

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.592 of 2003

1. Dasharath Yadav, S/o Bindu Yadav, aged about 27 years,
2. Shivcharan @ Totoram, S/o Bindu Yadav, aged about 29 years,
R/o New Bus Stand, Rawanbhata, Mungeli, Distt. Bilaspur (C.G.)
---- Appellants

Versus

State of C.G., Through Police Mungeli.

---- Respondent

For Appellants:	Mr. H.S. Ahluwalia, Advocate.
For State/Respondent:	Mrs. Madhunisha Singh, Panel Lawyer.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

Per Deepak Gupta, Chief Justice

25/07/2016

1. This appeal by the accused is directed against the judgment dated 6-5-2003 delivered by the 3rd Additional Sessions Judge, Fast Track Court, Mungeli, in Sessions Trial No.536/1997, whereby he convicted both the accused of having committed an offence under Section 302 of the IPC and sentenced them to undergo imprisonment for life and to pay fine of Rs.1,000/-, and in default of payment of fine to further undergo RI for six months.
2. FIR was lodged at the instance of the deceased himself and in this FIR, deceased Bhauram stated that he stays in Ravanbhata and in connection with his work he went to Mungeli and he was

returning from Mungeli to Ravanbhata on his bicycle. He parked his bicycle in the house of Manoj and then was proceeding to his house on foot, Lakhanlal (PW-1) was walking behind him then the accused accosted him and attacked with lathis and give blows all over his body. The incident was witnessed by Lakhanlal (PW-1). In the statement, it is also recorded that there was some dispute with regard to grazing of cattle between the two sides which had earlier been resolved but the trouble had again brewed-up.

3. The injured Bhauram was taken to the doctor – Dr. R. Bhattacharya (PW-12) who examined him and found six injuries on his person. The injuries are as follows: -

1. Abrasion on left face 2½ c.m. x 2½ c.m.
2. Abrasion on right face 3½ c.m. x 2½ c.m.
3. Bruise on back from left to right 16 c.m. x 14 c.m.
4. Bruise on left thigh towards back 8 c.m. x 6 c.m.
5. Bruise on backside of left leg 10 c.m. x 8 c.m.
6. Bruise on left arm 6 c.m. x 4½ c.m.

The doctor recommended that X-ray be got conducted. Unfortunately, the deceased died next morning at 6.50 a.m.. It is not very clear whether X-ray was conducted or not. Postmortem was conducted by Dr. R. Bhattacharya (PW-12) and this time, he found two more injuries in addition to what he had already mentioned in the MLC which are as under: -

1. Abrasion on right forehead 3½ c.m. x 2½ c.m.
2. Abrasion on left forehead 3 c.m. x 2½ c.m.

4. Conviction of the accused is based on the basis of FIR, statements of three witnesses Lakhanlal (PW-1), Shankar (PW-3) and Umediram (PW-10), and the dying declaration of the deceased recorded by D.R. Sidar (PW-2), Executive Magistrate.
5. We shall first deal with the dying declaration which is Ex.P-6. Although the deceased has stated that both the accused Dashrath and Toti @ Shivcharan had beaten him, but there is no description of the nature of injuries or the nature of assault in this dying declaration.
6. Lakhanlal (PW-1) is an eyewitness to the occurrence. He states that he was walking behind Bhauram. He was ahead and the accused were behind him and they heaped lathi blows on Bhauram and killed him. Bhauram fell down. When the witness tried to intervene, he was threatened by the accused that he should think of what would be the consequences. He got scared and did not go near the accused. He, however, raised an alarm and then the accused ran away. He then telephoned the police officials but they said that there is no one in the police station so he should bring the injured to the police station. He then took the injured to the police station in a rickshaw and on the basis of the statement of Bhauram, the FIR was lodged. He also states that when Bhauram reached to police station, the police also asked Bhauram what had happened then he replied about the assault made upon him by accused Shivcharan and Dashrath who were armed with lathi and danda.

7. The other two eyewitnesses Shankar (PW-3) and Umediram (PW-10) are actually not eyewitnesses in the real sense because from their evidence it is clear that they reached the spot after hearing the cries of Lakhanlal (PW-1) and when they reached, they saw the accused running away.
8. From the aforesaid evidence, it is established and proved beyond reasonable doubt that the injuries on the person of Bhauram were caused by accused and none-else. The statement of the deceased in the FIR, his dying declaration and the statement of Lakhanlal (PW-1) fully support this fact. Statements of Shankar (PW-3) and Umediram (PW-10) are immediately after the occurrence and they saw the accused running away from the spot and therefore there can be no manner of doubt that Bhauram was beaten up by the accused. He unfortunately expired next morning at 6.50 a.m..
9. The question that arises is whether the accused are guilty of culpable homicide amounting to murder or culpable homicide not amounting to murder. From the evidence gathered on record, it is more apparent that the accused had come with a plan to cause injuries on the person of Bhauram. However, the prosecution, in our opinion, has failed to prove beyond reasonable doubt that the accused had come with intention of causing the death of the deceased. When we examine eight injuries, we find that major injuries are on leg and chest which are grievous in nature. The head injury is in fact not so serious.

There was no fracture of the skull and there is no lacerated wound on head. There is a bruise, though on internal examination under the bruise haematoma has also been found. One fracture has been found on right parieto occipital region and the major injury is fracture of ribs and fracture of tibia. From the evidence, it appears that intention of the accused was to teach a lesson to the deceased and beat him up thoroughly. They wanted to break every bone of his body, however, that does not mean that they had the intention to kill him.

10. We, however, feel that the action of the accused was sufficiently grave for them to have the knowledge that attack of this nature may cause the death of the deceased.

11. Mr. H.S. Ahluwalia, learned counsel for the appellants, submits that this is a case which falls under Section 304 Part-II of the IPC.

12. We are of the view that though the accused may be imputed the knowledge that their attack with lathis may cause the death of the deceased, it cannot be said that certainly they came with intention of causing death of the deceased. We cannot even come to the conclusion that the injury caused was sufficient in the ordinary course of nature to cause death. While holding so we are relying upon the statement of the doctor who has not pinpointed the death to any one injury but has said that it is the cumulative effect of all injuries. Further more, even the eyewitness Lakhanlal (PW-1) does not ascribe any particular role

to any one of the accused i.e. which of the accused gave the injury on which part of the body of the deceased has not been mentioned by him. The accused were not charged with having committed the offence under Section 34 of the IPC. There is no appeal by the State. We cannot include Section 34 of the IPC at this stage. Therefore, the case, in our opinion, falls under Section 304 Part-II of the IPC.

13.The appellants had already undergone imprisonment for more than 7½ years. The occurrence took place on 3-10-1997. Almost 18 years have expired. The appellants have been on bail since 2009. It would not be just and fair to send them behind bars by imposing more substantial punishment. We, therefore, feel that the substantial punishment may be limited to the period of incarceration already undergone by the accused. However, fine on each of the accused is increased to Rs.25,000/- and in default of payment of fine the defaulting accused will have to undergo RI for one year. Fine shall be deposited with the trial Court and fine so deposited shall be paid to the legal heirs of the deceased.

14.The appeal stands disposed of in the above terms.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge