REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1317 OF 2022

CHHERTURAM @ CHAINU …Appellant

Versus

STATE OF CHHATTISGARH …Respondent

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. We are faced with a case of patricide *albeit* both the father and the son were drinking together.

2. In the intervening night of 26th and 27th July, 2010, between 10.00 pm and 12.30 am, the effect of alcohol may have resulted in a quarrel *inter se* the father and the son. The informer, Chamruram (PW-8), who is a neighbour, on reaching their house found the appellant assaulting his father, Goienda, the deceased, with *Nagar Wood*. The deceased fell to

the ground and died. In the presence of the appellant's brother, PW-4, the appellant admitted that he killed his father. The FIR was lodged by PW-8 in the Police Station Darima next morning and the appellant was arrested on 28.07.2010. On his disclosure statement regarding a *lungi* as well as *Nagar Wood*, the same were found at the courtyard of his house and then sent to Forensic Science Laboratory, Raipur, for chemical examination.

3. It is necessary to set out the result of the autopsy, which opined that the injuries on the dead body were caused by some hard and blunt object between half to two hours of death. These injuries were stated to be fatal to life and sufficient to cause death to the deceased. There were eleven injuries found, as under:

> "1. On the right side of the head of the deceased a torn wound was present from front to back in the parietal region to a depth of 2.5x1/4xinch to the depth of the bone;
>
> 2. On the front of the head 2x1 / 4 inch size dark blue torn wound was there, on which swelling was present all around;
>
> 3. On the back left side of the head 4 inches rounded one contusion was present, inside which blood clot was present;
>
> 4. 3x2 inch size one contusion was present near left ear;
>
> 5. On the front and left side of the neck 6x4 inch part swelling and

blue colored contusions were present;

6. On the left cheek in the 4x4 inch part, there were contusions with swelling;

7. The sternum bone on the chest was broken and there was a blood clot beneath it and there was a blue colour contusion, present on the chest;

8. On the right chest, in 4x4 inch area, contusion was present due to which the second, third, fourth rib were broken and blood had accumulated beneath the broken rib;

9. On the left chest there was a 6x2 inch size contusion present and beneath it the first, second, third and fourth ribs were broken and blood clot had accumulated beneath the broken ribs;

10. On the back and left abdominal side, 3 contusions were present, which were of 3X2, 5X2 inches and 7X2 inches in size; and

11. The left eye was red in color and swelling was present in it."

On an internal examination of the dead body, alcohol was found present inside the deceased's stomach. The cause of death was stated to be haemorrhage shock caused by the fatal injuries to the vital organs and death was homicidal in nature.

4. On completion of investigation, a charge sheet was filed before the Judicial Magistrate, 1st Class, Ambikapur, who committed the case to the

court of Sessions. Charges were framed under Section 302 of the Indian Penal Code (hereinafter referred to as '*the IPC*') on 08.03.2011 and the prosecution examined ten witnesses.

5. The appellant pleaded innocence in his statement under Section 313 of the Code of Criminal Procedure (hereinafter referred to as '*the CrPC*') but admitted that he and the deceased were residing together in the same house.

6. The learned Additional Sessions Judge vide the judgment dated 15.10.2012 convicted the appellant finding him guilty of causing a homicidal death amounting to murder under Sections 302 of the IPC and sentenced to undergo RI for life with a fine of Rs.1,000/- and in default to undergo additional RI for four months. It was opined that the case of the prosecution was based on direct evidence, judicial confession, seizure based on appellant's statement and on circumstantial evidence that the body of the deceased was found in the appellant's house.

7. On appeal being preferred before the High Court, the same was dismissed by the impugned judgment dated 08.04.2015. The evidence was analysed threadbare including the statement of neighbours, who

were prosecution witnesses stating that the appellant and the deceased were residing in the same house and on being informed about the death of the deceased, they went to the house and saw the dead body of the deceased.

8. On the Special Leave Petition being preferred, notice was issued on 18.07.2022. The only aspect, on which notice was issued on 18.07.2022, was on the plea of the learned counsel for the appellant that the present case would fall under Section 304 Part-I of the IPC and not Section 302 of the IPC. The appellant had already undergone actual sentence of twelve years by then.

9. Arguments have been heard on the aforesaid aspect after grant of leave on 22.08.2022.

Submissions on behalf of the Appellant:

10. Learned counsel for the appellant contended that both the appellant and the deceased were consuming liquor and started fighting under the influence of liquor. In this altercation, the appellant picked up a *Nagar Wood* and inflicted few injuries to his father, which resultantly caused death. There was no motivation and intention, which means that the

essential ingredients of Section 300 of IPC were absent and the conviction under Section 302 of IPC was erroneous. Moreover, alcohol was also found in the stomach of the deceased.

11. It may be noticed that the learned counsel for the appellant sought to contend on the aspect of whether the conviction could be based on the last seen theory. However, that is not the aspect on which notice was issued.

Submissions on behalf of the Respondent:

12. Learned counsel for the respondent sought to initially contend that in case of the homicide committed within the privacy of a house, there is burden on the inmates to offer a cogent explanation for the crime committed. The testimonies of witnesses established the crime. Once again, we have to say that that is not an aspect, which is required to be examined by us in view of the limited notice issued.

13. On the issue of the nature of offence, learned counsel for the State relied upon the judgment in ***Surain Singh v. State of Punjab***[1] to make out a case under Exception 4 of Section 300 of the IPC. Section 300

[1] (2017) 5 SCC 796

reads as under:

> "**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* —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—
>
> *Thirdly* —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—
>
> *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.
>
> xxxx xxxx xxxx xxxx
>
> *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 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."

14. In order to make out a case under Exception 4 aforesaid, it was pleaded that there were two essential ingredients: (i) the accused did not act with premeditation, and (ii) the accused did not act in a cruel or brutal

manner taking advantage of the situation. Hence the nature of injuries is an important factor in determining whether the death was caused due to a sudden fight.

15. Learned counsel referred to the judgment in ***Manokaran v. State of T.N.***[2], wherein this Court refused to entertain the case within Exception 4 of Section 300 of the IPC due to the nature of injuries, which showed cruelty and brutality meted out to injure a person on the root of the neck.

16. In applying the said principles to the facts of the present case, it is submitted that there were eleven injuries on the vital areas such as skull, chest and abdomen leading to breaking of sternum as well as second, third and fourth rib to demonstrate that the appellant acted with brutality. Hence, the present case cannot fall under the Fourth Exception to Section 300 of IPC.

17. Learned counsel for the respondent also made a reference to Section 86 of the IPC, which reads as under:

> "**86. Offence requiring a particular intent or knowledge committed by one who is intoxicated**.—In cases where an act

[2] (2010) 15 SCC 562

> done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

18. It was, thus, the submission made by the respondent that merely because the appellant and the deceased had consumed liquor together, full knowledge is liable to be attributed to the appellant and the defence of being under the influence of liquor is not something which was available to him.

19. It was further contended that the benefit of Section 300 Fourthly extends to act committed by an offender with the knowledge that the result of such acts will be death approximates a practical certainty/a very high degree of probability. The nature of injuries in the present case indicates that death was a practical certainty. Therefore, the conviction of the appellant was liable to be sustained under Section 302 of the IPC.[3]

Conclusion:

20. We have examined within the limited contours of the aforesaid facts and the principles of law enunciated. There is no doubt that the

[3] A.P. v. Rayavarapu Punnayya (1976) 4 SCC 382

parties were closely related, being the father and the son. There was no prior dispute. Liquor got the better of the appellant. That, however, is no defence in view of Section 86 of the IPC.

21. We have to thus turn to the fact that there was no prior intent but in the sudden fight, injuries were inflicted. It is necessary to look to the injuries in this behalf which had been enumerated hereinabove. There were eleven injuries! It is not only the number of injuries but where and in what manner they were inflicted, even if it is by a piece of *Nagar Wood* and not by a dangerous weapon. There were multiple injuries on the head – on the right side, on the front side, on the back left side, near the left ear, on the front and left side of the neck and on the left cheek. The sternum bone on the chest was broken and there was a blood clot beneath it. On the right chest, 4X4 inch area contusion was present due to which the second, third, fourth rib were broken and blood had accumulated beneath the broken rib. Similarly on the left chest, there was a 6X2 inches size contusion. The contusions were also present on the back and left abdominal side. It is clearly a case of mercilessly beating on all the vital parts of the body and reigning blows, albeit with a wood piece, on head and on different parts of the head again and again. With

these kinds of blows, there would be no possibility of the deceased surviving. Maybe it was under the influence of liquor, but the nature of blows was such that the endeavour was to end the life of the deceased, the father. It was certainly an act in a cruel and brutal manner taking advantage of the situation even if there was no pre-meditation. The factual scenario would, thus, fall within the ratio of ***Manokaran***[4] case.

22. Sympathy for the son in such a scenario would be misplaced. The victim was the father. The appellant must take the consequences of such merciless attack on his father. There is no cause made out for application of Exception 4 of Section 300.

23. The only redeeming feature is that the appellant has already undergone 12 years of sentence and on completion of the sentence, as per remission policy, he would be liable to be considered for release. The only aspect which we are inclined to consider is to issue a direction to the State to consider the case of the appellant for remission, the moment he completes the mandatory sentence as per the policy for such consideration.

[4] (supra)

24. The appeal is accordingly disposed of in the aforesaid terms leaving the parties to bear their own costs.

……J.
[Sanjay Kishan Kaul]

....……J.
[Pamidighantam Sri Narasimha]

New Delhi.
September 13, 2022.