

**Devendra Kumar & Ors.**

**v.**

**State of Chhattisgarh**

(Criminal Appeal No. 328 of 2015)

06 November 2024

**[B.R. Gavai,\* Prashant Kumar Mishra and  
K.V. Viswanathan, JJ.]**

### **Issue for Consideration**

Whether the conviction would fall for the offence punishable u/s.302 IPC or under a lesser offence.

### **Headnotes<sup>†</sup>**

**Penal Code, 1860 – ss. 304 Part I, 302, 307 read with s.34 – Punishment for culpable homicide not amounting to murder – Previous enmity between the families of the appellants and the victim – Appellants assaulted the victim with weapons after making a threat that they would kill him and later the victim succumbed to his injuries – Courts below convicted the appellants u/s.302 and s.307 rw s.34 and sentenced accordingly – Interference with:**

**Held:** Evidence of the medical expert that the death of the deceased was homicidal death does not call for interference – In view of the credible testimony of the eyewitnesses, no reason to interfere with the finding of the courts below that it is on account of the injuries caused by the appellants that the deceased had died – There was previous enmity between the parties – From the evidence of Sarpanch of the village it is clear that there was a quarrel between the appellants and the deceased – Weapons used by the accused persons are axe and sticks, which are commonly used by the agriculturists – No material on record to show that there was any premeditation – Taking into consideration all these aspects, the possibility of offence being committed by the appellants without premeditation in a sudden fight in a heat of passion upon a sudden quarrel cannot be ruled out – From the nature of the injuries sustained by the deceased, it cannot be said that the appellants have taken undue advantage or acted in

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a cruel or unusual manner – Thus, appellants entitled to benefit of doubt – Conviction of appellants u/s.302 altered to the one under Part I of s.304 – Appellants sentenced to the period already undergone. [Paras 18, 19, 20, 21, 23]

### List of Acts

Penal Code, 1860.

### List of Keywords

Previous enmity; Making threat of killing; Evidence; Medical expert; Homicidal death; Credible testimony; Eyewitnesses; Quarrel; Premeditation; Premeditation in a sudden fight in a heat of passion upon a sudden quarrel; Undue advantage; Acted in cruel or unusual manner; Benefit of doubt.

### Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 328 of 2015

From the Judgment and Order dated 04.10.2010 of the High Court of Chhattisgarh at Bilaspur in CRLA No. 15 of 2004

### Appearances for Parties

Vikrant Narayan Vasudeva (A.C.), Adv. for the Appellants.

Ravi Kumar Sharma, D.A.G., Mrs. Prerna Dhall, Piyush Yadav, Ms. Akanksha Singh, Praphull Kumar, Prashant Singh, Advs. for the Respondent.

### Judgment / Order of the Supreme Court

#### Judgment

**B.R. Gavai, J.**

1. This appeal challenges the judgment and order dated 4<sup>th</sup> October, 2010 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 15 of 2004 whereby the High Court dismissed the Criminal Appeal preferred by the present appellants and upheld the order of conviction and sentence dated 17<sup>th</sup> October, 2003 passed by the Additional Sessions Judge (FTC), Kawardha (CG)<sup>1</sup> in S.T. No. 50 of 2003.

<sup>1</sup> Hereinafter referred to as the 'trial court'.

**Devendra Kumar & Ors. v. State of Chhattisgarh****2. The facts leading to the present appeal are as follows:-**

- 2.1** On 20<sup>th</sup> December 2002, at about 11 a.m., a complaint was lodged by one Dhannu Das (PW-2), the shopkeeper of a betel shop at Village Chhirha who had witnessed an incident near his shop wherein the appellants had assaulted the deceased, namely Bahal, with lathis, a rod and an axe after making a threat that they would kill him. On the receipt of the complaint, the Police Station at Kawardha registered a First Information Report<sup>2</sup> being Crime No. 262 of 2002 under Section 307 read with Section 34 of the Indian Penal Code, 1860<sup>3</sup> against the appellants.
- 2.2** Pertinently, prior to the occurrence of the incident which ultimately led to this criminal appeal, a land dispute relating to certain agricultural land and crops therein was pending between the families of the present appellants and the deceased. In the pending *lis*, the Sub-Divisional Magistrate had passed an order in Criminal Case No. 216 of 2003 titled Bahalram v. Devendra on 17<sup>th</sup> December 2002, thereby closing the proceedings under Section 145 of the Code of Criminal Procedure, 1973 in view of the order passed by the High Court of Chhattisgarh at Bilaspur, directing the maintenance of status quo in respect of the agricultural fields which were in the possession of the present appellants.
- 2.3** According to the prosecution story, at about 9 a.m. on 20<sup>th</sup> December 2002, Rajni Bai (PW-1) and her son Bahal, the deceased, reached Village Chhirha, having walked their way from Kawardha. Upon reaching Village Chhirha, the deceased stopped near the betel shop of Dhannu Das (PW-2). The deceased was showing the order passed by the Sub-Divisional Magistrate dated 17<sup>th</sup> December 2002 to Ghurwaram Patel (PW-4), the Sarpanch of Village Chhirha, when the present appellants arrived at the scene. Appellant No.1-Devendra and Appellant No. 2-Rohit were armed with lathis whereas Appellant No. 3-Banauram was carrying an axe and Appellant No.4-Kuleshwar was carrying a rod. After warning the deceased that they would kill him that day since he always quarreled in the

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2 "FIR" for short

3 "IPC" for short

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land matter and created litigation, the appellants engaged in a mar-peeet with the deceased, resulting in several injuries being caused to the deceased. On seeing this, Rajni Bai (PW-1) intervened which led the appellants to fight with her as well whereupon she sustained several injuries as well. On the same day, at about 1:15 p.m., during the course of the treatment, the deceased succumbed to his injuries.

- 2.4 Subsequently, the post-mortem was conducted wherein it was concluded that cause of death was coma caused by internal haemorrhage which was in turn caused by a fracture in the head leading to a brain injury.
  - 2.5 Upon the conclusion of the investigation, a chargesheet was filed before the Court of the Chief Judicial Magistrate, Kawardha. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the trial court.
  - 2.6 Charges came to be filed by the trial court under Section 302 read with Section 34 of the IPC and in the alternate, Section 307 read with Section 34 of the IPC. The appellants pleaded not guilty and claimed to be tried.
  - 2.7 The prosecution examined 15 witnesses to bring home the guilt of the appellants. In their defence, the appellants denied the charges and stated that they had been falsely implicated owing to the agricultural land dispute.
  - 2.8 At the conclusion of the trial, the trial court found that the prosecution had proved the case against the appellants and accordingly, convicted them under Section 302 and Section 307 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life.
  - 2.9 Being aggrieved thereby, the appellants preferred a Criminal Appeal before the High Court. The High Court vide the impugned judgment and order dismissed the Criminal Appeal and confirmed the order of conviction and sentence awarded by the trial court.
3. Being aggrieved thereby, the present appeal.
  4. We have heard Mr. Vikrant Narayan Vasudeva, learned Amicus Curiae, and Mr. Ravi Kumar Sharma, learned Deputy Advocate General appearing on behalf of the respondent-State of Chhattisgarh.

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5. Learned Amicus Curiae submits that it is an admitted fact that there has been a previous enmity between the family of the appellants and the family of the deceased. It is submitted that admittedly the appellants were in possession of the disputed land. However, the deceased was making an attempt to dispossess the appellants from the said land. It is submitted that one month prior to the date of the incident, the wife of the appellant No.1-Devendra Kumar lodged an FIR against the deceased with regard to forcible dispossession. It is, therefore, submitted that the appellants are entitled to be acquitted.
6. Learned Amicus Curiae, in the alternative, submitted that the possibility of the deceased trying to dispossess the appellants from the land in question and the appellants committing the crime without premeditation in a sudden fight in the heat of passion upon a sudden quarrel cannot be denied. It is, therefore, submitted that the offence, at the most, would fall under Part I or Part II of Section 304 IPC.
7. Learned counsel for the respondent-State, on the contrary, submits that both the learned trial court as well as the High Court, on correct appreciation of the evidence, have convicted the appellants for the offences punishable under Section 302 of the IPC. It is, therefore, submitted that no interference would be warranted.
8. It is further submitted that the present case is a case of direct evidence wherein a number of eyewitnesses have supported the prosecution version.
9. With the assistance of the learned counsel for the parties, we have perused the evidence placed on record.
10. From the evidence of the medical expert Dr. N.K. Yadu (PW-6), we do not find that any interference is warranted with the finding that the death of the deceased Bahal was homicidal death. The only question would be as to whether the conviction would fall for the offence punishable under Section 302 IPC or under a lesser offence.
11. Rajni Bai (PW-1) is the mother of the deceased Bahal. She has stated that on the date of the incident, when the deceased was showing the case related documents to Sarpanch, she saw the accused persons assaulting her son. She has also stated that the accused Devendra Kumar (Appellant No.1 herein) had assaulted her with bamboo stick.

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12. The fact regarding the previous enmity and the ongoing dispute between the husband of Rajni Bai (PW-1) and the accused No. 1-Devendra Kumar and others has not been denied by her. She has also admitted in her cross-examination that the fight took place between her son and the appellants herein near the cart.
13. Rajni Bai's (PW-1's) evidence is corroborated by Dhannu Das (PW-2). He has stated in his cross-examination that his shop and the field of Devendra Kumar and others are adjacent to it. He has also admitted the fact regarding Devendra Kumar and others were cultivating the land adjacent to his shop.
14. Pusau (PW-3)-mason has also supported the prosecution version.
15. Ghurwaram (PW-4)-Sarpanch of the village has also supported the prosecution version. He has admitted in his cross-examination that when the deceased had come to him, he had read out the order of the SDO Rasandigoth and told him that he will harvest the crop of half the land.
16. In view of the credible testimony of the eyewitnesses, we have no reason to interfere with the finding of the trial court as well as the High Court that it is on account of the injuries caused by the appellants that the deceased had died.
17. The next question that requires to be considered is whether the case would fall under Section 302 IPC or not.
18. It is not in dispute that there was previous enmity between the parties. The accused persons were in possession of the land in question. A month prior to the date of the incident, an FIR was lodged by the wife of the appellant No.1-Devendra Kumar against the deceased since he had tried to dispossess the appellants.
19. From the evidence placed on record, specifically the evidence of Dhannu Das (PW-2) in the presence of whom the incident has occurred, it is clear that the place of the incident is adjacent to the field in possession of the appellants. From the evidence of Ghurwaram (PW4)-the Sarpanch of the village also it is clear that there was a quarrel between the appellants and the deceased. The weapons used by the accused persons are axe and sticks, which are commonly used by the agriculturists. There is no material on record to show that there is any premeditation.

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- 20.** Taking into consideration all these aspects, the possibility of offence being committed by the appellants without premeditation in a sudden fight in a heat of passion upon a sudden quarrel cannot be ruled out. From the nature of the injuries sustained by the deceased, it cannot be said that the appellants have taken undue advantage or acted in a cruel or unusual manner.
- 21.** In that view of the matter, we find that the appellants would be entitled to benefit of doubt and the conviction under Section 302 IPC needs to be altered to the one under Part I of Section 304 IPC.
- 22.** We are, therefore, inclined to partly allow the present appeal.
- 23.** In the result, we pass the following order:
- (i) The appeal is partly allowed.
  - (ii) The conviction of the appellants under Section 302 IPC is altered to the one under Part I of Section 304 IPC.
  - (iii) The appellants have already undergone a sentence of more than 12 years prior to their release on bail by the order of this Court dated 17<sup>th</sup> February 2015. We find that the said sentence would subserve the ends of justice. Therefore, the appellants are sentenced to the period already undergone.
  - (iv) The bail bonds, if any shall stand discharged.
- 24.** We place on record our deep appreciation to Mr. Vikrant Narayan Vasudeva, learned Amicus Curiae for the valuable assistance rendered.

*Result of the case:* Appeal partly allowed.