

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 375 of 2012**

1. Sajid @ Chini S/o Abdul Majid Khan, aged about 26 years, R/o Village Gariaband, P.S. Gariaband, District Raipur (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, through District Magistrate, Raipur, District Raipur (C.G.)

---- Respondent

For Appellant	:Mr. Awadh Tripathi and Mr. Wasim Miyan, Advocate.
For Respondent/State	:Mr. Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.**08/05/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 11.12.2009 passed by the Additional Sessions Judge, Gariabandh, in Sessions Trial No.15/2009 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Vicky @ Shabbir Qureshi in sharing common intention, convicted the appellant under Section 302/34 of the I.P.C. and sentenced him to imprisonment for live with fine of Rs.2000/- and in default to pay fine, to undergo additional RI for two months.

2. Conviction is impugned on the ground that without there being any iota of evidence against the appellant, the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, deceased Vicky @ Mohd. Shabbir Qureshi was

working as Booking Agent in Dau Travels and was issuing tickets at Bus-Stand, Gariabandh. Appellant was also working in Mahendra Travels. On account of issuing tickets, terms between the parties were rival. On 23.01.2009 at about 9.00 pm, appellant along with co-accused persons dragged the deceased and assaulted him by knife and stick and caused fatal injuries. P.W.6 Mohd. Asif Qureshi, P.W.7 Prem Kumar Sonwani, P.W.8 Manoj Kumar Dewangan and P.W.10 Rohit reached to the spot whereupon appellant fled from the spot along with co-accused persons. P.W.6 Mohd. Asif Qureshi went to police station Gariabandh and lodged F.I.R. vide Ex.P.5 against the appellant and other co-accused Sajid.

Injured Mohd. Shabbir Qureshi was sent for medical examination. He was examined by P.W.18 Dr. H.K.Chouhan vide Ex.P.18 and found following injuries and symptoms:

- i. Lacerated wound of 5 x 1 cm over right forehead.
- ii. Lacerated wound of 1 x 1 cm over left pinna of middle region.
- iii. Blood from nose also present.

Thereafter, injured Mohd. Shabbir Qureshi was referred to Medical College Hospital, Raipur, where he was and during the course of treatment he died on 24.01.2009. Death was intimated to the Police vide Ex.P. 27 and merg was recorded vide Ex.P.28.

4. After summoning the witnesses vide Ex.P.9, inquest over the dead body was prepared vide Ex.P.8. Dead body was sent for autopsy to Dr. B.R. Ambedkar Hospital, Raipur. Dr. R.K.Singh (P.W.22) conducted autopsy vide Ex.P. 25 and found following contusion abrasion injuries and symptoms:

- i. Contusion of 2 x 0.5 cm over left shoulder middle lateral.
- ii. Contusion of 4 x 0.5 cm over middle chest lateral.
- iii. Contusion of 3.5 x 2 cm over just above left wrist.
- iv. Multiple contusions abrasions over left knee and upper 1/3rd of left

- lower leg anterior vertical of 10 x 5.5 cm.
- v. Contusion of 1 x 0.5 cm over right thigh.
 - vi. Contusion of 3 x 1 cm traverse of just right to L4.
 - vii. Surgical stitched wound 2 cm above left supra-orbital ridge going to left frontal left parietal and left occipital region, semi-circle in shape having 36 stitches.
 - viii. Surgical stitched wound over just above right supra-orbital ridge obliquely traverse 5 x 2 cm. X bone deep.
 - ix. Multiple friction abrasions over right forearm 1/3rd, 11 x 5 cm.
 - x. Scalp Eechymosed against injuries.
 - xi. Both temporalis muscles are Eechymosed.
 - xii. Bone pierce not present in left temporal, frontal and parietal regions in continuity in 9 x 5 cm area.
 - xiii. Contusions in brain found.
 - xiv. Multiple fractures of anterior cranial-fossa. Haemmorrhage was present.

Cause of death was head injury and its obligations.

5. During the course of investigation, appellant Anil Pandey was taken into custody. He made disclosure statement of knife vide Ex.P. 3. The same was recovered at his instance vide Ex.P.4. Bloodstains and plain soils were recovered from the spot vide Ex.P.11. Spot map was prepared vide Ex.P.12. Patwari prepared spot map vide Ex.P. 13. Another co-accused Sajid was also taken into custody. He made disclosure statement of rod vide Ex.P.14. The same was recovered at his instance vide Ex.P.15. Seized articles were sent for chemical examination to F.S.L. vide Ex.P.16.

6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. After completion of investigation, charge sheet was filed before the Court of J.M.F.C. Gariabandh, who in turn committed the case to the Court of Additional Sessions Judge, Gariabandh.

8. In order to prove the guilt of the appellant, prosecution examined as many as 24 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed. Accused person has also filed copy of F.I.R. Ex.D.4 to D.11 and copy of *Nakl Digar* Ex.D.12 to D.15 to show the criminal antecedents of deceased.

9. After providing an opportunity of hearing, learned Additional Sessions judge while acquitting Abdul Javed, convicted and sentenced the appellant along with co-accused person as aforementioned.

10. We have heard learned counsel for the parties and perused the record of lower Court including judgment impugned.

11. Mr. Awadh Tripathi, learned counsel for the appellant, vehemently argued that although conviction of the appellant is based on P.W.6 Mohd. Asif Qureshi, P.W.7 Prem Kumar Sonwani, P.W.8 Manoj Kumar Dewangan and P.W.10 Rohit, who have witnessed the incident and considered as eye-witnesses, but they are interested and relative witnesses. The deceased was having criminal antecedents and was having bad criminal character. Both the parties are employees of different travel agencies and on account of booking of tickets and departure of vehicles, they used to fight regularly. On the date of incident, P.W.18 Dr. H.K.Chouhan had noticed only two injuries over the body of deceased, who died on second day. He was alive at the time of causing injuries and thereafter also. Appellant along co-accused person were holding knife, rod and stick but they have not finished the deceased on the spot, which shows that they have caused injuries to teach a lesson to deceased, but, they have not caused homicidal death amounting to murder of deceased. The evidence of

P.W.6 Mohd. Asif Qureshi, P.W.7 Prem Kumar Sonwani, P.W.8 Manoj Kumar Dewangan and P.W.10 Rohit is completely contradictory. Their evidence is not sufficient for placing reliance upon the conviction of the appellant, that too, conviction under Section 302/34 of the I.P.C. Therefore, conviction of the appellant is not sustainable in law.

12. On the other hand, Mr. Sumit Jhanwar, learned counsel for the State, opposed the appeal while submitting that evidence of P.W.6 Mohd. Asif Qureshi, P.W.7 Prem Kumar Sonwani, P.W.8 Manoj Kumar Dewangan and P.W.10 Rohit is sufficient for proving the guilt of the appellant, who is the author of the crime and has caused homicidal death amounting to murder of deceased. Therefore, by convicting the appellant, the trial Court has not committed any illegality.

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. In the present case, homicidal death as a result of fatal injuries found over the body of deceased – Vicky @ Mohd. Shabbir Qureshi has not substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.6 Mohd. Asif Qureshi, P.W.7 Prem Kumar Sonwani, P.W.8 Manoj Kumar Dewangan and P.W.10 Rohit, F.I.R. Ex.P.5, injury report Ex.P.18, P.W.22 R.K.Singh and autopsy report Ex.P. 25.

14. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of P.W.6 Mohd. Asif Qureshi, P.W.7 Prem Kumar Sonwani, P.W.8 Manoj Kumar Dewangan and P.W.10 Rohit. As per evidence of P.W.6 Mohd. Asif Qureshi, deceased was busy with issuance of tickets of travel agency under which he was working. At the time of incident, present appellant along with other co-accused persons were assaulting deceased by rod, stick and knife. All the accused persons were chasing deceased. Appellant and co-accused person Sajid were holding rods and knife. As soon as he reached the spot, they fled from the spot. He along with one Banti took deceased to Gariyaband hospital, where

deceased was examined and was referred to Medical College Hospital, Raipur, where he died. P.W.7 Prem Kumar Sonwani, P.W.8 Manoj Kumar Dewangan and P.W.10 Rohit have substantially corroborated the evidence of P.W.6 Mohd. Asif Qureshi. Defence has cross-examined these witnesses. There may be contradictions and omissions in their evidence but they are not vital in nature, inter alia, reveal that the appellant caused injuries and did not affect the root of the case. Their evidence further clearly reveals that appellant and other co-accused person caused injuries to deceased and as a result of which deceased died on second day, which shows that appellant has caused homicidal death of deceased.

15. As regards question of motive, in case of direct evidence, motive loses its importance. Even otherwise, it is aid in criminality and can be inferred from the kind of weapon used, part of body hit, nature of injury and other circumstances. In the present case, as per Ex.D.4 to D.15, offence punishable under Section 25, 27 of the Arms Act, Section 13 of the Gambling Act and 379, 324, 392, 380 and 309 of the I.P.C. for committing theft and causing injuries and for committing robbery have been registered against the deceased. Ex.D.4 to Ex.D.15 further reveals that deceased was a man of bad criminal character and was having criminal antecedents. At the time of incident, the appellant caused injuries to deceased but as per report Ex.P.18, two injuries have been noticed by the Dr. H.K.Chouhan, that too, caused by hard and blunt object and not by sharp edged object. Autopsy Surgeon P.W.22 Dr. R.K.Singh further noticed other contusions, which were trivial in nature. Report and evidence of Dr. H.K.Chouhan revealed that only two injuries have been noticed vide Ex.P.18 and that two injuries are vital in nature. Appellant along with other co-accused person was holding only rod, stick and knife, but, he has not caused further injuries. They were having sufficient opportunity to finish the deceased at the time of incident but they have not misused such opportunity to kill the deceased on the spot, which shows that on account of previous dispute, especially, relating to issuance of tickets and on account of previous transactions incident took place but at the time of causing injuries, the appellant did not have any knowledge that by the injuries caused by him,

the deceased may die. Therefore, the act attributed to the appellant squarely falls within purview of section 304 Part II of the I.P.C. and not under Section 302/34 of the I.P.C.

16. Appeal filed on behalf of co-accused Anil Pandey in Cr.A.No.81/2010 has been partly allowed vide judgment dated 27.04.2015 and his conviction under Section 302/34 of the IPC has been altered to Section 304 Part-II/34 of the IPC and he is sentenced to undergo R.I. for 7 year.

17. While convicting the appellant under Section 302/34 of the I.P.C. the trial Court has not considered the facts and circumstances of the case and thereby committed an illegality.

18. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 302/34 of the I.P.C. is altered to Section 304 Part II / 34 of the I.P.C. and he is sentenced to undergo RI for seven years. Appellant is in custody and he is entitled to set off for the period of detention.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE