

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 262 of 2012

1. Chubul S/o Dangjhal Korva Aged About 27 Years Occupation - Agriculturist,
2. Dangjhal S/o Amso Korva Aged About 55 Years Occupation - Agriculturist,

Both are by Caste - Korva, R/o Village Sakhouli, Police Station Darima, District Surguja Chhattisgarh

**---- Appellants
in jail**

Versus

1. State Of Chhattisgarh Through : The Police Station Darima, District Surguja Chhattisgarh

---- Respondent

For appellants : Ms. Neha Verma, Advocate.
For Respondent/State : Mr. Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board By Justice Pritinker Diwaker

26/08/2015

This appeal arises out of the judgment of conviction and order of sentence dated 31.1.2012 passed by Sessions Judge, Surguja (Ambikapur) in S.T.No.120/2010 convicting appellant No.1 under Section 302 of IPC and appellant No.2 under Section 302/34 of IPC and sentencing each of them to undergo life imprisonment, pay a fine of Rs.2000/- and in default to suffer additional R.I. for six months.

02. In the present case, name of the deceased is Lalsai. It is alleged that on 1.1.2010 there was some hot talk between the

accused/appellants and the deceased leading to scuffle between them and then appellant No.1 picked up a wooden log and gave a solitary blow on the frontal portion of head of the deceased resulting in his death. The incident was witnessed by PW-2 Gudlibai and PW-5 Chengaram. At the instance of PW-2, wife of the deceased, a marriage intimation Ex.P/4 was recorded on 2.1.2010 at 9.20 am and thereafter, FIR (Ex.P/3) was registered against the accused/appellants under Section 302/34 of IPC. Inquest Ex.P/5 over the body of the deceased was conducted and thereafter, the dead body was sent for postmortem. Dr. B.L. Koushal (PW-1) conducted postmortem on the body of the deceased vide Ex.P/1 and noticed a lacerated wound on the frontal region of the head with fracture of the skull and opined that the cause of death was hemorrhagic shock due to head injury and that the death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused persons under Section 302/34 of IPC and thereafter, the trial Judge framed charge under Section 302 in the alternative 302/34 of IPC against them.

03. So as to hold the accused persons guilty, the prosecution examined as many as 6 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced them as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits that even if the entire prosecution case is taken as it is, at best the accused/appellants can be convicted under Section 304 Part-II of IPC because the incident had taken place all of a sudden in the heat of passion without any premeditation and appellant No.1 gave only a solitary blow to the deceased which unfortunately resulted in his death. She submits that the appellants are in jail since 2.1.2010, thereby have already completed more than 5 ½ years and therefore, after converting their offence into Section 304 Part-II of IPC, they may be sentenced to the period already undergone by them.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no illegality in the same.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 Gutlibai, wife of the deceased, is lodger of the FIR (Ex.P/3). She has stated that on the date of incident the accused persons killed her husband. She has stated that the deceased was called by appellant No.1 to his house at about 4 pm and upon seeing *marpeet* between them her uncle Chengaram called her. When she reached there, she saw her husband lying near the house of the accused persons. She has stated that appellant No.1 assaulted the deceased by a wooden log and when she reached there the accused persons were there and the said wooden log was lying on the floor. She has

further stated that after seeing the injury on the head of the deceased, appellant No.1 had sprinkled water on his head. PW-4 Guddu is also relative of the appellants and the deceased. He has stated that he heard the voice of Chengaram by saying that the deceased and appellant No.2 are quarreling. When he reached there, he found the deceased lying on the floor and that there was some altercation between them. PW-5 Chengaram who is another eyewitness to the incident has stated that appellant No.2 is his elder brother whereas appellant No.1 is son of appellant No.2. He has stated that the deceased was husband of his niece Gutlibai. On the date of incident he saw the deceased lying in dead condition on the courtyard of the accused persons. He has clarified that he saw the scuffle between the deceased and the accused persons, they were hurling abuses at each other and then appellant No.1 gave a blow by wooden log on the head of the deceased as a result of which he died.

09. PW-1 Dr. B.L. Koushal conducted postmortem on the body of the deceased on 2.1.2010 vide Ex.P/1 and noticed a single lacerated wound with very little blood inside the wound on frontal portion of head (size 1 ½" x 1/6" x scalp depth), anteo posteriorly directed. On removal of scalp there is big haematoma (clotted blood) beneath the lacerated wound and there is 7" transversely fissure (linear). There is fracture of the skull on frontal parietal suture over right side. This injury is antimortem and caused by beating with any heavy article like stick. In his opinion, the cause of death was hemorrhagic shock due to head injury and the death was homicidal in nature. PW-6 Pankaj Kumar Shukla, investigating officer, has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 1.1.2010 initially there was some hot talk between the accused/appellants and the deceased, which led to scuffle between them and during the course of scuffle, appellant No.1 picked up a wooden log lying nearby on the floor and assaulted with it on the head of the deceased as a result of which he died. The said wooden log is 18.5 inches long, weighing 1.700 kg. Thus, from the overall evidence, involvement of the accused/appellants in the crime in question is established beyond any doubt.

11. Now the question for consideration before this Court is whether act of the accused/appellants is covered with any of the exceptions to Section 300 of IPC?

12. The evidence goes to show that on the date of incident there was some altercation between the accused/appellants and the deceased and appellant No.1 being enraged, picked up a wooden log lying there on the floor and assaulted on the head of the deceased with it only once, which unfortunately proved to be fatal to his life. The evidence reflects that there was no premeditation or intention on the part of the accused/appellants to cause death of the deceased and the incident occurred in the heat of passion upon a sudden quarrel. The appellants were not carrying any weapon, the weapon used was lying on the place of incident itself, appellant No.1 gave only a solitary blow to the deceased and as such, did not act in a cruel or unusual manner. However, considering the nature and extent of injuries caused to the deceased on his vital part with such a force that frontal parietal bone of the skull got fractured leading to his instantaneous death, it also

appears that though the accused/appellant No.1 had no intention to cause death of the deceased but had the knowledge that the injury being inflicted by him was likely to cause death of the deceased. That being the position, act of the appellant No.1 is held to be culpable homicide not amounting to murder and it is covered by Exception 4 of Section 300 of IPC. Therefore, accused/appellant No.1 is liable to be convicted under Section 304 Part-II of IPC and appellant No.2 under Section 304 Part-II read with Section 34 of IPC for sharing common intention to commit the said offence. As regards sentence, they are in jail since 2.1.2010 and as such have already completed more than 5 ½ years jail sentence. Therefore, in the totality of facts and circumstances of the case, the ends of justice would be served if they are sentenced to the period already undergone by them.

13. In the result, the appeal is allowed in part. While acquitting the appellants of the charges under Section 302 & 302/34 of IPC, they are held guilty under Section 304 Part-II and 304 Part-II read with Section 34 of IPC respectively and sentenced to the period already undergone by them. They are reported to be in jail, therefore, they be released forthwith if not required in any other case.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge