

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 26 of 2002**

Nawadha Ram S/o Maneser Satnami, Aged about 28 Years, R/o village Riwapar,
PS Sarangarh, Tahsil Sarangarh, District Raigarh, Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh, Through DM Raigarh.

---- Respondent

For Appellant : Shri H.S.Ahluwalia, Advocate.
For Respondent/State : Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****26/10/2016**

1. This appeal by the convicted Accused/Appellant is directed against the judgment dated 21.09.2001 delivered by the learned Sessions Judge, Raigarh, District Raigarh in Sessions Trial No. 198 of 1999 whereby he convicted the Accused/Appellant for having committed an offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.
2. The prosecution story in brief is that on 16.08.1999, the Appellant-Nawadha Ram alongwith co-accused Anand had gone to attend a Dashkarm ceremony in the house of one Shivnarayan. The case of the prosecution is that a verbal altercation took place between the Appellant-Nawadha Ram and the deceased-Awadh Ram with regard to Awadh Ram having sold some of his agricultural land to some other person. Because of this altercation, the Appellant and his brother beat up the deceased-Awadh Ram. Anand had a knife in his hand and the Appellant-Nawadha Ram was armed with a *lathi*. The case of the prosecution was

that both the persons had common intention of killing Awadh Ram and in furtherance of their common intention they murdered him.

3. The matter was investigated and both the brothers were charged for having committed murder of Awadh Ram. After evidence was recorded, the learned trial Court found the Appellant-Nawadha Ram guilty of having committed an offence of murder as aforesaid. However, with regard to the Accused-Anand, the learned trial Court held that he was only guilty of causing simple injuries and therefore sentenced him to undergo only one year rigorous imprisonment. The learned trial Court therefore did not agree with the case of the prosecution that this was a case where Section 34 IPC was attracted and the conviction of the accused/Appellant was only under Section 302 IPC.

4. The Accused-Anand has already undergone his sentence and has not filed any appeal. Aggrieved by the aforesaid judgment of conviction and order of sentence, the Appellant-Nawadha Ram has filed the present appeal.

5. We have heard learned counsel for the Appellant and have carefully gone through the records.

6. Shivnarayan, in whose house the occurrence allegedly took place, has not been examined. Ghasiya Ram (PW-2) alleged to be an eyewitness, has turned hostile and did not support the prosecution story. Vedkunwar (PW-7) is the widow of the deceased. She has not seen how the occurrence started. According to her, on hearing that the Accused persons were beating her husband, she went to rescue him when she was also beaten up by the Accused persons. Mohanbai (PW-8) is the daughter-in-law. She reached the place of occurrence even after her mother-in-law and her version is similar to that of her mother-in-law. From the statement of Vedkunwar (PW-7) and Mohanbai (PW-8), one thing is apparent that the Accused and his brother Anand had beaten the deceased.

7. The issue is whether this offence is an offence amounting to murder or not? In this regard, reference will have to be made to the medical evidence. Immediately after the occurrence, the deceased-Awadh Ram was taken to the Civil Dispensary, Kosiya, District Raigarh where Dr. B.K.Chandravanshi (PW-4) found the following injuries on the person of Awadh Ram:

Avadh Ram S/o Chand Ram	45 yr, Satnami, Riwapara	B/by: PC P.L.Sidar No. 317
MI : Black mole on left of chest adjacent to the lat. border of sternum	On 16/08/1999 at 7:15 pm	PC Kosir Recog: Sukh Ram SATnami, Riwapar
1. Lacerated wound (5.0x0.6xTD) cm	Rt. Parietal region	Hard and blunt object
2. Incised wound (6.0x1.0xTD) cm	Rt. forearm mid dorsally	Hard & sharp object.
3. Abrasion (Scratch) (5.0x0.3xTD) cm	Lt. Forearm mid dorsally	Hard and pointed object.
4. Contusion (8.0x6.0) cm	Lt. Arm at upper 1/3rd posteriorly	Hard and blunt object.
5. Abrasion (5.0x3.0) cm	Rt. knee joint ant.	Friction with hard rough surface.
6. Lacerated wound (5.0x0.6xTD) cm	Dorsum of Rt. Foot between 3rd and 4th phalanges	Hard blunt object.
7. Lacerated wound (1.0x0.3xTD)	Ventrum of Rt. foot at base of 5th phalanges.	----"----
		Opinion -Injury No. 2, 3, 4, 5, 6 and 7 are simple in nature. Caused by. (2nd -hard and sharp object) (3rd - hard and pointed object) 4, 5,, 6 and 7 are caused by hard and blunt object. Duration is about within 6 hours old and healed within 10-15 days. If not complicated. For injury No. 1 advise X ray. Opinion will be given after X-ray report.

C.D. Kosia
Distt. Raigarh
7:15 pm

* Advise: X Ray Skull Ap Lat.
For X Ray report advised to
consult with X-Ray expert.

Sd/- Illegible
16.8.1999
Dr. B.K.Chandrawanshi
C.D. Kosia
Distt. Raigarh M.P.

8. On perusal of the aforesaid MLC, it is apparent that there were three lacerated wounds, one incised wound, two abrasions and one contusion. The incised wound could be caused by the knife which is alleged to be used by the Accused-Anand. Since the knife was not recovered, the learned trial Court held that the prosecution has failed to prove that the Accused-Anand had attacked with a knife. That portion of the judgment is not under challenge and therefore at best, the Appellant can be held guilty of having caused injury No. 1, 4, 6 and 7. As far as injury No. 6 and 7 are concerned, they are on the foot. They are not even grievous in nature and have been termed as simple injuries. All the injuries except injury No. 1 have been termed as simple injuries. As far as injury No. 1 is concerned, that has been caused by a hard and blunt object. The Doctor in his evidence and also in response to the query made by the police has stated that this injury could have been caused by the *lathi* seized at the instance of the Appellant. Therefore, we hold that the prosecution has proved that the injuries were caused to the deceased by the Appellant.

9. The question is that even if the story of the prosecution is believed, whether the Appellant can be held guilty of having committed murder of the deceased or not? As far as injury No. 1 is concerned, Awadh Ram was advised to undergo X-ray and the X-ray report is Exhibit P/8 which shows that no fracture was found in the skull. Even the postmortem report clearly states that the skull was not fractured. It is also established that the deceased after being taken to the Civil Dispensary, was referred to the District Hospital at Raigarh. He remained admitted there for four days and thereafter, he was advised to go to Raipur. The prosecution has failed to prove that Awadh Ram was taken to Raipur for further treatment. In fact, from the statement of the wife, it is apparent that the deceased was not taken to Raipur because she herself says that he was taken out from the hospital at Raigarh. Awadh Ram was taken back home. He has died because some clots formed in the brain and the opinion of the Doctor is that he did not die

of the injuries sustained but as a result of clotting. This clotting may be a result of the injuries caused but the accused cannot be imputed with the knowledge that the injuries which he caused would eventually lead to the death of Awadh Ram. In criminal case, *mens rea* is the most important factor to be taken into consideration. The intention of the Accused was to cause injuries to the deceased and not to cause his death. He used a *lathi* to cause grievous injuries and therefore, he can be held guilty only for the offence punishable under Section 325 IPC because this is a case where none of the ingredients of Section 299 IPC are satisfied and the case does not come either within the definition of culpable homicide amounting to murder or plain and simple homicide not amounting to murder. There was no intention to kill Awadh Ram and even the Accused-Appellant cannot be imputed with the knowledge that his injuries which did not even cause any fracture to the head would ultimately lead to death of Awadh Ram. In this view of the matter, we partly allow the appeal.

10. We therefore partly set aside the judgment dated 21.12.2001 of the learned Sessions Judge, Raigarh in Sessions Trial No. 198 of 1999 convicting the Appellant under Section 302 IPC and convert his conviction to one under Section 325 IPC. The Appellant has already remained behind the bars for almost five years. The occurrence took place 17 years back and we feel that no purpose would be served in sending the Appellant back to jail. Hence, the sentence is reduced to the period of incarceration already undergone by him.

11. The Accused/Appellant is on bail. The bail bonds shall remain effective for a period of six months in view of the provisions of Section 437-A CrPC.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE