

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 697 of 2007

- Motilal, S/o Bundram, aged about 45 years, by caste- Gond, r/o villag Khondhri (Khondhar), P.S. Dabhra, District Janjgir-Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Dabhra, District Janjgir-Champa (CG)

---- Respondent

For Appellant	:	Shri N.S. Dhurundhar, Advocate
For Respondent	:	Shri Vivek Sharma, Government Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker, J

13/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 4.8.2007 passed by the Additional Sessions Judge, Sakti, District Janjgir Champa (CG) in S.T. No.212/2006 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.500/-, in default to undergo additional R.I. for 2 months.
2. In the present case name of deceased is Ganesh Ram.
3. The prosecution story, in brief, is that on 15.3.2006 Moolchand (PW-2) had gone to co-accused Padum Singh to take his money back and there a hot exchange of words took place between Moolchand and other co-accused persons. When deceased Ganesh tried to intervene in the

quarrel between said Moolchand and accused persons, he suffered single club injuries on his head as a result of which he died during the course of treatment. Members of accused party namely Motilal, Ajay & Itwari have also suffered injuries. Based on the complaint of Motilal (appellant herein), FIR under Crime No.69/06 was registered against the complainant party including Moolchand (PW-2) & Tarachand (PW-8). Immediately thereafter FIR was lodged by Sitaram (PW-1) at 10.30 p.m. against six accused persons including the appellant herein under Sections 294, 323, 506 Part II & 147 of IPC. Deceased Ganesh Ram was taken to the hospital where he was medically examined by Dr. S.L. Mirri (PW-5) vide Ex.P-10 and he noticed one lacerated wound of the size of 3 x 0.5cm x bone deep in middle portion of skull just right side, 11 cm above of right ear, horizontal in direction along with swelling around the wound. Red blood clot present. The doctor has referred the deceased to Government District Hospital, Janjgir Champa for x-ray examination and further treatment. Injured Motilal was also medically examined by Dr. (Smt.) Shashikala Mirri (PW-6) vide Ex.P-14 and she did not notice any injury on his body. Ganesh Ram died in the government hospital in the course of his treatment on 17.3.2006. On the basis of information received from the hospital on 17.3.2006 itself at 8.45 a.m., un-numbered merg (Ex.P-24) was recorded. Inquest (Ex.P-3) was conducted over the body of deceased by PW-4. Numbered Merg Intimation (Ex.P-5) was recorded on 19.3.2006. The post mortem examination on the dead body was conducted by Dr. Mahesh Rawat Rai (PW-10) on 17.3.2006 and post-mortem report is Ex.P-19. The autopsy surgeon had noticed following injuries on the body of deceased:-

- stitched wound 6cm, 6 stitches, on opening the wound it was lacerated type. fracture at the middle of the skull.

- healed wound at the tip of left shoulder of 2x1cm in size.

The doctor has opined that cause of death was coma as a result of intracranial haemorrhage. Statements of witnesses were recorded under Section 161 CrPC.

4. On completion of investigation, charge sheet for the offence punishable under Sections 294, 506B, 323, 147 & 302 IPC was filed against the accused persons including accused/appellant herein. However, the trial Court has framed the charges under Section 302 and 302/149 of IPC against the accused persons. The prosecution in order to bring home the charges levelled against the accused/ appellant examined 20 witnesses in all. Statement of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. They have examined two witnesses in their defence.
5. After hearing the parties, the Court below convicted & sentenced the accused/appellant in the manner as described above, whereas co-accused persons have been convicted under Section 147 of IPC.
6. This appeal has been preferred by accused/appellant only assailing the impugned judgment of conviction and order of sentence.
7. Counsel for accused/appellant submits that;-
 - evidence of PW-2 Moolchand cannot be given much credence insofar it relates to witnessing the alleged assault made by the appellant on the head of the deceased with club because admittedly there were seven accused who participated in the assault and the possibility of single fatal blow being caused by someone else cannot be ruled out in the present case.
 - even if the entire prosecution case is taken as it is, at best the appellant can be convicted either under Section 326 or Section 304 Part II of IPC and not under Section 302 IPC as has been done by the

trial Court.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. We have heard counsel for the parties and perused the evidence available on record.
10. Sitaram (PW-1) is the eyewitness of the incident. He has stated that on the fateful night after eating food, he went asleep. On hearing commotion, he woke up and came near the house of Ganesh and saw that his uncle Ganeshram (deceased) was lying on the earth with bleeding head injury. He has further stated that even after fall of his uncle on the ground, the accused persons continued to assault him. At the time of incident, Moolchand, Tarachand & others were present there. He has further stated that when the accused left the spot, he along with Samaru, Tarachand and Sakharam took the deceased to the hospital in a tractor and at that time he was alive but was unconscious. He has further stated that the deceased died in the course of treatment at CIMS, Bilaspur where he was referred for further treatment. He has further stated that accused Motilal assaulted the deceased with club on his head and remaining accused persons have assaulted on the back, leg etc. of the deceased. However, in the cross-examination this witness has admitted that he did not see as to who gave club blow on the head of deceased.
11. Moolchand (PW-2) has stated that on the date of incident he had gone to the house of co-accused Padum to take back money of his friend. While he was returning home and reached near the house of Motilal, accused Jaikumar abused him saying that as to why he had come in the night for demanding money. On being threatened by accused Moti & Jaikumar

when he tried to escape from the spot, the accused persons chased him with intention to kill him. While he was going to his house running, he met Ganesh (deceased) who asked all the accused persons as to why they are chasing him. On this, accused Motilal gave a club blow on the head of Ganesh as a result of which he fell down. He has further stated that hearing his cries, the villagers had come and intervened. He has further stated that Motilal gave a club blow to him also. In the cross-examination of this witness, the defence could not shake his credits nor could bring anything on record to show that he was giving false evidence or trying to falsely implicate the accused/appellant.

12. Smt. Dhaja Bai (PW-3) is the another eyewitness of the incident and she has also duly supported the prosecution case. She has categorically stated that on hearing commotion she came out of her house and saw that all the accused persons were assaulting her father-in-law (deceased).
13. Pulkit Ram (PW-4) is the witness of seizure memo Ex.P-8 and spot map (Ex.P-5) prepared by the Patwari.
14. Dr. S.L. Mirri (PW-5) did the MLC of deceased and noticed the injuries as mentioned above. According to this witness, the injuries found on the body of deceased may come from the clubs produced before him for examination. In the cross-examination he has denied the suggestion that such injuries may come on account of fall.
15. Dr. (Smt.) Shashikala Mirri (PW-6) is the doctor who medically examined injured Moolchand (PW-2) and she did not notice any external injury on his body.
16. Samaru Lal Satnami (PW-7) did not support the prosecution case and turned hostile.
17. Khemram (PW-9) is the another eyewitness of the incident. This witness has stated that hearing the commotion he came near the house of

deceased and saw that the accused persons were assaulting the deceased by clubs. All the accused persons were armed with club. Accused Motilal had assaulted on the head of deceased by club. On account of assaults made by accused persons, the deceased fell down on the ground. In the cross-examination this witness stuck to his version given in the examination-in-chief.

18. Dr. Mahesh Rawat Rai (PW-10) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as mentioned above. He has stated that all the injuries present on the body of deceased were ante mortem in nature and caused by hard & blunt object. This witness has opined that cause of death was coma as a result of intra-cranial haemorrhage.
19. Mansai Paikra (PW-11) is the police person who recorded FIR (Ex.P-1). Swyamwar Singh (PW-12) is the police person who helped in the initial investigation. Onkar Prasad Dubey (PW-13) is the Head Constable who assisted in the investigation. Muni Baba Maitri (PW-14) is the Patwari who prepared spot map Ex.P-5. J.K. Rathore (PW-15) is the police person who assisted in the investigation. K.S. Rathiya (PW-19) is the investigating officer who has duly supported the prosecution case. Nandbihari (PW-20) did not support the prosecution and turned hostile.
20. Close scrutiny of evidence makes it clear that on 15.3.2006 the accused/appellant had caused injuries on the head of the deceased by club and because of this assault, he died in the hospital while undergoing treatment. The incident was witnessed by Moolchand (PW-2) & Dhaja Bai (PW-3), who have categorically deposed in their statements that it is the accused/appellant who had assaulted the deceased by club as a result of which he started bleeding and fell down on the earth. Evidence of these witnesses gets corroboration from the statement of Khemram (PW-9), an

independent witness, according to whom, hearing the commotion he came near the house of accused and saw the accused/appellant assaulting on the head of deceased by club. Statements of aforesaid eyewitnesses further get corroboration from the medical evidence wherein a lacerated wound in the middle portion of the skull caused by hard and blunt object was noticed by the autopsy surgeon and according to him, cause of death was coma as a result of intra-cranial haemorrhage. The query- whether the injuries present on the body of deceased could be caused by the club produced before him, has also been answered by the doctor (PW-5) in affirmative vide Ex.P-12. Despite lengthy cross-examination of the aforesaid eyewitnesses, nothing has been brought out on the record by the defence to create any doubt about the creditworthiness of the testimonies of any of the aforesaid witnesses and being so, this Court does not find any reason to disbelieve their statements who have described the incident in a lucid manner. In view of above, the complicity of accused/appellant in crime in question stands well proved.

21. Now the question to be considered by this Court is whether the act of accused/appellant make him liable to be convicted under Section 304 Part-II or 326 of IPC?
22. From the evidence available on record it is clear that when the deceased tried to intervene during the quarrel between Moolchand (PW-2) and the accused persons, the accused/appellant gave a single club blow on his head which proved fatal. It is thus apparent that the occurrence had taken place in the spur of moment and in a heat of passion upon sudden intervention of the deceased. The act attributed to accused/appellant by the eyewitnesses to the incident reveals that he never acted in a cruel or unusual manner. Though from the nature of injury, we find that the weapon was wielded forcibly, but that by itself is not sufficient to raise the

presumption that the appellant intended to cause the death of deceased. However, in the given facts and circumstances of case, the accused/appellant can definitely be clothed with the knowledge that injury being inflicted by him on the deceased was likely to cause his death. This being the position, the act of accused/appellant is covered by Exception-IV to Section 300 of the IPC i.e. culpable homicide not amounting to murder, and he is liable to be convicted under Section 304-II of the IPC and not under Section 302 of the IPC as has been done by the trial Court.

23. Accordingly, the appeal is partly allowed. While acquitting the appellant of the charge under Section 302 IPC, he is held guilty under Section 304 Part II of IPC and sentenced to undergo R.I. for 5 years and to pay a fine of Rs.5,000/-, in default to undergo RI for 2 years. The amount so deposited shall be paid as compensation under Section 357 (3) of Cr.P.C. to the legal heirs of deceased by the trial Court after due verification.
24. The appellant is reported to be on bail. He is directed to immediately surrender before the trial Court concerned to serve out the sentence imposed upon him.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan/-