

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2552 of 1999**

1. Sunderlal, son of Kendaram Kokha, aged 25 years
 2. Dasharam Kanwar, son of Wakar Kanwar, aged about 19 years.
- Both residents of Village Amapali, P.S. Lelunga, Distt. Raigarh (MP) (Now Chhattisgarh)

---- Appellants**Versus**

State of Madhya Pradesh Through the District Magistrate, Raigarh (MP) (Now State of Chhattisgarh)

---- Respondent

For Appellants	:	Shri Hari Shankar Patel, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, PL

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****05/05/2015**

1. The Appellants stand convicted to life imprisonment as ordered on 8.4.1999 by the 2nd Additional Sessions Judge, Raigarh in Sessions Trial No. 65 of 1997.
2. The deceased Nanhi Ram was assaulted by the Appellants on 11.11.1996 at about 3:00 pm witnessed by his wife, PW-4, Hemanti Bai who was also injured during the assault. The witness lodged FIR Exhibit P-10, the same day at about 19:00 hours. The MLC of the witness was done the same day about 7:15pm, Exhibit P-2, by PW-1, Dr. Shailendra Upadhyay. Four simple injuries were found caused by

hard and blunt object, the duration of which was approximately 3 to 5 hours earlier.

3. The postmortem of the deceased, Exhibit P-1, was also done by PW-1 on 12.11.96 at 3.00 pm. A lacerated wound was found above left eyebrow 1" x 1" bone deep, lacerated wound 1" medial to right ear 1" x 1" bone deep, lacerated wound above right eyebrow 1" x 1" bone deep and lacerated wound 1" lateral to right eye 1 cm x 1 cm bone deep were found on the deceased. The 3rd, 6th, 7th and 8th ribs on the left side were fractured and also the 2nd, 3rd, 4th, 5th and 6th ribs on the right side were also fractured. In the opinion of the Doctor, the cause of death was syncope due to excessive internal and external hemorrhage caused by rupture of spleen, due to external compression of chest and abdomen. Death was estimated to have occurred 18 to 36 hours earlier, homicidal in nature.

4. Learned Counsel for Appellant submitted that PW-4 is the only eye witness to the assault. She was not an independent witness but the wife of the deceased and thus an interested witness. From her statement in cross examination it doubtful that she was an eye witness. Even if she was an injured witness the allegations do not make out an offence under Section 302 IPC. The manner and nature of assault itself makes it apparent that there was no intention to kill the deceased. The Appellants allegedly demanded money to buy liquor and upon refusal, Appellant No. 2 is stated to have kicked the deceased from behind leading him to fall down. PW-4 in cross examination has also deposed that the deceased had consumed country liquor. When in an inebriated condition, the deceased would abuse and on the fateful day also he was shouting obscenities. The Appellants therefore may have assaulted the deceased by kicks and fists because of the behaviour of the deceased himself. The injuries

suffered were on account of the stones lying around and the deceased falling on them. The prosecution has not proved that the deceased was assaulted by stones. Even if blood has been found on the stones it does not lead to any presumption of assault by stones. The benefit of doubt has to be given to the Appellants. There is no allegation that any weapons were used for assault. After the deceased fell down the Appellants are alleged to have assaulted him with legs, fists and kicks. The fracture of the ribs are possible by the deceased falling on the stones after he was kicked from behind. Alternately, the ribs may have broken because of the assault by fists and kicks only. There is no evidence that the Appellants intended to damage the spleen, which was occasioned due to fracture of the ribs. The Doctor has opined that the death was due to external compression of chest and abdomen which suggests that one of the Appellants may have sat over chest of the deceased. If the intention was to kill, nothing prevented the Appellants from assaulting the deceased with the stones allegedly found on the spot on the head or any other vital part of the body. The injuries on the face are simple lacerated wound either near eyebrows or eyes by falling on the stones. The conviction therefore deserves to be altered to one under Section 325 IPC. Reliance was placed on an order in Criminal Appeal No. 1267 of 2002 (Ajit Singh v. State of Punjab) (Coram: B.N.Agrawal and G.S.Singhvi, JJ), by the Supreme Court decided on 6.5.2009 to submit that in a conviction under Section 325 IPC, one year custody was sufficient. Alternately, reliance was placed on AIR 1986 SC 209 (Mohinder Singh v. State (Delhi Administration)) to submit that a period of 3 1/2 years of custody was sufficient for a conviction under section 325 IPC. Reliance was further placed on AIR 1958 Patna 452 (Ram Baran Mahton v. The State) and

1993 CrLJ 208 (Bombay High Court) (Rajesh Anantram Thakur v. The State of Maharashtra).

5. Learned Counsel for the State submitted that the Appellants assaulted the deceased in retaliation to his refusal to give money to them for liquor. Even if the initial assault was by pushing the deceased from behind only, the nature of injuries found in the postmortem report by fracture of 3rd, 6th, 7th, 8th ribs on the left side and 2nd, 3rd, 4th, 5th and 6th ribs on the right side could not have been possible by the fall. Obviously, the Appellants assaulted the deceased with stones seized from the spot with blood stains on them, marked Exhibit P-8 proved by PW-5. The informant, PW-4 stated that she went away to call for help and was not present when the murderous assault continued. The deceased had died by the time she came back with help from the village. The conviction called for no interference.

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

7. PW-4, Hemanti Bai stated in cross examination that the deceased had consumed country liquor and was abusing loudly. Whether that be the reason, or the money demanded by the Appellants to buy liquor, the Appellants accosted the deceased and the witness on the way. Appellant No. 2 kicked the deceased from behind leading to the latter falling down. The Appellants then assaulted the deceased with their hands, legs and fists. On the witness intervening, she was threatened to stay away lest she would meet the same fate. The witness ran to the village looking for help and by the time she came back, the deceased was dead. The witness further stated that Appellant No. 1 had assaulted her leading to bleeding from the mouth. The MLC of the witness found one abrasion on the inner

aspect of the lower lips 1"x 0.5", swelling of the upper lip 1"x1", lacerated wound on the upper lip 0.5cm x 0.5cm muscle deep, swelling of the left shoulder joint and swelling at head in middle 1"x1". The injuries were simple caused by hard and blunt object which could also include hands and legs used for assault. In cross-examination, no question was asked from the witness with regard to the assault made by the Appellants on the deceased with their hands, legs and fists. We find no reason to disbelieve the witness considering that not only she was an injured eye-witness but also the wife of the deceased. There has to be some tangible reason or evidence led by the Appellants in their defence why the witness was stating falsehood to implicate them when the victim was her own husband. The natural human tendency of the wife would be to ensure that the real culprits who assaulted the deceased in her presence were brought to book. Criminal jurisprudence does not postulate that conviction cannot be based on the evidence of a solitary related eye witness. At best it may call for greater scrutiny by the Court only. The evidence of PW-4 is consistent and convincing. The contention urged on behalf of the Appellants that from her statement during cross-examination she did not appear to be an eye-witness does not appeal to us. No suggestion has been given by the Appellants how the witness sustained injuries in any other manner and that it may have been possible in another occurrence.

8. PW-5, Ramsai proved the seizure of the stones from the place of occurrence, marked Exhibit P-8 one of which was found to be sharp weighing approximately 2 Kg with blood on it, another small stones approximately of 1/2 Kg with blood on it and a smooth stone of approximately 1/2 Kg with blood on it.

9. PW-8, Asharam deposed that PW-4 had come running asking for help which finds corroboration from the witness being named in the

FIR also. PW-9, Santram proved the spot map, marked Exhibit P-9. K.P.Awasthy, the Assistant Sub Inspector of Police, PW-10, proved seizure of broken bangles from the place of occurrence, marked Exhibit P-7 and the seizure of stones. The forensic report, marked Exhibit P-15 confirmed presence of blood on the stones.

10. The Appellants led one defence evidence to the effect that the deceased died on account of consuming liquor and that he may have been killed by one Ujjwal Das with whom he had strained relations and who had also threatened to kill him. He also had enmity with one Subhash who may also possibly have killed him.

11. The identity of the Appellants, the nature and manner of assault made by them is sufficiently clear from the prosecution evidence and has not been disputed or contested by the Appellants in cross examination also. No dangerous weapon of assault is alleged to have been used. The deceased was pushed by Appellant No. 2 and fell down. He sustained injuries on his face near the eyebrows and eye. The possibility that these injuries were caused by the stones on which he may have fallen cannot be ruled out. The prosecution has led no evidence that the stones were used as weapons of assault or that the injuries caused on the person of the deceased were possible only if he was beaten to death with stones. It was the duty of the prosecution to prove the same beyond reasonable doubt and conviction cannot be founded on conjectures or surmises or even suspicion but only proof. Undoubtedly, the deceased had suffered fracture of four ribs on the left side and five ribs on the right side. The fracture of the ribs has led to rupture of the spleen. There is no evidence that the Appellants intended to cause injury by rupture of the spleen of the deceased and thereby cause his death. The cause of death as opined by the Doctor was external compression of the chest and abdomen. The possibility

that the ribs were broken either due to assault made by hands, legs and fists or because one of the Appellants may have sat over the chest of the deceased, cannot be ruled out to hold exclusively that the death was the result of assault by stones.

12. Section 300 IPC defines murder if the act causing death was done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or any bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death or with the knowledge that the assault was so imminently dangerous that in all probability would cause death or such bodily injury as is likely to cause death. We are satisfied that the nature of the present assault does not fall in any of the aforesaid categories. The conviction under Section 300 IPC is therefore difficult to uphold.

13. In our opinion, the nature of assault attributed to the Appellants appropriately will come within the definition of grievous hurt '*Eighthly*' as defined in Section 320 IPC, endangering life. The punishment appropriately would lie under 325 IPC the maximum sentence for which may extend to seven years.

14. The Appellants are stated to have undergone custody for approximately four years. In Mohinder Singh (supra), relied on by the Appellants, the assault was with bricks. The allegation was of an assault by an iron rod which was not supported by the medical evidence. Altering the conviction from Section 304 Part II IPC to one under Section 325 IPC, sentence of 3 ½ years imprisonment was held sufficient. In Ajit Singh (supra), the facts are not clear from the order and therefore we do not consider it prudent to apply the same for a one year sentence only.

15. It is not considered necessary to deal with the other judgments cited on behalf of the Appellants.

16. For the reasons discussed hereinabove the conviction of the Appellants is altered from Section 302/34 IPC to Section 325/34 IPC and they are sentenced to the period already undergone. The conviction of the Appellants is therefore upheld with modification of the sentence.

17. The appeal is partly allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE