

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1096 of 2008

1. Chhatram S/o Sitaram Yadav Aged About 45 Years

2. Anirudh S/o Chhatram Yadav, aged about 18 years,

Both are R/o Hirri, P.S. Pamgarh, Distt.-Janjgir-Champa (CG)

---- Appellants

Versus

- State Of Chhattisgarh Through District Magistrate, Janjgir-Champa, Distt.-Janjgir-Champa (Cg)

---- Respondent

For Appellants	:	Smt. Savita Tiwari, Advocate.
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

Per P. Diwaker, J

24/07/2017

This appeal arises out of the judgment of conviction and order of sentence dated 12.11.2008 passed by the Sessions Judge, Janjgir-Champa in ST No.146/2007 convicting the appellants under Sections 294, 302/34 of IPC, 3(1)(x) & 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentencing them to undergo RI for three months, life imprisonment plus fine of Rs.1000/-, RI for one year plus fine of Rs.1000/- and life imprisonment plus fine of Rs.1000/- with default stipulations respectively.

02. In the present case, name of the deceased is Mahendra Khare. As per prosecution case, on 27.5.2007 at about 5.30 am when Mahendra Khare (deceased) and his brother Itwari (PW-2) were returning after attending the nature's call, Mahendra was assaulted by the appellants by spade and club. Injured Mahendra was immediately taken to hospital and at about 6.45 am FIR (Ex.P/3) was lodged by Itwari (PW-2) against the appellants under Sections 307, 294, 506B, 34 of IPC and Sections 3(1)(x) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The deceased was medically examined by PW-8 Dr. DC Choudhary vide MLC Ex.P/18 and apart from bruises, abrasion and swelling on various parts of the body, he noticed incised wound on supra orbital region, left angle of the frontal head and fracture of mandible bone. In his opinion, the cut injuries were caused by hard and sharp edged weapon and others by hard and blunt object. During treatment Mahendra expired in the hospital and based on the information received from hospital, unnumbered merg Ex.P/23 was recorded and thereafter, numbered merg was also recorded. Inquest over the dead body was prepared vide Ex.P/16 on 27.5.2007. The dead body was sent for postmortem, which was conducted on the same day by PW-18 Dr. Vijay Kumar Verma vide Ex.P/28 who found following injuries:

- (i) stitched wound, 2" x bone deep from left angle of mouth to downwards obliquely,
- (ii) stitched wound, 1.5" x bone deep vertically placed just by side of left eye,
- (iii) stitched wound, 2.5" x bone deep obliquely placed at the mid of forehead,

- (iv) irregular diffuse contusion blackish in colour over head.
- (v) fracture of both side of mandible bone in more than two parts,
- (vi) fracture of right and left parietal bone, suture 6" in length starting from mid of frontal bone,
- (vii) fracture of left temporal bone in more than two pieces,

In his opinion, the cause of death was coma as a result of fracture of skull bones and injury to brain.

After filing of charge sheet, the trial Court framed charges under Sections 294, 506(2), 302 read with Section 34 of IPC and Sections 3(1)(x) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the accused/appellants.

03. So as to hold the accused persons guilty, the prosecution examined 18 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined one Narayan Prasad as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits that even if the entire prosecution case is taken as it is, considering the facts and circumstances of the case giving rise to the incident which resulted in death of Mahendra Khare and the role attributed to the appellants, at best they are liable to be convicted under Section 304 Part-I or II of

IPC because the incident had taken place all of a sudden in the heat of passion without there being any premeditation on the part of the accused/appellants. Further, considering the detention period of the appellants as they are behind the bars since last 10 years, after conversion of their conviction into one under Section 304 Part-I or II, they may be sentenced to the period already suffered by them.

She has placed reliance on the decisions in the matters of ***Adu Ram Vs. Mukna and others, 2005 (1) CCSC 70 (Supreme Court)*** and ***Arjun and another Vs. State of CG, (2017) 3 SCC 247.***

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the trial Court after due appreciation of the evidence on record has rightly convicted and sentenced the appellants and there is no infirmity or illegality in the impugned judgment warranting interference by this Court. She further submits that considering the gravity of the injury and the manner in which the deceased was assaulted by the appellants resulting in multiple fracture of bones of vital part head, their case would not fall under any of the exceptions to Section 300 of IPC and their conviction under Section 302/34 of IPC is strictly in accordance with law.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 Itwari, brother of the deceased and lodger of FIR, has stated that on the date of incident when he and deceased Mahendra Khare were returning after attending the nature's call, on the way deceased stopped for doing Datoon (a sort of twig used for cleaning teeth). When

he (this witness) was going all alone towards his house and was about 200 ft away from the pond, he heard some commotion and saw that the appellants with their bullock-cart were standing near the deceased and abusing him filthily in the name of his mother and sister as also in the name of his caste. When Mahendra called him out, he reached there running and saw that appellant Anirudh assaulted his brother Mahendra by club on his head as a result of which he fell down and then appellant Chhatram assaulted him by spade. Both the appellants assaulted his brother Mahendra and when he tried to intervene the appellants also hurled abuses at him in the name of his caste and made him run, so he ran away towards the kitchen garden of Geetaram. He states that he called Geetaram (PW-3) for help. In cross-examination but for minor contradictions he remained firm and has reiterated as to the manner in which the deceased was assaulted by the accused/appellant.

09. PW-3 Geeta Prasad, other eyewitness to the incident while supporting the prosecution case has stated that both the accused persons were abusing the deceased filthily and caused injuries to the deceased by club and spade. He is also a witness to memorandum (Ex.P/6 & P/12) of appellant No.2 Anirudh and appellant No.1 Chhatram and seizure Ex.P/7, P/8 and P/9 whereby club, spade and pant were seized.

10. PW-8 Dr. DC Choudhary medically examined the deceased vide MLC Ex.P/18 and noticed bruises, abrasion and swelling on various parts of the body, there was incised wound on supra orbital region, left angle of the frontal head and fracture of mandible bone. In his opinion,

the cut injuries were caused by hard and sharp edged weapon and others by hard and blunt object. PW-18 Dr. Vijay Kumar Verma conducted postmortem on the body of the deceased on 27.5.2007 vide Ex.P/28 and as mentioned above, noticed as many as three stitched wounds on mouth, left eye and forehead as also fracture of mandible bone, fracture of both right and left parietal bone and fracture of left temporal bone. In his opinion, the cause of death was coma as a result of fracture of skull bones and injury to brain.

11. PW-4 Sunderlal Jangde assisted the other villagers in hospitalizing injured Mahendra. PW-6 Balwant, son of the deceased, has been examined to prove motive. He has stated that after removing his beetle shop accused Chhatram had constructed house for which a report was lodged by his father Mahendra. He has further stated that one Shripal Yadav had also threatened his father. PW-9 RJ Dewangan, PW-10 Kamal Kishore Upadhyay and PW-12 JK Rathore assisted in the investigation. PW-11 Budhram is a witness to memorandum Ex.P/6, P/12 and seizure Ex.P/7 to P/11 & P/13. Though he has been declared hostile but has admitted his signature on the documents. PW-13 Vijay Kumar Tandon, Patwari, prepared the spot map Ex.P/5. PW-17 ML Daharia, investigating officer, has duly supported the prosecution case.

12. DW-1 Narayan Prasad has been examined to show that on the date of incident accused/appellant No.2 Anirudh was suffering from diarrhea for which he was treated by this witness on the date of incident also. He states that he had advised Anirudh for rest and that he was not in a position to walk. In cross-examination he, however,

admits that though he is a government servant but has not maintained any record of the treatment given to accused Anirudh. He has admitted the fact that a person can perform his routine work after taking treatment given by him. He has further stated that the symptoms which he noticed on Anirudh do not indicate any serious illness.

13. Close scrutiny of the evidence makes it clear that on 27.5.2007 the accused/appellants on account of there being previous animosity with deceased Mahendra caused him grievous injuries by club and spade as a result of which mandible bone, parietal bones and temporal bone got fractured and on the same day he expired while undergoing treatment in the hospital. The eyewitnesses to the incident i.e. PW-2 Itwari and PW-3 Geeta Prasad have duly supported the prosecution case and described as to the manner in which the deceased was brutally assaulted by the accused/appellants. Defence has utterly failed to elicit anything from them to discredit their testimonies. Medical evidence also lends due corroboration to the ocular evidence according to which corresponding injuries were noticed on the person of the deceased and the cause of death was also coma as a result of fracture of skull bones and injury to brain. Thus, on the basis of unrebutted ocular evidence coupled with medical evidence available on record, complicity of the accused/appellants in commission of the crime stands proved beyond all reasonable doubt.

14. As regards the argument of the counsel for the appellants that in the given facts and circumstances of the case, the appellants can, at best, be convicted under Section 304 Part-I or II of IPC, we find no force in this argument. In order to bring a case within the ambit of

Exception 4 to Section 300 of IPC, there must be evidence to show that the incident culminating in death of the deceased was the result of a sudden fight without premeditation on the part of the accused and most importantly, without the offender's having taken undue advantage or acted in a cruel or unusual manner. However, in the present case, the appellants armed with club and spade, reached the spot, started hurling abuses at the deceased, first appellant No.2 Anirudh caused him injury on his head by club and thereafter, appellant No.1 Chhatram caused him injury by spade. Thus, considering the nature and extent of injuries, the manner in which the appellants assaulted the deceased with such a force that his mandible bone, parietal bones and temporal bone got fractured and on the same day he expired while undergoing treatment in the hospital, the case of the appellants is not covered by any of the exceptions to Section 300 of IPC. In view of this, it can safely be held that while inflicting injuries on the deceased the appellants had not only the intention to cause his death but also had the knowledge that such injuries would result in his death. Being so, their conviction under Section 302/34 of IPC cannot be faulted with. The judgments cited by the counsel for the appellants being distinguishable on facts from the present case are of no help to the appellants.

15. So far as their conviction under Section 294 of IPC and 3(1)(x) & 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is concerned, the evidence on record also goes to show that while inflicting injuries on the deceased the appellants were also hurling abuses at the deceased and PW-2 Itwari in public place in the

name of mother and sister as also in the name of their caste knowing fully well that they are the members of scheduled caste/scheduled tribe community. As such, their conviction under these sections is also in accordance with law.

16. For the reasons stated above, we are of the opinion that the prosecution has successfully proved guilt of the appellants based on the evidence adduced by it and the trial Court was fully justified while recording their conviction and sentence under Sections 294, 302/34 of IPC, 3(1)(x) & 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

17. In the result, the appeal being without substance fails and is, accordingly, dismissed. The appellants are reported to be in jail, therefore, no further order regarding their arrest etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge