

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.521 of 2012**

Sunil Gupta S/o Ramchandra Gupta, R/o Village Kenapara, P.S. Jainagar, Distt. Surguja C.G.

---- Appellant

Versus

State Of Chhattisgarh Through - The Police Aarakshi Kendra Gandhinagar , Distt. Surguja C.G.

---- Respondent

And**Criminal Appeal No. 525 of 2012**

Mutur Giri S/o Parmeshwar, R/o Village Kenapara, P.S. Jainagar, Distt. Surguja C.G. , R/o Kaveri Dhabha, P.S. Gandhi Nagar Ambikapur , Distt. Surguja C.G.

---- Appellant

Vs

State Of Chhattisgarh through District Magistrate, Surguja, Distt. Surguja (CG)

-----Respondent

For Appellants:	Shri SC Verma and Shri Awadh Tripathi, Advocates.
For Respondent/State:	Smt Madhunisha Singh, Panel Lawyer.

Hon'ble The Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****Order on Board**

Per Deepak Gupta, Chief Justice

28/11/2016

1. Both these Appeals are being disposed of by a common judgment as they arise out of the same judgment dated 31.5.2012 passed by the 1st Additional Sessions Judge, Ambikapur, District Surguja (CG) in Sessions Trial No.391/2010, whereby the Appellants have been convicted for the offence punishable under Sections 302/34 and 201/34 IPC and sentenced to undergo life imprisonment with fine of Rs.1,000/- and RI for 2 years with fine of

Rs.200/- respectively with usual default stipulations.

2. The case of the prosecution is that on the date of occurrence i.e. 22.6.2010, deceased Pramod Gupta went along with Appellant Sunil Gupta on the motorcycle of Sunil Gupta. Thereafter, these two persons along with other accused ate food and also drank liquor. Late in the evening, there was a fight between these three persons during which, the two accused persons gave beating to the deceased as a result of which, he died. It is the prosecution story itself that thereafter both the accused came to the house of the deceased and informed the brother and family members of the deceased that Pramod Gupta, the deceased was lying in an injured condition near the FCI godown. Thereafter, Pradeep Gupta, PW-5 and Sanjay Gupta, PW-12 – the two brothers of the deceased went to the spot and found some blood lying at the spot and there were also traces of some fight having taken place about 100 feet away from the place of occurrence. According to them, they came to know at the scene of occurrence that their brother had been taken to hospital. They then went to District Hospital at Ambikapur and found that Pramod Gupta was dead. There is no motive ascribed to anybody. It is obvious that the deceased and the accused were friends. They used to eat and drink together. It is proved that the deceased went along with the accused and from the statements of Pradeep Gupta, PW-5 and Sanjay Gupta, PW-12 – the two brothers of the deceased, it is also clear that the both the accused persons came to the house of the deceased late in the evening and informed his brothers that their brother Pramod Gupta was lying in an injured condition near FCI godown. It appears that they were in or around the FCI godown when the incident took place. Not only was the deceased last seen together but even as per the version of the accused, they had seen the deceased lying in an injured condition when they came to the house of the deceased. The

accused have offered no explanation as to what happened. The deceased had suffered injuries and since it stands proved that these injuries were suffered by him when he was in the company of the accused, it is proved beyond doubt that they must have caused the injuries. The accused have not given any explanation in this regard.

3. Learned Counsel for both the accused mainly argued that these cases do not fall within the ambit of Section 302 IPC but would fall within the ambit of Section 304 IPC.

4. The Doctor i.e. Dr. RK. Tekam has been examined as PW-13. Relevant portion of postmortem, Exhibit P-19 is as follows:-

“Rigor mortis found on both limbs. Eye semi opened, Rt swoterm enlarged (Hernia). Lacerated wound found on back of scalp 3 x 1 cm. Lacerated wound on Rt. Temporal area 4 cm x 2 cm scalp bone found depressed. Abrasion found on chest abdomen, arm (Rt), back, chest, Lt arm move with crepitus, Lt humerus bone fractured. Abrasion on both knee. Lt side of forehead swelling with echymosis. Coronol suture opened with exploration-Liver, Spleen, Kidney found pale. Both lung found ruptured. Chest compressed anterior & posterior, multiple rib found fractured anteriorly. Stomach contains fluid with alcoholic smell. Small and long intestine contained fecal matter, thiosasic cage filled with cinfled blood. Bladder is empty.”

This report shows that there were two lacerated wounds on the head of the deceased. These wounds are 3 cm x 1 cm and 4 cm x 2 cm. The case of the prosecution is that the deceased was beaten with fist blows and therefore, it is apparent that the intention was not to kill the deceased but injuries have been caused on his head. The Doctor, in his statement, has stated that these injuries could be caused even by a fall. It is also proved from the medical evidence itself that the deceased was smelling alcohol and sufficient quantity of alcohol was found in his body.

5. Keeping all these facts and circumstances in view, we are in agreement with the Learned Counsel for the Appellants that these cases do not fall within the ambit of Section 302 IPC but fall under Section 304 IPC.

6. As far as Section 201 IPC is concerned, we are not at all in agreement with the view given by the trial Court. According to the prosecution, the accused had hidden some clothes of the deceased. This story is totally unbelievable because it is the accused themselves who went to the house of the deceased and informed his family members that he was lying in an injured condition. This also shows that there was no intention to kill the deceased. No offence under Section 201 IPC is made out.

7. As far as the quantum of punishment is concerned, we have been informed that the accused are behind the bars since 7.7.2010 i.e. more than 6 years. In our opinion, 6 years is sufficient punishment, in the facts and circumstances of the case.

8. We therefore partly allow the Appeals. We acquit the accused for having committed an offence punishable under Section 201 IPC. Their conviction under Section 302 IPC is converted to one under Section 304 IPC. As far as sentence part is concerned, jail sentence imposed on the accused/Appellants is reduced to the period of imprisonment already undergone by them. They be set at liberty forthwith, if not required in any other case.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE