

**Criminal Appeal (DB) No. 1459 of 2023**

**Against the Judgment of conviction dated 02.02.2017 and order of sentence dated 04.02.2017 passed by 2<sup>nd</sup> Additional Sessions Judge-cum-Fast Track Court (Rape Cases) Deoghar in Sessions Trial No. 109 of 2020.**

Sri Ram Sharma .....APPELLANT  
Versus  
State of Jharkhand .....RESPONDENT  
.....

For the Appellant : M/s Bhawesh Kumar, Ravi Kumar, S.N. Tiwary and  
Ashutosh Anand No. 2, Advocates.  
For the State : Mr. Vishwanath Roy, A.P.P.  
.....

**P R E S E N T**

**SRI ANANDA SEN, J.  
SRI SUBHASH CHAND, J.**

**J U D G M E N T**

**Per, Ananda Sen, J.**

This criminal appeal is directed against the Judgment of conviction dated 02.02.2017 and order of sentence dated 04.02.2017 passed by 2<sup>nd</sup> Additional Sessions Judge-cum-Fast Track Court (Rape Cases), Deoghar in Sessions Trial No. 109 of 2010, whereby and whereunder, the appellant having been found guilty of charges under Section 302 of Indian Penal Code, has been sentenced to undergo imprisonment for life and fine of Rs.10,000/-.

2. The learned counsel for the appellant submitted that from the facts as narrated by the prosecution, no case under Section 302 of the Indian Penal Code is made out against the appellant. He also submitted that there is only one injury on the head of the deceased, as stated by the eye witness and the said fact has been corroborated by the medical evidence, which establishes the point that the conviction could not be under Section 302 IPC. He further submitted that the court witness was a Doctor, who stated that the appellant was suffering from schizophrenia. Thus, on these grounds, the counsel for the appellant sought for acquittal of the appellant.

3. Learned A.P.P. submitted that the eye witness clearly stated that the appellant gave a blow on the head of the deceased with hammer, which resulted in his death. He further submitted that there is no material to doubt the testimony of eye witness i.e. P.W. 11, who was present at the place of occurrence, that being so, the conviction of the appellant cannot be held to be bad. So far as mental ailment of the appellant is concerned, he submitted that the Doctor has stated that the appellant was admitted in RINPAS on 3.8.2013, which is at least more than three years after the occurrence, thus this medical evidence, whereby the Doctor has stated that the appellant was suffering from schizophrenia, is of no help to the appellant.

4. The appellant has been convicted and sentenced for committing the offence punishable under Section 302 IPC. He is in custody since the date of occurrence i.e. 23.2.2010 i.e. for fourteen years. This appeal is of the year 2023, but considering the period of custody, we thought it proper to hear the appeal on merits, to which the parties also agreed. The appeal has also been admitted and the Trial Court Record is with us and with the respective parties.

5. The informant, in this case is Naresh Sharma, who stated in his *fardbeyan* that the co-worker of his father namely Pradeep Kumar Sharma informed him by calling on his mobile that the informant's father was not well and that he is taking him to Sadar Hospital, Deoghar. When he reached the hospital with his co-villagers, namely Jantu Sharma and Raghubir Sharma, he saw his father in unconscious condition and during course of treatment he died at Bed No. 11. The informant was informed by the co-worker of his father, namely Pradeep Kumar and owner of shop Ranjan Kumar Sharma and one Pappu, that at about 5:00 a.m. Sri Ram Sharma (appellant) who is a cousin of the informant, gave a blow of hammer on the head of the father of the informant, as a result of which, blood started oozing from the head of the victim and despite bringing him to the hospital, he could not survive.

On the basis of the aforesaid *fardbeyan* of the informant, Mohanpur P.S. Case No. 38/2010 was registered for the offence

under Section 302 of Indian Penal Code, against the appellant. Subsequently, the matter was taken up for investigation and after completion of investigation, charge sheet was submitted against the appellant and, accordingly, cognizance of the offence was taken and the case was committed to Court of Sessions for trial.

6. In order to prove the charges against the accused, the prosecution has examined altogether fourteen witnesses, as P.W. 1- Kanchan Sharma, P.W. 2- Nageshwar Yadav, P.W. 3-Pyarelal Sharma, P.W. 4- Shankar Choudhary, P.W. 5- Pappu Kumar Mandal, P.W.6- Bharat Sharma, P.W.7-Ranjan Kumar Sharma, P.W.8-Shiv Narayan Yadav, P.W.9-Chunnu Gupta, P.W.10- Naresh Sharma, P.W. 11- Pradeep Sharma, P.W. 12- Dr. Deepak Kumar Sinha, P.W.13- Albinus Indwar, P.W. 14- Chandrashekhar Paswan. The Court has examined Dr. P. K. Sinha as Court Winters No. 1.

The prosecution has also exhibited the following documents;

- Ext.- 1 Sign of Naresh sharma on fardbeyan.
- Ext.-1/1 Fardbeyan.
- Ext.-1/2 Endorsement in Fardbeyan
- Ext.2- Postmortem report.
- Ext.3- Seizure list.
- Ext.-4 Confessional statement.
- Ext.-5 Formal FIR.
- Mark-X Xerox of inquest report.
- Ext.6- Order to produce seizure list.
- Material Exhibit- I- Hammer.

7. We have gone through the record and evidences as well as impugned judgment. We find that except P.W. 11, all other witnesses i.e. P.Ws. 1 to 10 including the informant are hearsay witnesses as admittedly they had reached the place of occurrence after hearing hue and cry. All these hearsay witnesses stated that immediately after the occurrence had taken place, they reached the place of occurrence, when the sole eye witness narrated how the incident had taken place and how the appellant had assaulted the deceased on his head with hammer. They also stated that this appellant was found tied and it was P.W. 11, who tied the appellant. The informant also supported the statement made in the FIR. Admittedly this informant is also not an eye witness.

8. Now the main witness in this case is P.W. 11, who was the co-worker of the accused and the deceased. Admittedly he is the eye witness. He stated that all three were sleeping in the same room. The deceased and the accused were related to each other as the deceased is the maternal uncle of the accused-appellant. There was no dispute amongst them and relationship amongst them was cordial. They were sleeping on the same cot. In early hours of the morning, a dispute arose between the deceased and the accused for a hammer. The accused was asking for the hammer whereas the deceased told him that it will be given only to the employer. There was a sudden altercation and heated exchange of words. Because of the scuffle, altercation and sudden provocation, the appellant took the hammer and gave one blow on the head of the deceased, as a result of which, he sustained injury. The appellant was tied and the injured was taken to hospital. The other people thereafter assembled. Later on, the deceased died.

P.W.12 is the Doctor, who conducted the postmortem over the dead body of the deceased and found rigor mortis on all the forelimbs. On external examination, he found blood clot and blood found in mouth, nose and right ear. One lacerated wound 3"x1"x bone deep on right temporal area of head. On internal examination, he found fracture of right temporal and right occipital bone. Blood clot was found on occipital part of brain. Heart-right chamber contained 40 ml of blood, left chamber was empty. Both lungs were intact. Liver, Spleen, Kidney and stomach were intact and pale. Time elapsed since death within ½ hours. This witness has opined that the cause of death was hemorrhage and shock due to above injuries.

**P.W. 13-Albinus Indwar**, is the Investigating Officer, who stated that he arrested the appellant. He stated that he received information through mobile that some altercation had taken place. He went to the place of occurrence and came to know that the injured was taken to Sadar Hospital. He reached the hospital and received information that Sudhir Sharma succumbed to the injury. He recorded the *fardebayan* of the informant, who signed the same. He identified the

written report as Ext.-1/1. He also stated that Dhandhari Sharma signed the report and Pradeep Kumar put his thumb impression. He further stated that he prepared the inquest report, which was marked as Ext.- X. After preparing the inquest report, he sent the dead body for postmortem. He recorded the re-statement of the witnesses and he also described the place of occurrence. Thereafter, he submitted the chargesheet. No other material could be extracted from him.

**P.W.14 Chandrashekhar Paswan**, is formal witness, who produced the hammer, which has been marked as material Ext.-1.

**Dr. P.K. Sinha** is **Court Witness No. 1**, who stated that he was the Doctor of RINPAS and this appellant was admitted in RINPAS on 3.8.2013 as he was suffering from schizophrenia.

9. From the evidence laid by the parties, we find that it is an admitted case of the prosecution that some altercation suddenly erupted between the deceased and the appellant, when this appellant took the hammer and gave a blow on the head of the deceased. The medical evidence also proves the aforesaid fact that only one blow was given on the head of the deceased by this appellant.

Sections 299 and 300 of the IPC read as hereunder:-

**Section 299. Culpable homicide.-**

*Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

*Illustrations:-*

*(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.*

*(b) A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.*

*(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.*

*Explanation 1.— A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.*

*Explanation 2.— Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.*

*Explanation 3.— The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.*

**Section 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—*

*2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—*

*3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—*

*4thly.—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.*

*Exception 1.—When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

*The above exception is subject to the following provisos:—*

*First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

*Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

*Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.*

*Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.*

*Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*

*Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

*Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.*

*Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.*

*Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.*

10. As per exception 4 of Section 300 IPC, a culpable homicidal is not a murder, if it is committed without premeditation in a sudden fight in the heat of a passion upon a sudden quarrel. Thus, if a culpable homicidal is committed without any premeditation in a heat of passion upon sudden quarrel and the offender does not take any undue advantage nor acts in a cruel manner, the said death will not be covered under Section 300 IPC.

11. In this case, from the prosecution evidence, it is clear that there was no intention of causing death of the deceased by the appellant. There was sudden quarrel and in the heat of the passion and without any premeditation, the blow was given with hammer on the head of the deceased. Further, it is the case of the prosecution from the evidence of the eye witness and also from the medical evidence that only one blow was given on the head of the deceased, which also suggests that there was no premeditation or intention to commit murder. Thus, we hold that this case will fall within Exception (4) of Section 300 of the Indian Penal Code.

12. On the facts, this case would be covered under Section 304 Part-II of the Indian Penal Code. Section 304 IPC provides as follows;

**304. Punishment for culpable homicide not amounting to murder.**—*Whoever commits culpable homicide not amounting to murder, shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*

*or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.*

13. In the facts of the case and as per the evidence, we hold that this case will fall within Exception (4) of Section 300 of the Indian Penal Code, which would be covered under Section 304 Part-II of the Indian Penal Code. We hold this because, we found from the evidence and the materials, there was no intention to commit murder. Accordingly, we set aside the conviction of the appellant under Section 302 of the Indian Penal Code and convict him under Section 304 Part-II of the Indian Penal Code and sentence him to undergo rigorous imprisonment for ten years.

14. So far as mental ailment is concerned, from the evidence of Court witness No. 1 i.e. Dr. P.K. Sinha we find that the appellant was admitted in mental hospital RINPAS in the year 2013, whereas this occurrence had taken place in the year 2010. Thus there is nothing to suggest that on the date of occurrence, the appellant was suffering from schizophrenia. Thus, we are not inclined to accept the aforesaid argument made on behalf of the appellant that he was mentally ill.

15. Since the appellant has already remained in custody for more than ten years and he has already served the sentence under Section 304 Part-II of the Indian Penal Code, this Court directs the above named appellant to be released forthwith from custody, if not required in any other case. Accordingly, this Criminal Appeal is **partly allowed**.

16. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment.

17. Pending Interlocutory application, if any, is also disposed of.

**(ANANDA SEN, J.)**

**(SUBHASH CHAND, J.)**

Jharkhand High Court, Ranchi.  
Dated: the 01<sup>st</sup> May, 2024.  
NAFR/Anu/Cp.-3.