P.C. has also been recorded in which he denied the circumstances appears against him, pleaded innocence and has submitted that he has been falsely implicated in the offence.

5. After appreciation of oral as well as documentary evidence led by the prosecution the learned trial Court has convicted and sentenced the appellant as mentioned in the earlier part of this judgment. Hence, this appeal.

6. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict the appellant in the offence in question. There is no eye-witness to the incident and the appellant has been convicted by the learned trial Court only on surmises and conjectures. There is lack of cogent and clinching evidence to connect the appellant with the offence in question. It is not in dispute that the deceased was residing separately from the appellant since 9-10 years and merely on the basis of recovery of Adhar Card of the deceased he cannot be convicted. In alternative he would submit that there is no weapon used to assault the deceased and if it is found proved from the evidence of witnesses that on the date of incident the appellant and deceased were together and it is the appellant who caused injuries to the deceased, in view of the fact that the incident occur all of sudden and in heat of passion and without taking the undue advantage or without any unusual manner the deceased was being

beaten by hands and fists by which she received internal injuries on her head which led to her death and therefore, the offence of the appellant, if any, does not travel beyond the scope of Section 304 of the IPC and by altering conviction of the appellant from Section 302 of the IPC, he may be convicted for the offence under Section 304 Part II of the IPC and sentenced for the period already undergone by him as he is in jail since 04-03-2022.

7. Learned counsel for the State vehemently opposes the submissions made by the learned counsel for the appellant and has submitted that the prosecution has proved its case beyond reasonable doubt. But for minor omissions and contradictions evidence of prosecution witnesses are fully reliable. There are evidence on record that on the date of incident the appellant and deceased were together, they had gone to choice center and some dispute arose there with respect to withdrawal of the amount from the account of the deceased. They returned back to the house of the deceased and thereafter the deceased was found dead in injured condition. The Adhar Card of the deceased was seized from the appellant and he has not explain as to on what point of time he departed from the company of the deceased. The proximity of the entire affairs conclusively leads towards guilt of the appellant that he committed murder of his mother and fled away. The judgment passed by the learned trial Court is well reasoned and there is no infirmity or illegality in the said judgment and the appeal filed by the appellant is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the

record of the case.

9. Homicidal death of the deceased has been proved by the prosecution by examining doctor A.K. Vishwakarma PW-6 who conducted the postmortem of the dead body of the deceased. While conducting the postmortem of the dead body of the deceased he found certain injuries on her body and opined that cause of death was neurogenic shock and the nature of death was homicidal. Postmortem was conducted by a team of doctors and PW-6 has remained firm in his cross-examination that the deceased died due to injuries and her death was homicidal. Though he admitted that the deceased had consumed liquor and substance of alcohol have been found on her abdomen. But, with respect to the nature of death he stuck that the death of the deceased was homicidal. We are of the considered opinion that the finding recorded by the learned trial Court that death of the deceased was homicidal in nature is finding of fact based on evidence available on record and we hereby affirm the said finding.

10. Now, the next question for consideration would be whether the accused-appellant herein is the perpetrator of the crime in question, which the learned trial Court has recorded in affirmative by relying upon the testimony of eyewitnesses.

11. PW-1 has stated in his evidence that he saw the appellant and the deceased together near the grocery shop of Umesh. The deceased had taken Rs.1000/- from the shop. The appellant was demanding Rs.1000/- from her mother, but her mother gave him Rs.500/- and then he went away from there and on the next day he came to know that the

appellant has committed murder of the deceased. Though, this witness has been declared hostile, but in cross-examination also he remained firm that both of them were together on the date of incident and normal conversation was going on between them.

12. PW-2 Vinay Kumar has stated in his evidence that on the date of incident there was quarrel between the appellant and the deceased on the issue of transaction of amount. The memorandum statement (Ex.-P/2) of the appellant was recorded in his presence and based on his memorandum statement Adhar Card of the deceased and Rs.500/- cash was recovered from him. He is also a witness of seizure memo Ex.-P/4. In cross-examination he stated that he disclosed the incident whatever he has heard by other persons.

13. PW-3 Jivdhan Jaiswal, who is the first informant, has stated that on the date of incident, at about 9 to 10 a.m., the deceased had made telephonic call to him and informed that she withdrawn Rs.1000/- from choice center and after taking Rs.500/- from her, he beaten her. In the evening also she made telephonic call to him and informed that she was complaining pain on whole of her body. On the next day when he went to the house of the deceased he found her dead body lying on the cot. Then he called her family members and then informed the police. In cross-examination he admitted that he has not seen both of them together and the quarrel between them. He also disclosed the family background of deceased in his cross-examination and he denied that the deceased has not informed him that she was being assaulted by the appellant on the date of incident for Rs.1000/-.

14. PW-4, Suku @ Pando who is the memorandum and seizure witness, but in his cross-examination he resiled from his chief examination.

15. PW-5 Mukesh Kushwaha is owner of the choice center in whose shop the appellant and the deceased had gone on the date of incident, he stated in his evidence that on the date of incident at about 12-12:20, the appellant and the deceased came to his shop. The appellant pressurized the deceased for withdrawal of more amount, but the deceased withdrew only Rs.1000/- from her account and thereafter, both of them had gone together. He also stated that during that time both of them were arguing each other and the deceased was protesting the act of the appellant. At this stage, he has been declared hostile on the point of marpeet between them in his shop. But, in cross-examination he remained firm in saying that after withdrawing the money from her account, both of them had gone together and the appellant was insisting for withdrawing more amount. From these evidence the presence of the appellant with the deceased at the relevant point of time has been proved by the prosecution and immediately thereafter the deceased was found dead in her house in injured condition.

The learned trial Court after relying upon the judgment passed by the learned trial Court in the matter of State of **Vahitha Vs. Tamil Nadu**, 2023 SCC OnLine SC 174 has held that the appellant has failed to discharge his burden and has not explained as to when he departed from the company of the deceased which led towards guilt of the

appellant for commission of the murder of the deceased. As such, the learned trial Court has rightly held that it is the appellant/accused who has caused injuries over body of the deceased and accordingly we hereby affirm the said finding.

16. The aforesaid finding brings us to the next question for consideration, whether the case of the appellant is covered within Exception 4 to Section 300 of the IPC vis-a-vis culpable homicide not amounting to murder and their conviction can be converted to Section 304 Part-I or Part-II of the IPC, as contended by learned counsel for the appellants?

17. The Hon'ble Supreme Court in the matter of **Sukhbir Singh v. State of Haryana**, (2002) 3 SCC 327 has observed 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 Sukhbir 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."

18. The Hon'ble Supreme Court in the matter of **Gurmukh Singh Vs. State of Haryana**, (2009) 15 SCC 635 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 the 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 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 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.
- (n) 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.”

19. 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 has 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.

20. Further, the Supreme Court in the matter of **Arjun Vs. 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 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 :

“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”.

21. In the matter of Arjun (supra), the Supreme Court has held that if there is intention and not knowledge, the same would be case of Section 304 Part-I of the 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 of the IPC.

22. Further, the Hon'ble Supreme Court in the matter of ***Rambir Vs. State (NCT of Delhi), 2019 (6) SCC 122***, has laid down four ingredients to bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

- (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 offender had not taken any undue advantage or acted in a cruel or unusual manner.”

23. According to the postmortem report (Exhibit P/9), there was no injury of any weapon and no fracture was found either head bone or any other bone of the body of the deceased and subarachnoid hematoma and hematoma in fronto parietal area was found on her body. The other contusions have been found on the body of the deceased, was caused by any weapon or object and as per the evidence came on record the appellant caused injuries by hands and fists. Even the witnesses who seen them together when they had gone to withdraw the amount from choice center, none of the witnesses have seen that the appellant caused any injuries by any weapon to the deceased. The only dispute arose between them to withdraw more amount from the bank account of

the deceased and as such the entire circumstances and the manner in which the quarrel between them arose, shows that the appellant did not have intention to cause murder of the deceased, though in a heat of passion he would have assaulted the deceased. It is also not the case of prosecution that the appellant came there armed with any deadly weapon or having any weapon in his hand.

24. From the facts of the present case it emerges that some dispute arose between the appellant and the deceased with regard to withdrawal of more amount from her bank and without there being any premeditation on the part of the appellant to cause death of deceased, the assault was made. As such, his case would fall within the purview of Exception 4 of Section 300 of the 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. As such, it could be safely said that the appellant did not had the intention to kill the deceased.

25. In view of the above discussion, we hold that it would meet the ends of justice if the conviction of the appellant under Section 302 of the IPC is altered/converted to Section 304 Part-II of the IPC.

26. Accordingly, conviction of the appellant under Section 302 of the IPC is set aside, however, he is convicted under Section 304 Part-II of the IPC and sentenced to undergo rigorous imprisonment for 7 years.

27. As the appellant is stated to be in jail since 04-03-2022, he shall serve out the remaining sentence as awarded by this Court.

28. The criminal appeal is partly allowed to the extent indicated herein-above.

29. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentences to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

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

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice