

**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment Reserved on : 14/01/2022****Judgment Delivered on : 31/01/2022****CRA No. 1449 of 2015**

- Ashok Kumar Gawde S/o Singrai Gawde, Aged About 23 Years, R/o Tumapal, Police Station Tadoki, District Kanker, Chhattisgarh., Chhattisgarh

**---- Appellant****Versus**

- State Of Chhattisgarh, through the Station House Officer, Police Station Tadoki, District Kanker, Chhattisgarh., Chhattisgarh

**--- Respondent**

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For Appellant : Mr. D.N. Prajapati, Advocate.

For Respondent/State: Ms. Shivali Dubey, Panel Lawyer.

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**Division Bench : Hon'ble Shri Justice Rajendra Chandra Singh Samant & Hon'ble Shri Justice Arvind Singh Chandel**

**C A V JUDGMENT****Per R.C.S. Samant, J.****31/01/2022**

1. This appeal has been preferred against judgment dated 15-10-2015 passed by learned Sessions Judge North Bastar Kanker in Sessions Trial No.61/2014 convicting the appellant for offence under Section 302 of the IPC and sentencing him with life imprisonment along with fine of Rs.100/- with default stipulation.
2. The case of the prosecution, in brief, is this, that the appellant and his father Singrai Gawde, the deceased were living together in the same house along with wife of the appellant Sameela (PW-3). On 07-04-2014 at about 9.00 p.m. in the evening, Sameela

(PW-3) came to the house of the Sahdev Ram (PW-1) and informed that her husband appellant Ashok Kumar Gawde and her father-in-law Singrai, the deceased both are beating each other. Sahdev Ram (PW-1) went to the spot and saw that the appellant was lying unconscious on the floor of the Aangan and his father Singrai, the deceased was lying in dead condition and bleeding. Sahdev Ram (PW-1) immediately summoned Aganuram (PW-4) and other witnesses who visited the spot of incident, then the appellant was sent to hospital through ambulance. On the basis of the information given by Sahdev Ram (PW-1), FIR (Ex.-P/1) and morgue intimation (Ex.-P/1A) was lodged in the police station. The police conducted the inquest procedure. The dead body of the deceased was subjected to postmortem. Doctor Shital Dugga (PW-6) has reported vide postmortem report (Ex.-P/9) that the death of the deceased Sigray Gawde was caused due to bleeding and shock from the injuries suffered by him and his death was of homicidal nature.

3. Other investigative procedures were taken up. Seizure of blood stained soil and plain soil was made vide Ex.-P/7. Spot map of the place of incident was prepared. Seizure of blood stained clothes of the appellant was made by Ex.-P/15. A crow bar was seized from the spot of incident vide Ex.-P/4. Seizure of the blood stained clothes of the deceased was made by Ex.-P/13 which were preserved by the doctor conducting postmortem

examination. These seized articles were sent for FSL examination and the FSL report (Ex.-P/21) was obtained. A query was made regarding the seized crow bar regarding which report (Ex.-P/11) was obtained from the examining doctor. The appellant was arrested and on completion of the investigation charge sheet was filed.

The trial Court framed charge under Section 302 of the IPC. The appellant/accused denied the charge and pleaded not guilty. The prosecution examined 8 witnesses. On completion of the prosecution evidence, the appellant/accused was examined under Section 313 of the Cr.P.C., in which he denied all the incriminating evidence present against him in the case and again made statement that he is innocent and that he has been falsely implicated. The appellant opted for examining witness in defence, but later on he did not examine any witness.

4. Learned trial Court after giving opportunity of hearing to the prosecution and defence has delivered the impugned judgment convicting and sentencing the appellant in the manner mentioned hereinabove.
5. It is submitted by learned counsel for the appellant that the appellant has been erroneously convicted by the learned trial Court. There is no eye-witness present of this incident. The case is based only on circumstantial evidence, but the chain of circumstances were not fully proved by the prosecution. The only circumstance is that the appellant and the deceased were

residing in the same house. In this incident the deceased as well as the appellant both were assaulted and injured and unfortunately the deceased has died. The basis of information given by Sahdev Ram (PW-1) is the statement Sameela (PW-3) who has stated in the Court that she did not inform about the incident to any person, therefore, the statement of Sahdev Ram (PW-1) that he received information from Sameela (PW-3) is falsified. There is no evidence of any other circumstances.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Sangili alias Sanganathan Vs. State of Tamil Nadu represented by Inspector of Police**, (2014) 10 SCC 264, in which it is observed that suspicion however strong cannot be a substitute for proof. It is submitted that in the case of **Gali Venkataiah Vs. State of Andhra Pradesh**, AIR 2008 SC 462, it has held that in case of death being caused in an incident of sudden fight the case shall be covered under 4<sup>th</sup> Exception of Section 300 of the IPC. It is submitted that if it is believed that there had been a fight between the appellant and his father, then the same will be covered under Exception 4 of Section 300 of the IPC. Further, relying on the judgment of Hon'ble the Supreme Court in the case of **Budhi Singh Versus State of Himachal Pradesh**, (2012) 13 SCC 663 : 2013 AIR SCW 457, it is submitted that when death is caused on grave and sudden provocation that will be a case under the Exception (1) to Section 300 of the IPC.

It is submitted by learned counsel for the appellant that in

case this Court is not inclined to give clean acquittal to the appellant, then the Exceptions under Section 300 of the IPC may be taken into consideration and the conviction and sentence imposed upon the appellant be reduced. Hence, it is prayed that the appeal may be allowed.

6. Learned State counsel opposes the submission made by learned counsel for the appellant. It is submitted that the prosecution has proved the case beyond reasonable doubt. There is evidence present regarding all the circumstances. The death of the deceased has been reported to be homicidal by the doctor conducting the postmortem examination and further, it was the burden of the appellant under Section 106 of the Evidence Act to explain as to what may have been the other reasons for cause of death of the deceased, which he has not explained. Hence, the appeal is without any substance which may be dismissed.
7. Heard learned counsel for the parties and perused the record of the trial Court.
8. Considered on the submissions.
9. Sahdev Ram (PW-1) has stated, that on the night of incident Sameela (PW-3) came to his house and informed that her husband and the deceased both are fighting with each other. The witness went to her house and saw the appellant in unconscious condition and then he also saw his father, the deceased in dead condition. After informing some villagers, the appellant was sent to hospital via ambulance. Later on, he lodged the FIR (Ex.-P/1)

and morgue intimation (Ex.-P/1A) in the police station. In cross-examination his statement about his visiting the spot and seeing the circumstances and also his statement about giving information to the police has remain unrebutted.

10. Shyam Sai (PW-2) has stated that he was informed about the incident by Mohanram who was informed by Sahdev Ram (PW-1). Subsequent to which, this witness visited the spot and saw the dead body of the deceased and then the appellant was sent for treatment to hospital by ambulance. This statement is unchallenged in cross-examination.
11. Sameela (PW-3) has stated that she was not present in the house when the incident took place and she does not know about the quarrel between her husband and her father-in-law and also that she had not informed about the incident to any person. This witness was declared hostile in which she has not admitted any of the suggestions given by the prosecutor. Therefore, her statement has no evidentiary value.
12. Aganuram (PW-4) has stated that he was informed about the incident by Sahdev Ram (PW-1) and then he visited the spot and saw the appellant lying outside the house and the deceased inside the house.
13. Doctor Shital Dugga (PW-6) examined the dead body of the deceased Sigrail and she found one lacerated wound of size 3 x 1 x 0.5 inch on the temporal occipital region of the deceased. She saw one swelling size 13 x 5 inches on the right side of the

back of the deceased. 5<sup>Th</sup> rib of the right side of the deceased was found fractured. In the internal examination she found blood clots, liver was torn and the internal organs were congested. Vide her report Ex.-P/9 she has opined that the cause of death of the deceased was due to excessive bleeding and shock and that was homicidal in nature. The statement of this witness has remained unrebutted in her cross-examination.

14. Rest of the witnesses examined are regarding the investigative procedures.
15. The evidence regarding seizure of crow bar vide Ex.-P/4 has been supported by independent witness Sahdev Ram (PW-1) and then procedure was conducted by Ajay Xess (PW-8) on which basis the possibility of this crow bar being the instrument of offence is fit for consideration.
16. After making a careful scrutiny of the evidence in the case, learned trial Court has held that the circumstances regarding the appellant and the deceased living together in the same house, presence of the appellant in the house when the deceased was done to death, presence of injuries on the body of the appellant for which he was treated and further, the death of deceased Singrai being homicidal were held proved and this has been the basis of conviction against the appellant.

Taking into consideration the provisions under Section 106 of the Indian Evidence Act holding that the it was the burden on the appellant to explain the circumstances under which the death

of deceased Singrai was caused, after considering on the evidence present in the case and also the conclusion drawn by the trial Court, we are of the view that the circumstances as mentioned hereinabove have been proved by the prosecution and there is no explanation given by the appellant to contradict the circumstances. The only one issue which has been raised in the present appeal needs consideration is whether this incident, in which the death of Singrai was caused, was a sudden fight between him and the appellant.

17. On taking into consideration the evidence present in the record, it is fit to be observed, that there is evidence in this respect that the deceased and the appellant both had quarreled with each other before the death of the deceased was caused. When witness Sahdev Ram (PW-1) and others visited the house they saw the appellant in unconscious condition because of the injuries he has suffered and he had to be sent to hospital for treatment. This fact and circumstance has not been explained by the defence, on the contrary it supports the point raised that there had been a fight between the appellant and the deceased in which the appellant was also injured in such a manner that he was lying unconscious when the witnesses visited the spot and therefore, he had been sent to be treated in the hospital. On the basis of these facts, it can be inferred that in the same quarrel, the appellant as well as the deceased inflicted injuries to each other, in which the deceased succumbed to the injuries, whereas, the appellant had



to go to hospital for the treatment of injuries suffered by him. This indicates the possibility of the circumstance of sudden fight or the provocation which the appellant may have received because of the aggressive act of the deceased himself who had inflicted injuries upon the appellant. On the basis of these observations this case appears to be covered under Exception 4 of Section 300 of the IPC which is reproduced below:-

**“300. Murder.** : – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –

*Secondly.* – xxxxxx            xxxxxx

*Thirdly.* –     xxxxxx            xxxxxx

*Fourthly.* – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

18. The conduct of the deceased has to be inferred in this case. The presence of injuries on the body of the appellant which made him unconscious are sufficient to draw conclusion that while inflicting injuries the deceased has not spared the appellant in any manner and he had inflicted him such injuries which made the appellant unconscious. It can be inferred that the appellant had in return inflicted the injuries on the deceased and the injuries so

inflicted by him turned to be fatal which has resulted in his death. This appears to be an incident of give and take between the appellant and the deceased in which the appellant acted in such a manner that he exceeded the mark and that resulted in the death of the deceased. Hence, this case is certainly an exception and covered under Exception 4 of Section 300 of the IPC. Hence, on this basis we are of the view that the conviction of the appellant under Section 302 of the IPC is not sustainable. As per the evidence it was a case of inflicting injuries to each other by the deceased and the appellant, therefore, intention for causing death of the deceased is clearly not made out. Therefore, the offence made out against the appellant is clearly an offence under Section 304 Part II of the IPC.

According to this conclusion drawn, this appeal is allowed in part modifying the conviction of the appellant. Conviction against the appellant under Section 302 of the IPC is set aside and it is modified to conviction under Section 304 Part II of the IPC. So far as the sentence part is concerned, the appellant has already undergone detention in jail for about more than 7 years and his detention is nearly completing 8 years, therefore, we are of the view that imposition of jail sentence already undergone by the appellant shall serve the purpose of sentencing in this case. Hence, it is ordered that the appellant is sentenced for offence under Section 304 Part II of the IPC with detention and jail sentence of period already undergone by him in jail. In case the

appellant is not required to be detained in any other case he shall be released forthwith.

Sd/-  
**(R.C.S. Samant)**  
**Judge**

Sd/-  
**(Arvind Singh Chandel)**  
**Judge**

Aadil