



APR
31.8.10

(3)

HIGH COURT OF CHHATTISGARH, BILASPUR

CORAM: **Hon'ble Shri Rajeev Gupta, C.J. &**
Hon'ble Shri Sunil Kumar Sinha, J.

Criminal Appeal No. 488 of 1992

Ramsingh @ Tungan

Vs.

The State of Madhya Pradesh
(Now State of Chhattisgarh)

JUDGMENT

For consideration

Sd/-
Sunil Kumar Sinha
Judge

HON'BLE SHRI JUSTICE RAJEEV GUPTA

I agree

Sd/-
Chief Justice

30/08/2010

Post for Judgment : 31/08/2010

Sd/-
Sunil Kumar Sinha
Judge



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(32)

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CORAM: **Hon'ble Shri Rajeev Gupta, C.J. &**
Hon'ble Shri Sunil Kumar Sinha, J.

Criminal Appeal No. 488 of 1992

APPELLANT

Ramsingh @ Tungan S/o Ghudu
Baiga, aged 30 years, Occupation
Agriculturist, R/o Datari Tola, P.S.
Bodla, District Rajnandgaon

Versus

RESPONDENT

The State of Madhya Pradesh
(Now State of Chhattisgarh)
Through P.S. Bodla, District
Rajnandgaon

**(Criminal Appeal under Section 374 (2) of The Code of Criminal
Procedure, 1973)**

Appearance:

None for the appellant.

Mr. Akhil Mishra, Dy. Govt. Advocate for the State.

JUDGMENT
(31.08.2010)

Following judgment of the Court was delivered by
Sunil Kumar Sinha, J.

(1) Appellant- Ramsingh stands convicted u/s 302 IPC and
sentenced to undergo imprisonment for life by the Additional
Sessions Judge, Khairagarh, Camp – Kawardha, in Sessions Trial
No. 43/91 on 26th of February, 1992.

(2) The facts, briefly stated, are as under:-

Deceased- Suna was resident of village Chuwachaper. Appellant- Ramsingh is the brother of wife of the deceased from her maternal side. He is resident of a nearby village namely Datrari-tola. On 7.4.91 at about 4.00 p.m., the deceased went out from his house and reached to a nearby *gali*. The appellant was also coming through the same *gali*. The appellant was holding bow & arrow. The allegations are that the appellant said to the deceased that, today he will kill the deceased and thereafter he shot one arrow on the deceased which hit on his abdominal portion. The appellant came to the deceased and tried to take out the arrow, but in the process the wooden portion detached from the iron portion and the iron portion could not be taken out from the body of the deceased. After sometime the deceased died. The incident was witnessed by three witnesses namely Itwari (PW-1), Parbati (PW-2 – wife of the deceased) and Sonibai (PW-9 – sister of the deceased). Itwari (PW-1) lodged the First Information Report (Ex.-P/12). The Investigating Officer reached to the place of occurrence, gave notice (Ex.-P/1) to the *Panchas* and prepared inquest (Ex.-P/2) on the body of the deceased. The post-mortem examination was conducted by Dr. R.K. Bakshi (PW-13), who found that the liver of the deceased was damaged as there was an injury of 2 cm x 1 cm x 2 cm on the left lobe of the liver. Blood was found in the abdominal cavity. According to the post-mortem report Ex.P/17, the cause of death was syncope as a result of injury to the liver causing haemorrhage.

(3) The learned Sessions Judge relied on the testimonies of the above three eye-witnesses and recorded the conviction u/s 302 IPC and sentenced the appellant as aforementioned.

(4) We have perused the records of the Sessions Court. We have no doubt about the involvement of the appellant in the above incident. On the basis of evidence of the above three eye-witnesses, it was established that the appellant shot an arrow on the deceased which resulted into his death. The question which requires consideration is as to whether the act of the appellant would be punishable u/s 302 IPC or the appellant would be liable for punishment under some lesser Section.

(5) Mr. Akhil Mishra, learned Dy. Govt. Advocate appearing on behalf of the State, argued that the appellant shot an arrow on the deceased with intention to cause his death, therefore, he was rightly punished u/s 302 IPC and there is hardly any scope for interference in this matter.

(6) In Virsa Singh -Vs- State of Punjab, AIR 1958 SC 465, it was held that the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly"; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the

injury of the type, just described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution, the offence is murder under S. 300 "thirdly". It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature, or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. The question whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

(7) In Laxminath -Vs- State of Chhattisgarh, (2009) 3 SCC 519, the appellant shot one arrow which hit on the arm of the victim. Thereafter he shot another arrow on his mother-in-law (deceased) which hit on her chest. The Supreme Court, relying on the judgment of *Virsa Singh* (supra) held that in the factual scenario and fact that

one arrow was shot, the offence would be covered by Section 304 Part-I & not Section 302 IPC and conviction awarded to the appellant u/s 302 IPC was altered under Section 304 Part-I IPC with custodial sentence of eight years. If we examine the case on hand on the principles laid down in *Virsa Singh's* case, it does not appear that the appellant had an intention to cause such bodily injury (i.e. injury on the liver) to the deceased and for the said reason, his act would not be punishable u/s 302 IPC and he would be liable for punishment under Part-I of Section 304 IPC.

(8) In the result, the appeal is partly allowed. The conviction and sentence awarded to the appellant u/s 302 IPC are set-aside. The appellant is convicted u/s 304 Part-I IPC and sentenced to undergo R.I. for 10 years. We gathered from the record that the appellant was arrested on 8.4.91 and was released on bail on 7.5.2002, hence, he has already served more than the sentence awarded to him. Therefore, he is not required to surrender. He is on bail. His bail bonds are cancelled and surety stands discharged.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge