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GOVIND SINGH

v.

THE STATE OF CHHATTISGARH

(Criminal Appeal No. 770 of 2019)

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APRIL 29, 2019

[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

Penal Code, 1860:

C *s.300 Exception 4 and s.304 (Par II) – Prosecution of appellant-accused u/s. 302 – For causing death of his daughter (deceased) – Eye-witnesses to the incident turned hostile – Trial Court convicted the accused u/s. 302 relying on Dying Declaration – Imprisonment of life imposed – High Court confirmed the conviction and sentence – On appeal, held: The occurrence was sudden and in a spur of moment without any per-meditation –*
D *Therefore, the act of the accused would fall under Exception 4 to s. 300 – The conviction is modified to one u/s. 304 (Part II) – The sentence is reduced to the period already undergone i.e. about eleven years.*

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Partly allowing the appeal, the Court

HELD: 1. The entire occurrence was in a spur of moment. There was quarrel between the father and daughter as to where the bulb was to be put on. In the sudden quarrel and in spur of the moment, the appellant threw the chimney lamp on his daughter. The occurrence was sudden and there was no premeditation. The chimney lamp was burning there, which the appellant had picked up and thrown on the deceased. Since the occurrence was in sudden quarrel and there was no premeditation, the act of the accused would fall under Exception 4 to Section 300. [Para 7][1084-F-G]

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2. The conviction of the appellant-accused under Section 302 IPC is modified as the one under Section 304 Part-II IPC. The appellant-accused has undergone about eleven years and eight months of imprisonment. Considering the facts and circumstances of the case and the period of imprisonment which

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the appellant-accused has undergone, the sentence of imprisonment is modified to the period already undergone. A
[Para 8][1084-H; 1085-A-B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
No. 770 of 2019

From the Judgment and Order dated 11.04.2013 of the High Court of Chhattisgarh at Bilaspur in CrI. A. No. 587 of 2008 B

Ram Lal Roy, Mrs. Anjani Aiyagari, Advs. for the Appellant.

Pranav Sachdeva, Ms. Neha Rathi, Jatin Bhardwaj, Advs. for the Respondent. C

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. This appeal arises out of judgment and order dated 11.04.2013 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.587 of 2008 in and by which the High Court has affirmed the conviction of the appellant under Section 302 IPC and sentence of life imprisonment imposed upon the appellant. D

3. Case of prosecution is that on 23.05.2007 at 07.30 PM, deceased Lalita was sitting in her room along with her friend Dev Kumari (PW-1); while her mother Indra Kunwar (PW-2) was cooking food inside the house. At that time, the appellant-father of the deceased came to her room and took out the bulb saying that he wanted to connect the same in the courtyard. When deceased asked her father Govind Singh not to do so, he disconnected the wire. When deceased started reconnecting the wire, the appellant asked her not to do and abused her which resulted in wordy quarrel. Out of anger, the appellant-accused threw burning chimney lamp on the deceased Lalita causing her burn injuries. Upon hearing the cries of the deceased, her mother (PW-2) and her friend Dev Kumari (PW-1) rushed near her. Ram Dayal (PW-4) and Mannu (PW-3) extinguished the fire by pouring water on the deceased. Immediately thereafter, deceased was taken to Community Health Centre, Odgi where she was attended by Dr. P.K. Patel (PW-9). After giving her the preliminary treatment, deceased was referred to District Hospital, Ambikapur. While deceased was taking treatment at District Hospital, Ambikapur, she succumbed to her injuries on 30.05.2007. E
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- A Initially the case was registered under Section 307 IPC which was subsequently altered into Section 302 IPC. The dying declaration of the deceased (Ex.P-16) was recorded by PW-21-Executive Magistrate in the presence of Dr. P.K. Patel (PW-9) who certified as to the fit, mental condition of the deceased. The eye witnesses Dev Kumari (PW-1), mother Indira Kunwar (PW-2), Manu Singh (PW-3) and Ram Dayal (PW-4) did not support the case of the prosecution and turned hostile. Mainly relying upon the dying declaration (Ex.P-16), the trial court convicted the appellant-accused under Section 302 IPC and sentenced him to undergo life imprisonment. The High Court affirmed the conviction under Section 302 IPC and also the sentence of imprisonment imposed upon the appellant. Being aggrieved, the appellant is before us.

4. By our order dated 10.08.2018, notice was issued only limited to the nature of offence and the quantum of sentence.

- D 5. We have heard the learned counsel appearing for the appellant/accused and the learned counsel appearing for the State of Chhattisgarh and perused the impugned judgment and other materials placed on record.

- E 6. The occurrence was at 07.30 PM. While the deceased was talking with her friend – Dev Kumari (PW-1), the appellant-accused wanted to take out the bulb as he wanted to connect the same in the courtyard for which the deceased objected. There was a wordy quarrel between the appellant-father and his daughter-deceased. In the wordy quarrel, the appellant-accused threw chimney lamp on the deceased causing her burn injuries. She sustained injuries on her face, chest and stomach and parts below the legs. The deceased succumbed to injuries seven days after the occurrence.

- F 7. The entire occurrence was in a spur of moment. There was quarrel between the father and daughter as to where the bulb is to be put on. In the sudden quarrel and in spur of the moment, the appellant threw the chimney lamp on his daughter. The occurrence was sudden and there was no premeditation. The chimney lamp was burning there which the appellant had picked up and thrown on the deceased. Since the occurrence was in sudden quarrel and there was no premeditation, the act of the accused would fall under Exception 4 to Section 300.

- G 8. The conviction of the appellant-accused under Section 302 IPC is modified as the one under Section 304 Part-II IPC. As per jail certificate,

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the appellant-accused had undergone about 10 years, 2 months and 25 days as on 26.08.2017. By now, the appellant-accused has undergone about eleven years and eight months of imprisonment. Considering the facts and circumstances of the case and the period of imprisonment which the appellant-accused has undergone, the sentence of imprisonment is modified to the period already undergone.

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9. The conviction of the appellant-accused under Section 302 IPC is modified as conviction under Section 304 Part-II IPC. The sentence of life imprisonment imposed upon the appellant is reduced to the period already undergone by the appellant-accused. The appellant-accused is ordered to be released forthwith unless his presence is required in any other case.

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10. The appeal is partly allowed in the above terms.