

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 221 of 2011

1. Jitu @ Jitendra S/o Shri Dukalu, aged about 21 years, Occupation – Labourer job, R/o Village – Ughara, P.S. Bemetara, Dist – Durg (C.G.)
2. Motu @ Golu @ Kamalesh, S/o Nakul, age 20 years, Occupation – Labourer job, R/o Maroda, P.S. Newayee, Dist – Durg (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, Through : Station House Officer P.S. Newayee, District – Durg (C.G.)

---- Respondent

For Appellant	:	Mr. Uttam Pandey, Advocate
For Respondent / State	:	Mr. Ashish Shukla, Govt. Advocate

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

CAV JUDGMENT

Passed on : 23/07/2015

Per I.S. Uboweja, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 27.12.2010 passed by the 7th Additional Sessions Judge (FTC), Durg in Sessions Trial No.71/2009, whereby the trial Court has convicted the appellants under Sections 120B, 302/34, 294 and 506(B) of the IPC and sentenced them to undergo life imprisonment and fine of Rs.1,000/-, in default, additional R.I. for 3 months, to undergo life imprisonment and fine of Rs.1,000/-, in default, additional R.I. for 3 months, to undergo R.I. for 3 months and to undergo R.I. for 2 years respectively.
2. Conviction is impugned on the ground that without there being an iota of evidence against the appellants, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of prosecution, on 22.12.2008 at about 11.30 a.m., deceased Vijay along with his second wife Kamla Bai (PW-14) was going to Maroda Station. As the deceased Vijay had to take some money from accused / appellant Jitendra Nishad, he was called by Jitendra Nishad. In Newayee basti, deceased Vijay met with accused/appellant Golu, who told him that Vijay is calling him near nursery, thereupon, deceased along with Golu went to Nursery of Forest Department where accused Jitendra was present with his two companions. They abused the deceased in the name of mother & sister and accused Golu along with his other two companions held the hands and arms of the deceased and accused Jitendra while abusing and saying to kill him today, threatened him and assaulted with iron rod on various parts of his body. Upon protest by Kamla Bai (PW-14), they abused her and threatened to kill her if report is lodged and fled away. Thereafter, injured Vijay immediately lodged a report in police station Newayee about the incident. Case was registered on 22.12.2008 at about 12.05 p.m. under Sections 294, 506, 323, 34 of the IPC and statements were also recorded by the police. Thereafter, injured was sent to Government Hospital, Durg, where during the course of treatment on 22.12.2008 in the evening at about 6.40 p.m. he died due to injuries and then, Crime No. 233/2008 was registered and the offence was altered into Sections 120(B), 302/34, 294 and 506 of the IPC.
4. During the course of investigation, dead body of deceased Vijay was sent for post-mortem. Dr. V.S. Baghel (PW-13) conducted autopsy on

the dead body of the deceased vide Ex.P-40 and found following injuries :-

- (i) Lacerated wound of 2 cm linear skin deep on left parietal area;
- (ii) Abrasion of 2 x ½ cm on posterior aspect of right elbow;
- (iii) Bruise present in right arm, forearm & hand on postero-lateral aspect;
- (iv) Abrasions 03 in number of 4 x 1 cm, 1 x 1 cm and 2 x 1 cm on anterior aspect of right knee;
- (v) Abrasion of 2 x 1 cm on lateral aspect of right leg;
- (vi) Lacerated wound of 2 x 1 cm x bone deep over skin in middle / 3rd on right leg;
- (vii) Lacerated wound with loss of nail & skin of 4 x 2 cm on right great toe;
- (viii) Lacerated wound of 2 x 1 x bone deep on dorso-lateral aspect of left great toe base;
- (ix) Bruise of 10 x 4 cm on dorsum & lateral aspect of left foot & ankle;
- (x) Abrasion of 3 x 1 cm on lateral aspect of left knee;
- (xi) Lacerated wound of 1 x ½ x ½ cm with subluxation of dip joint of left ring finger;
- (xii) Fracture of ulna L/3rd left with bruise on whole left forearm postero-medially;
- (xiii) Lacerated wound of 2 x 1 x 1 cm on left elbow laterally;
- (xiv) Abrasion of 3 x 1 cm on left shoulder;
- (xv) Bruise of 10 x 6 cm on postero-lateral aspect of left arm with fracture of humerus lower end; and
- (xvi) Fracture of tibia right upper 4th.

5. Doctor has also opined that due to injuries in soft tissues and fracture of bones which resulted in excess bleeding and pain, the death of deceased Vijay took place and the death was homicidal in nature.
6. Accused/appellants were taken into custody, their confession statements were recorded and at their instance incriminating articles were seized, which were sent to FSL for chemical examination.
7. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions Judge, Durg wherefrom the 7th Additional Sessions Judge (FTC), Durg received the case for trial.
8. In order to prove the guilt of the accused/appellants, the prosecution had examined as many as 14 witnesses. The accused persons were examined under Section 313 of the Code in which they denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.
9. After providing opportunity of hearing to the parties, the Additional Sessions Judge (FTC), Durg, convicted and sentenced the appellants as aforementioned.
10. We have heard learned counsel for both the parties and perused the judgment impugned including the record of trial Court.
11. Learned counsel for the appellants while frankly not disputing the fact that the appellants have caused injuries to the deceased submits that

there was no premeditation or preparation on the part of the appellants, on account of eve-teasing to Kamla Bai (PW-14) wife of deceased Vijay, by the appellants, some altercation took place between the deceased and appellants and then the appellants assaulted Vijay in heat of passion, therefore, the trial Court ought not to have convicted the appellants for the offence punishable under Section 302/34 of the IPC and instead the appellants would be liable for punishment under Section 304 Part-II of the IPC. He further argued that deceased was sent for medical examination and he was admitted in the hospital, but before admission in the hospital, deceased himself had gone to police station and lodged FIR vide Ex.P-36, which shows that he was not serious at the time of lodging report. Only offence punishable under Sections 294, 506, 323 & 34 of the IPC has been registered against the appellants, but after death of the deceased the appellants have been charged with the offence punishable under Section 302/34 of the IPC. The deceased died after few hours of the incident. Evidence shows that he was in fully conscious condition till his death, he died due to improper treatment by the doctor and also due to negligence of hospital, therefore, offence under Section 302/34 of the IPC is not made out and the appellants at the most can be convicted under Section 304 Part-II of the IPC. There is not even an iota of single evidence of any conspiracy towards commission of murder, therefore, they are entitled to be acquitted from the charge of conspiracy.

12. On the other hand, learned State counsel opposed the appeal and supported the judgment impugned passed by the trial Court.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death of deceased Vijay as a result of fatal injuries found over his body has not been substantially disputed on behalf of the appellants, but, on the other hand, it is also established by the evidence of Kamla Bai (PW-14), FIR (Ex.P-36), Merg (Exs. P-15 & P-16), Inquest (Ex.P-2), autopsy report (Ex.P-40), MLC report (Ex.P-34), Bed head ticket (Ex.P-35), FSL report (Ex.P-26) and statements of Dr. V.S. Baghel (PW-13) and Dr. Yashwant Rao Tumde (PW-11) that death of deceased Vijay was homicidal in nature.
15. As regards the complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of Kamla Bai (PW-14). She has specifically stated that some quarrel took place between the appellants and the deceased because appellants were eve-teasing her while she was coming back after answering the call of nature. On hearing her cries, deceased came there and one of the accused persons assaulted deceased by rod and thereafter they fled. This evidence shows that there was no preparation or premeditation on part of the appellants to commit murder of the deceased and the appellants in a sudden quarrel assaulted the deceased in the above manner. The appellants dealt with some blows which were caused on non-vital parts of the body. Although the injuries were grievous in nature because there were multiple fractures found in his body, but this shows that there was no intention of appellants to commit murder of the deceased. The blows dealt by the appellants

unfortunately hit on the bones of deceased which proved fatal. However, knowledge can well be attributed to them that their such act was likely to cause death or was likely to cause such bodily injury to the deceased as was likely to cause his death. The deceased was alive for few hours. Prosecution story says that he has reported the incident at police station, at that time he was in conscious stage for long duration which shows that there was no reason for causing injuries to the deceased and also shows that the appellants have caused homicidal death of the deceased but not amounting to murder. However, at the time of causing injuries the appellants were having knowledge that by their act the deceased may die. Consequently, the act attributed to the appellants squarely falls within the ambit of Section 304 Part-II of the IPC.

16. After appreciating the evidence available on record, learned 7th Additional Sessions Judge (FTC), Durg has convicted and sentenced the appellants as aforementioned, but while convicting and sentencing the appellants the trial Court has not considered the facts and circumstances of the case in which incident took place and thereby committed an illegality.
17. Consequently, we are of the view that in the above facts and circumstances, offence under Section 302 of the IPC is not made out and the appellants are liable for punishable under Part-II of Section 304 of the IPC. The appellants are also entitled to be acquitted from the charge under Section 120 (B) of the IPC because there is no sufficient evidence about conspiracy for murder of the deceased.

18. In the result, the appeal is partly allowed. Conviction and sentences under Sections 294 and 506(B) of the IPC are hereby maintained. Conviction and sentences under Sections 120(B) of the IPC are set aside and conviction of the appellants under Section 302/34 of the IPC is altered to Section 304 Part-II of the IPC and the appellants are hereby sentenced to the period already undergone by them and to pay fine of Rs. 10,000/- (Rupees Ten Thousand) each, in default of payment of fine amount, they shall undergo additional R.I. for one year. The appellants are in custody since 24.12.2008, thereby they are in custody for more than 6½ years. It is also directed that total fine amount imposed upon the appellants shall be paid to the first wife of the deceased.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE