

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.965 of 2002

1. Mainu Ram, S/o Kanglu Ram, aged about 21 years,
2. Shiv Ram, S/o Kanglu Ram, aged about 19 years,
Both residents of Village Khurgaon, Thana Durg Kondal, District Kanker, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through the District Magistrate, Kanker, Chhattisgarh

---- Respondent

For Appellants	:	Shri Shivendu Pandya, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

13/4/2016

1. The Appellants stand convicted to life imprisonment under Section 302 IPC with fine of Rs.500/-, in the event of failure to pay which they were required to undergo further rigorous imprisonment for 3 months ordered on 20.8.2002 by the Third Additional Sessions Judge (F.T.C.), Kanker in Sessions Trial No.25 of 2000.
2. According to the prosecution case, the bicycle of the deceased and Appellant No.1 met with an accident on 12.8.1999. The two Appellants are then stated to have assaulted the deceased with hands and fists. The next day, Rojnamcha Sanha 443 was lodged with the police station. The MLC of the deceased, Exhibit P-12 found swelling on the left eye, subconjunctival hemorrhage, hematoma below left lower eyelid, swelling on the 9th, 10th and 11th ribs on both sides, coupled with bleeding through rectum suspecting grievous internal injuries. The deceased was under treatment from the day of occurrence and finally died on 30.8.1999.

3. Learned Counsel for the Appellants submits that the cause of occurrence was trivial in nature. There is no allegation of any previous enmity which may have been evidence of motive. The Appellants never intended to cause death nor can they be attributed knowledge that death was likely to ensue because of the assault by hands and fists. No weapons had been used to assault the deceased. The offence at best would come under Section 323 IPC. The Appellants have already undergone approximately 1 year and 3 months of custody which is more than the maximum that could have been imposed under Section 323 IPC.

4. Learned Counsel for the State submits that after being injured, the deceased came home and disclosed the names of the Appellants as the assailants to his wife PW-1, Danaybai. Similarly, the deceased had disclosed the names of the Appellants as the assailants to PW-2, Fagnuram, PW-4, Savji, PW-5, Shyamlal and PW-7, Chamra Ram, who was an eyewitness also. The names were also disclosed to PW-12, Lachchharam Kotwar. If there existed no previous enmity, there is no reason why PW-1, Danaybai, the wife of the deceased would be lying and wrongly stating that the deceased had named the Appellants as the assailants. This disclosure is virtually like a dying declaration and there is no reason to doubt it.

5. We have considered the submissions on behalf of the parties and perused the evidence on record.

6. The evidence leaves no doubt that the Appellants were the assailants. It is also not in controversy that no weapon of assault had been used and that the deceased was assaulted with hands and fists only. Likewise, the genesis of the occurrence was also very trivial over a bicycle accident. The Appellants and the deceased were co-villagers. There is no evidence of any pre-existing enmity. The Appellants appear to have acted

more in a fit of anger rather than with any intention or knowledge to kill the deceased. Perhaps they were only interested in venting their ire against the deceased for riding his bicycle negligently leading to all of them falling down.

7. Exhibit P-11, the post mortem report read with Exhibit P-12, the MLC, both reveal only internal injuries due to the assault by hands and fists. The deceased died on account of the internal injuries caused. There has been no fracture of the ribs but only perforation of the peritoneum covering the ribs. Death was occasioned due to septicemic shock because of the perforation of the peritoneum and jejunum. Except for the swelling over the ribs and injuries near the eyes and one incision on the left ankle, there was no other external injury. In the facts and circumstances of the case, it can therefore safely be inferred that the Appellants never intended to cause death much less had knowledge that death was likely to ensue. They also cannot be said to have assaulted with intention to cause grievous internal injuries to the deceased. But, the assault made by them certainly comes within Clause (8) of Section 320 IPC as grievous hurt which endangers life and not under Section 323 IPC as alleged. Keeping all aspects in mind, that they were co-villagers, the origin of the fight was trivial in nature due to a bicycle accident, that there are no external injuries which resulted in death, death was result of internal injuries for which it cannot be said that the Appellants intended to cause those very injuries, conviction is considered appropriate under Section 325 IPC.

8. In AIR 1958 Patna 452 (V 45 C 145) (Rambaran Mahton v. The State), the deceased was dashed to the ground and the Appellant sat upon his stomach dealt him with severe blows with his fists with the result that some of his ribs were fractured, his spleen was ruptured, he was rendered senseless and died after some hours. Similar injuries were found on the forehead side of chest. The 8th, 9th, 10th and 11th ribs were fractured. The

Doctor had opined that the injuries were caused by some hard and blunt substance and one of the injuries were caused by hard and strong compression of the chest side. The death was caused buy shock and hemorrhage as a result of the injury. Charge had been framed under Section 302 IPC, but the sentence was passed under Section 325 IPC to undergo rigorous imprisonment for 5 years. In the facts of the case and considering relationship of the parties, the sentence was reduced from 5 years to 1 year in appeal.

9. In the peculiar facts and circumstances of the case, we deem it appropriate to convict the Appellants under Section 325 IPC and sentence them to the period already undergone.

10. With the aforesaid modification of the conviction and sentence, the appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE