NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1730 OF 2015

PARDESHIRAM .....APPELLANT(S)

VERSUS

STATE OF M.P. (NOW CHHATTISGARH) .....RESPONDENT(S)

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Chhattisgarh at Bilaspur on 4.8.2010 whereby an appeal against the judgment of conviction and the order of sentence dated 4.3.2003 was dismissed.

2. The appellant stands convicted for an offence under Section 302 of the Indian Penal Code, 1860[1] for causing the death of Kartik Ram in an incident which occurred on 30.5.2002 at Village Bhardao Para, PS Aurang, District Raipur, Chhattisgarh. The

1 For short, the 'IPC'

deceased was the Uncle of the accused. The accused and the deceased had a dispute on agricultural land before the incident. The cause of the dispute was the raising of the wall which infuriated the appellant on the refusal of the deceased to raise the wall. An FIR was lodged based on the statement of Arjun (PW-1), son of the deceased. As per the statement, on the date of the incident, the deceased returned from his field after delivering fertiliser on his Bullock Cart. The deceased was to take another round to deliver fertiliser but in the meantime, the accused quarrelled with the deceased on the issue of construction of the wall. The dispute was pacified by Jagdish. However, after Jagdish left, the accused climbed over the Bullock Cart of Kartik Ram and assaulted him with a spade. The accused hit the deceased with a stone on his head and as a result, the deceased died.

3. The prosecution examined Arjun (PW-1), son of the deceased, Sukhbati Bai (PW-2), wife of the deceased, and Budhram (PW-3), an acquaintance of the deceased. PW 3 turned hostile. The prose-cution also examined Shankar Lal (PW-4), the nephew of the de-ceased and the accused. He also turned hostile. The postmortem of the dead body was conducted by Dr G.P. Chandrakar (PW-5). Ne-tan (PW-6) is the Investigating Officer.

4. Mr. Sanjay R. Hegde learned senior counsel for the appellant has argued that the offence was committed without premeditation in

the sudden fight in the heat of passion and, thus, falls within Ex-ception 4 of Section 300 IPC. The appellant and the deceased are members of the family and that the dispute occurred on the ques-tion of raising the wall. The appellant is alleged to have hit the de-ceased with the Shovel, a common agricultural tool, and later picked up a stone to hit the deceased. Such injuries were caused in the heat of passion as is likely to cause death. Therefore, it will be culpable homicide not amounting to murder falling within the first part of Section 304 IPC. Such an argument was raised before the High Court as well but the High Court did not agree with the argument raised.

5. The accused is an agriculturist, and the Shovel is a part of an agri-cultural tool that is possessed by agriculturists. The accused was attributed with the first blow with the Shovel followed a hit by a stone on the head of the deceased which was picked up from the street.

6. The accused and the deceased were from the same family. The cause of provocation was sudden, without premeditation. We find that, in the facts and circumstances of the case, it is a case falling under Exception 4 of Section 300 IPC. The injuries were inflicted without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken ad-vantage or acted cruelly or unusually. In this view of the matter,

we find that the appellant is liable to be convicted for an offence under Section 304 Part I.

7. The appellant has served more than 18years of his jail sentence. Therefore, keeping in view the period of custody undergone; the relationship between the accused and the deceased and the back-ground in which the injuries were caused, we are inclined to allow this appeal partly. We thus convict the appellant for an offence un-der Section 304 Part I IPC and sentence him to the sentence al-ready undergone. He is to be released forthwith, if not wanted in any other case.

.....J.
(HEMANT GUPTA)

.....J.
(S. RAVINDRA BHAT)

NEW DELHI;
FEBRUARY 09, 2021.