

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 2674 OF 2000**

Jan Kushal S/o Hari Isai, aged about 40 years, Occupation – Teacher,
R/o Nayamunda Jagdalpur, District – Bastar.

... Appellant**Versus**

State of Madhya Pradesh (now Chhattisgarh)

... Respondent

For Appellant	:	Mr. Adil Minhaj, Advocate.
For Respondent-State	:	Mr. B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per NAVIN SINHA, C.J.****02/09/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs.5000/-, failing which, he was required to undergo six months further imprisonment, as ordered on 13.12.1999 by the First Additional Sessions Judge, Bastar at Jagdalpur, in Sessions Trial No. 324 of 1988.

2. The deceased Govind was the brother of the informant Jeevnath who lodged the FIR, Exhibit P-11, on 24.4.1988 itself with regard to the occurrence at 9.00 p.m. The Appellant went to the house of the informant and queried why his work was not done and then assaulted him with fists and slaps. The informant told his brother, the deceased, who then went to the house of the Appellant and when he was returning, the Appellant assaulted him from behind on the head with a wooden plank. The informant having been subsequently deceased, the FIR was proved by PW-5 D.P. Singh, Assistant Sub-Inspector of police, who recorded the same. The MLC of the deceased was conducted on

24.4.1988 itself by PW-2 Dr. V.K. Lagoo at 11:30 p.m., who found a lacerated wound on the forehead with bleeding and haematoma and admitted him for observation opining that the injury appeared simple in nature. While the deceased was still under observation, PW-2 examined him again on 28.4.1988 observing that the deceased later on developed signs of head injury indicating neurological deficit leading to the conclusion that the injury was grievous in nature, marked Exhibit P-3. The FIR was originally registered under Section 325 IPC. After the MLC on 28.4.1988 it was converted to under Section 307 IPC. The injured was then deceased on 28.4.1988 and the FIR was converted to under Section 302 IPC.

3. The post-mortem of the deceased, Exhibit P-8, was conducted by PW-3 Dr. Somesh Pandey, who opined that the death has been caused due to head injury leading to extra cerebral and intra cerebral hemorrhage. Time since death was observed 3-3½ hours back, homicidal in nature. The post-mortem revealed that the left parietal bone was fractured in pentagonal shape 2cm x 3cm.

4. Learned Counsel for the Appellant submitted that PW - 7 & 8 were the only eye-witnesses. Even according to them, the parties were all known to each other. There is no evidence of any hostility or previous animosity. Only one assault was made which indicates that there was no intention to kill. Given the fact that even the Doctor (PW-2) in the MLC on 24.4.1988, Exhibit P-2, did not opine it to be serious in nature, it cannot be said that by that single assault death may necessarily have followed. The possibility that the deceased who was found drunk during both the MLC's may have fallen down and hurt himself cannot be ruled out as there was construction site near the

place of assault where stones were lying around. It was further submitted that the Appellant acted on grave and sudden provocation because it was the deceased who came to his house and challenged him to come out. Had the deceased not come to his house and laid out the challenge by shouting, there would have been no occasion for the Appellant to have assaulted the deceased.

5. Learned Counsel for the State opposing the appeal submitted that PW 7 & 8 are eye-witnesses. The former is the wife of the informant and sister-in-law of the deceased and the latter is the nephew of the deceased. They have both consistently said that the Appellant first assaulted the informant after which the deceased went to his house. It does not appear from the evidence that any altercation took place at the house of the Appellant and the deceased was pacified and made to return by the elder brother of the Appellant. The assault subsequently from behind was pre-meditated and not made on the spur of the moment or on any provocation. The fact that there may have been a single blow only cannot lead to any conclusion for lack of intention or knowledge as the post-mortem report reveals that it led to fracture of parietal bone. The Appellant had chosen the head, a sensitive part of the human body, for assault. The conviction calls for no interference.

6. We have considered the submissions on behalf of the parties and perused the evidence on record.

7. Evidently from the FIR, the Appellant and the deceased were both well known to each other. The deceased was the younger brother of the informant. The Appellant came to the house of Jeevnath and assaulted with slaps and fists. They then left together to have betel and

the altercation ended. The evidence of PW-7 Kanakdai, confirms that the parties were all well known to each other and Jeevnath had left home together with the Appellant. Likewise, PW-8 Mangalram also deposed that together with PW-7 they had gone to the house of the Appellant and the elder brother of the Appellant pacified them. There was no meeting or an altercation between the Appellant and the deceased at the former's house. Having been pacified by the elder brother of the Appellant, the deceased and the others were returning home when the Appellant came from behind and made one assault only on his head.

8. It cannot be said in the facts and circumstances of the case that the Appellant acted on any grave and sudden provocation merely because the deceased may have shouted challenging the Appellant from outside his house for having assaulted the brother of the deceased. Nonetheless, the Appellant later came out and assaulted the deceased from behind with a wooden plank on the head, a sensitive part of the human body. But, there was no repetition of the assault. If the Appellant intended to kill the deceased he would certainly have made more than one assault. At this stage, the absence of any motive or previous enmity between the parties also becomes relevant. The MLC of the deceased, Exhibit P-2, done on 24.4.1988 itself reveals that even the Doctor prima-facie formed an opinion of a simple injury. FIR was lodged under Section 325 IPC. The injured was kept in the hospital for observation. In the circumstances, from the apparent external look of the injury, it is difficult for us to hold that the Appellant can even be attributed the knowledge that by the single assault made by him would lead to death or be a cause of death.

9. Exhibit P-3, the second MLC of the deceased, was done four days later, concluding that the deceased developed complications showing neurological deficit. It was only then that PW-2 opined that the injury appeared grievous in nature. The fact that the parietal bone had been fractured by assault was revealed only in the post-mortem.

10. If the Appellant cannot be attributed intention or knowledge that death would be caused, it is difficult for us to convict him under Section 302 IPC much less under Section 304 Part I or II IPC.

11. Considering the manner in which the occurrence took place, the assault made by a wooden plank and not by any grievous instrument for assault, a single blow given, parties known to each other from before, absence of any previous enmity or motive for the assault, if the Appellant did not act on grave and sudden provocation, he certainly did respond with such impatience which was unjustified on facts if the deceased had left his house without having altercation with the Appellant even. In the entirety of the materials available, we are satisfied that the assault by the Appellant qualifies as grievous hurt under clause 8 as any hurt which endangers life. Conviction of the Appellant therefore deserves to be altered to one under Section 325 IPC.

12. In view of our conclusion that the Appellant never had the intention to cause death or the knowledge that it was likely to be caused by the single assault, that the patient was not given proper attention on 24.4.1988 as the injury appeared simple and only on 28.4.1988 it was discovered that the injured had suffered neurological deficit, coupled with the fact that today the Appellant would be virtually touching 70 years of age, we consider it appropriate to alter the conviction from

Section 302 IPC to one under Section 325 IPC and alter the sentence order accordingly to three years of custody.

13. In (2011) 14 SCC 250 (Tukaram v. State of Maharashtra) the deceased was assaulted by knife and iron rod causing internal injuries. The conviction was under Section 302 IPC. Altering it to Section 326 IPC holding three years of conviction as sufficient on facts it was observed as follows:-

“6. As already indicated above, a very limited relief can be granted to the accused in this matter. We find from the reading of the medical evidence that PW 11 Dr. Dhakate at the very initial stage did not realise the gravity of the situation as he had seen only one injury on the person of the deceased which was the external injury on the buttocks as he did not even look at the possibility that some internal injuries too could have been caused considering the manner of the attack.”

14. Considering that the assault was with a wooden bait causing internal injuries in (2014) 10 SCC 298 (Kusha Laxman Waghmare v. State of Maharashtra) the conviction was altered from Section 302 IPC observing as follows:-

“9. After giving our anxious consideration in the matter and after analysing the entire evidence, we are of the view that it is not a fit case where conviction could be sustained under Section 302 IPC. The weapon used by the appellant is a wooden stick and as per the prosecution case, the deceased was severely beaten by the said stick. As a result thereof, she died.....”

15. The Appellant has remained in custody for approximately 13 days only during trial and 7 months after conviction. The bail bonds of the Appellant are canceled and he is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

16. The appeal is partly allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge