



2024:CGHC:45004-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 307 of 2024**

**1** - Dilharan Sahu S/o Dayaluram Sahu Aged About 55 Years R/o Pisaud, Police Station - Janjgir Champa, District - Janjgir-Champa, Chhattisgarh. **... Appellant**

**versus**

**1** - State Of Chhattisgarh Through - Arkashi Kedre Janjgir, District - Janjgir-Champa, Chhattisgarh. **... Respondent**

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For Appellant :- Mr. M.P.S. Bhatia, Advocate  
For Respondent :- Mr. Shaleen Singh Baghel, Dy. Govt. Advocate

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**Division Bench**

**Hon'ble Shri Ramesh Sinha, Chief Justice &  
Hon'ble Shri Justice Amitendra Kishore Prasad, J.**

**Judgment On Board**

**(19.11.2024)**

**Per Amitendra Kishore Prasad, J**

1. This criminal appeal under Section 374(2) of the Cr.P.C. has been preferred by the appellant against the impugned judgment of conviction and order of sentence dated 31.10.2023 passed by the learned Sessions Judge, Janjgir, District Janjgir-Champa, C.G., in

Sessions Trial No.57/2022 by which appellant herein has been convicted for offence under Section 302 of the IPC and sentenced him to undergo imprisonment for life and fine of ₹ 25,000/-; in default of payment of fine to undergo additional R.I. for three months.

2. Case of the prosecution, in brief, is that on 29.06.2022 at about 7:00 am, deceased- Dileram Sahu was trying to stop drainage water towards his courtyard by mud with the help of spade, on which, present appellant objected and tried to stop the deceased and in that event, some quarrel took place between them and the present appellant assaulted upon the deceased and gave 3-4 blows with spade, due to which, deceased suffered grievous injuries over his body and died. After the incident, appellant informed about the incident to PW-2 Girdhari Sahu over telephone and thereafter, PW-2 lodged the written report at Police Station Janjgir vide Ex.P-3. On the basis of written report vide Ex.P-3, FIR vide Ex.P-18 was registered against the appellant. Thereafter, Merg Intimation (Ex.P/4) was recorded and inquest proceedings were conducted vide Ex.P/9 and dead body was sent for postmortem vide Ex.P/13. Postmortem was conducted by Dr. Iqbal Hussain (PW-8) and it was opined in the postmortem report that cause of death of deceased was due to cerebral injury and its complications due to stab injury. Pursuant to memorandum statement of appellant (Ex.P/5), spade and one Nokia mobile phone were seized clothes and griddle were

recovered vide Ex.P/6. The seized articles were sent for the chemical analysis and in FSL report vide Ex.P-29, human blood has been found on the seized spade.

3. After due investigation, appellant was charge-sheeted for the aforesaid offence and the case was committed to the Court of Sessions for trial in accordance with law. The appellant / accused abjured his guilt and entered into defence stating that he has not committed the offence.
4. In order to bring home the offence prosecution has examined as many as 13 witnesses and exhibited 29 documents, whereas the appellant in support of his defence has neither examined any witness nor exhibited any document.
5. The learned trial Court, after appreciating the oral and documentary evidence available on record, convicted and sentenced the appellant for the offence as mentioned in the opening paragraph of the judgment, against which this appeal has been preferred questioning the impugned judgment of conviction and order of sentence.
6. Learned counsel for the appellant submits that the trial Court is absolutely not justified in convicting and sentencing the appellant for the aforesaid offence and, as such, the impugned judgment is liable to be set aside. He further submits that there are material contradictions and omissions in the statements of the prosecution

witness and there is no cogent and clinching evidence available on record against the appellant. He also submits that due to some land dispute, some quarrel took place between the appellant and deceased and in that event, on account of grave and sudden provocation, the appellant assaulted the deceased, due to which, he suffered grievous injuries and died. The appellant is in jail since 29.06.2022 i.e. more than 2 years, therefore, the case of the present appellant falls within the purview of Exception 1 to Section 300 of IPC and the act of the appellant is culpable homicide not amounting to murder, therefore, it is a fit case where the conviction of the appellant for offence under Section 302 of the IPC can be converted / altered to an offence under Section 304 (Part-I or Part-II) of IPC. Thus, the present appeal deserves to be allowed in full or in part.

7. On the other hand, learned State counsel supports the impugned judgment and submits that prosecution has been able to prove the offence beyond reasonable doubt and, learned trial Court has rightly convicted and sentenced the appellant herein for the aforesaid offence, therefore, the appeal deserves to be dismissed.
8. We have heard the learned counsel for the parties, considered their rival submissions made herein-above and gone through the records with utmost circumspection.

- 9.** The first question is as to whether the death of the deceased was homicidal in nature, which the learned trial Court has recorded the finding in affirmative on the basis of postmortem report (Ex.P/13) which is proved by Dr. Iqbal Husain (PW-8), which is a finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and we hereby affirm the said finding.
- 10.** Now, the next question is, whether the appellant is author of the crime in question?
- 11.** In the instant case, taking into account the statement of Rakeshwari Sahu (PW-1), who is the eye-witness to the incident, has clearly stated that on the date of incident, he had seen the appellant assaulting the deceased over his body with spade two times and upon seeing him, appellant also tried to assault to him due to which, he ran away from the spot and hide himself inside the house. He has also stated that he had seen the appellant assaulting the deceased with spade at a distance of 6-7 feet. This witness was subjected to cross-examination where he remained firm and also admitted the fact that due to land dispute, appellant and deceased used to quarrel. This apart, PW-2 Girdhari Sahu, before whom appellant made extra-judicial confession, has stated that after the incident, appellant told him over telephone that he has committed murder of deceased by assaulting him with spade. Besides this, pursuant to the memorandum statement of

appellant, blood stained spade was seized in which human blood has been found as per FSL report vide Ex.P-2. Thus, considering the statements of Rakeshwari Sahu (PW-1) and PW-2 Girdhari Sahu and seizure made pursuant to the memorandum statement of appellant, we hold that it is the appellant has assaulted the deceased over his body with spade, as a result of which, he suffered grievous injuries and died.

**12.** The aforesaid finding brings us to the next question for consideration, which is, whether the case of the appellant is covered within Exception 1 to Section 300 of IPC vis-a-vis culpable homicide not amounting to murder and his conviction can be converted to Section 304 Part-I or Part-II of IPC, as contended by learned counsel for the appellant ?

**13.** It is profitable here to note Exception 1 to Section 300 of the IPC, which states as under: -

*“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.”*

**14.** Exception 1 to Section 300 of the IPC applies when due to grave and sudden provocation, the offender, deprived of the power of self-control, causes the death of the person who gave the provocation. Exception 1 also applies when the offender, on account of loss of self-control due to grave and sudden

provocation, causes the death of any other person by mistake or accident.

15. The Supreme Court in the matter of **K.M. Nanavati v. State of Maharashtra**<sup>1</sup> laid down the conditions which have to be satisfied for the exception to be invoked which are as under:-

- “(a) the deceased must have given provocation to the accused;
- (b) the provocation must be grave;
- (c) the provocation must be sudden;
- (d) the offender, by the reason of the said provocation, should have been deprived of his power of self-control;
- (e) the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and
- (f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident.

Their Lordships held that for determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an usually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. Their Lordships in paragraphs 84 & 85 of the report observed as under: -

“(84) Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an

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1 AIR 1962 SC 605

accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

(85) The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to S. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

16. Very recently, the Supreme Court in the matter of **Dauvaram**

**Nirmalkar v. State of Chhattisgarh**<sup>2</sup> relying upon **K.M. Nanavati**

(supra) held in paragraphs 12 & 13 as under: -

"12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his

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2 Criminal Appeal No.1124 of 2022, decided on 2-8-2022; AIR 2022 SC 3620



mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation.<sup>3</sup> The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self-control and the accused had acted without planning and premeditation. This has been aptly summarised by *Ashworth*<sup>4</sup> in the following words:

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3 See the opinion expressed by Goddard, CJ. in *R v. Duffy*, (1949) 1 All.E.R. 932

4 1975 Criminal LR 558-559, and George Mousourakis's elucidation in his paper 'Cumulative Provocation and Partial Defences in English Criminal Law'

“[T]he significance of the deceased’s final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased’s final act and the accused’s retaliation should continue to tell against him. The point is that the significance of the deceased’s final act and its effect upon the accused – and indeed the relation of the retaliation to that act – can be neither understood nor evaluated without reference to previous dealings between the parties.”

Exception 1 to Section 300 recognizes that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.”

17. Furthermore, in the matter of **Hansa Singh v. State of Punjab**<sup>5</sup>, where the accused appellant therein on seeing G committing the act of sodomy on his son, lost his power and self-control which led him to commit the murderous assault on G and where the accused was convicted under Section 302 of the IPC, their Lordships of the Supreme Court found the murder to be committed during grave provocation and altered the conviction to one under Section 304 Part-II of the IPC. Their Lordships observed as under: -

“We, however, feel that the occurrence took place while the deceased was committing sodomy on Haria and that gave such a sudden and grave provocation and annoyance to

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5 AIR 1977 SC 1801

the appellant which impelled him to assault the deceased. For these reasons we are satisfied that the case of the appellant falls clearly within the purview of Section 304, Part II of the Indian Penal Code. The appellant on seeing the deceased committing the act of sodomy on his son, lost his power and self-control and it was undoubtedly a grave and sudden provocation for him which led him to commit the murderous assault on the deceased.”

18. Reverting to the facts of the present case in light of principles of law laid down by their Lordships of Supreme Court in **K.M. Nanavati** (supra), **Hansa Singh** (supra) and **Dauvaram Nirmalkar** (supra), it is quite vivid from the statement of Rakeshwari Sahu (PW-1), who is the eye-witness to the incident, that on the date of incident, due to partition of land dispute, appellant quarreled with the deceased and in that event, appellant lost his self-control and in sudden and grave provocation assaulted the deceased with spade, by which, he suffered grievous over his body leading to his death. The statement of PW-1 Rakeshwari Sahu also finds corroboration with the evidence of PW-2 Girdhari Sahu, before whom appellant made extra-judicial confession. In our considered opinion, it was undoubtedly a grave and sudden provocation for appellant which led him to commit the murderous assault on deceased. However, he must have had knowledge and intention that the injuries caused by him is sufficient to cause death of deceased. As such, we are satisfied that the appellant's case would clearly fall within the purview of Exception 1 to Section 300 of the IPC and the offence would fall under Section 304 Part-I of the IPC.

**19.** In view of the aforesaid discussion, the conviction of the appellant for offence punishable under Section 302 of IPC as well as the sentence of life imprisonment awarded to him by the learned trial Court is hereby set aside. Considering that there was no premeditation on the part of the appellant to cause death of the deceased, but the injuries caused by him were sufficient in the ordinary course of nature to cause death, the appellant is convicted for offence punishable under Section 304 Part-I of IPC and he is sentenced to **ten** years' rigorous imprisonment in place of life imprisonment. However, the fine amount with default sentence imposed by the trial Court shall remain intact.

**20.** This criminal appeal is **partly allowed** to the extent indicated herein-above.

**21.** Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned for necessary information and action, if any.

Sd/-

**(Amitendra Kishore Prasad)**

**Judge**

Sd/-

**(Ramesh Sinha)**

**Chief Justice**