

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 145 of 2012**

1. Rajaram Sahu, aged about 32 years,
2. Teejram @ Teeju Sahu, aged about 29 years,
3. Taran Prasad Sahu, aged about 26 years,

All son of Baigaram Sahu, R/o village Bavanbudi, Thana-Jaijaipur, Distt. Janjgir-Champa (CG)

**---- Appellants**

**Versus**

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

**---- Respondent**

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| For Appellants       | : | Shri Uttam Pandey, Advocate.  |
| For Respondent/State | : | Shri Adhiraj Surana, Dy. G.A. |

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**Hon'ble Shri Pritinker Diwaker,**  
**Hon'ble Shri Ram Prasanna Sharma, JJ**

**Per P. Diwaker, J**

**17/07/2017**

This appeal arises out of the judgment of conviction and order dated sentence dated 7.12.2011 passed by Additional Sessions Judge, Sakti, Distt. Janjgir-Champa in ST No.162/2010 convicting the appellants under Sections 302/34 & 323/34 of IPC and sentencing each of them to undergo imprisonment for life, pay a fine of Rs.2000/- with default stipulation and RI for three months respectively.

02. As per prosecution case, on account of dispute over possession of the government land, on 12.7.2010 when PW-2 Smt. Shaivya Sahu

was returning along with her husband Ramlal Sahu (deceased) and father-in-law Gokul Sahu (PW-11) and reached near the house of one Jagdish Sahu, the accused/appellants reached there carrying clubs in their hands, started abusing them and thereafter caused injuries to the deceased. It is said that acquitted accused Terasbai also reached the place of occurrence and threw bricks at the deceased. In the incident the deceased suffered number of injuries and the appellants also caused injuries to Gokul Sahu (PW-11). Upon hearing the cries of PW-2 Smt. Shaivya Sahu, people residing in the vicinity reached the spot and intervened in the matter upon which the accused persons fled from the spot. Injured Ramlal is said to have first taken to Jaijaipur hospital where he was medically examined vide Ex.P/22 by PW-8 Dr. SL Banjare who noticed lacerated wound over left parietal region, hematoma over right parietal region, swelling over right eye, right hand and right leg. From Jaijaipur hospital injured Ramlal was referred to Janjgir hospital and then to CIMS and thereafter to Apollo hospital, Bilaspur from where while he was being taken to Raipur hospital, he expired on the way on 14.7.2010. In the meanwhile, FIR (Ex.P/2) was registered on 12.7.2010 at the instance of PW-2 Smt. Shaivya Sahu at 5.30 pm against the accused persons under Sections 294, 506, 307, 323, 341, 34 of IPC. After death of Ramlal, merg intimation Ex.P/3 was recorded on 15.7.2010. Inquest on the dead body was conducted vide Ex.P/5 on 15.7.2010 and thereafter the body was sent for postmortem which was conducted on the same day by PW-8 Dr. SL Banjare vide Ex.P/30 who noticed fracture of skull bone from middle frontal to occipital area, brain matter coming out, clotted blood present over parietal, frontal and occipital region, fracture of right hand's radius and

ulna bone, fracture of right leg's tibia and fibula bone and one crushed injury on this leg. In his opinion, the cause of death was coma due to head injury and that the death was homicidal in nature. While framing charge, the trial Court framed charges under Sections 302/34 and 307/34 of IPC against the accused persons.

03. So as to hold the accused persons guilty, the prosecution examined 13 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 Raju Karsh 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 while acquitting co-accused Terasbai of all the charges, convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

- (i) that the appellants have been falsely implicated in this offence.
- (ii) that all the eyewitnesses are relatives of the deceased and therefore, the possibility of false implication of the appellants cannot be ruled out.
- (iii) that it is the deceased party who first abused acquitted accused Terasbai and then it appears that some hot talks took place between the parties in which Ramlal sustained some injuries and died.
- (iv) that case of the appellants would not fall under Section 302 of IPC and in the facts and circumstances of the case, they can at best be convicted under Section 304 Part-I or II of IPC. Further, considering

their detention period which comes to more than seven years, they may be sentenced to the period already undergone by them after altering their conviction into one under Section 304 Part-I or II.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the appellants is strictly in accordance with law and there is no infirmity in the same. He submits that there is absolutely no evidence that the acquitted accused Terasbai was abused in any manner by the deceased party and then the appellants assaulted them. He further submits that the manner in which the deceased was assaulted clearly spells out a case under Section 302/34 of IPC against the appellants and as such, there is no question of alteration of their conviction.

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

08. PW-1 Jankibai has stated that deceased Ramlal was her brother-in-law (Jeth) whereas the accused persons are also in her relation. She states that on 12.7.2010 in between 4 & 5 when she was working in her house she saw the accused persons first abusing deceased and then all of them beating him. According to this witness, the accused persons were carrying clubs in their hands whereas acquitted accused caused injury to him by a brick. In lengthy cross-examination she remained firm and nothing could be elicited from her by the defence to make her evidence untrustworthy or doubtful. PW-2 Smt. Shaivya Sahu, lodger of the FIR, who is wife of the deceased and an eyewitness to the incident, has also duly supported the prosecution

case. Similarly, PW-4 Ajuram Sahu and PW-11 Gokul Prasad Sahu, who are eyewitnesses to the incident, have also fully supported the prosecution case and stated as to the manner in which the deceased was done to death by the appellants. Soon after the incident deceased Ramlal was first taken to Jaijaipur hospital where he was medically examined vide Ex.P/22 by PW-8 Dr. SL Banjare who noticed lacerated wound over left parietal region, hematoma over right parietal region, swelling over right eye, right hand and right leg. This witness also conducted postmortem on the body of the deceased vide Ex.P/30 and noticed fracture of skull bone from middle frontal to occipital area, brain matter coming out, clotted blood present over parietal, frontal and occipital region, fracture of right hand's radius and ulna bone, fracture of right leg's tibia and fibula bone and one crushed injury on this leg. In his opinion, the cause of death was coma due to head injury and that the death was homicidal in nature.

09. PW-10 Mahesh Kumar Sonwani, Patwari, prepared the spot map Ex.P/1. PW-12 Vinodini Tandi, Sub Inspector, helped in the investigation. PW-13 SK Pathak, investigating officer, has duly supported the prosecution case.

10. DW-1 Raju Karsh has stated that he saw the deceased party abusing Terasbai and upon hearing the cries of Terasbai, the accused persons reached there and thereafter while fleeing from the spot, head of the deceased got dashed against the wall as a result of which he fell down and likewise, Gokul Prasad also suffered some injuries.

11. Close scrutiny of the evidence makes it clear that it is the accused/appellants, who on account of there being land related dispute

with the deceased party, on 12.7.2010 assaulted the deceased by clubs, thereby causing him severe injuries. Record goes to show that the deceased was first taken to Jaijaipur hospital where he was medically examined by PW-8 Dr. SL Banjare and then considering his serious condition he was referred to Janjgir hospital from where he was shifted to CIMS and thereafter to Apollo hospital, Bilaspur and ultimately while he was being taken to Raipur hospital, he expired on the way on 14.7.2010. The incident was witnessed by PW-1 Jankibai, PW-2 Smt. Shaivya Sahu, PW-4 Ajuram and PW-11 Gokul Prasad Sahu. All of them have duly supported the prosecution case. Their evidence further finds corroboration from the medical evidence according to which corresponding injuries were noticed on the person of the deceased. Likewise, from the evidence on record, it has also been proved beyond any doubt that the appellants also caused injuries to Gokul Prasad Sahu (PW-11) in the said incident. We have no reason to disbelieve the statements of the eyewitnesses.

As regards the argument of the appellants that the evidence of the eyewitnesses being interest witnesses cannot be relied upon, it is well settled principle of law the evidence of an interested witness should not be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. All that the Courts required as a rule of prudence, not as a rule of law, was that the evidence of such witness should be scrutinized with a little care. It has to be realized that related and interested witness would be the last persons to screen the real culprits and falsely substitute innocent ones in their places. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to

each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (***See Anil Rai Vs. State of Bihar, (2001) 7 SCC 318; State of U.P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U.P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju @ Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Gangabhavani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M.P., (2015) 11 SCC 52.***)

12. In the instant case, presence of the eyewitnesses at the spot appears to be natural and they are not only in relation with the deceased but also with the accused persons. Being so, merely on account of these witnesses being relative of the deceased, their testimony, which is otherwise cogent and reliable and finds due corroboration from other evidence, cannot be disbelieved.

13. We further find no substance in the argument of the appellants that in the facts and circumstances of the case, the appellants can at best be convicted under Section 304 Part-I or II of IPC. The appellants armed with clubs waylaid the deceased and then assaulted him so brutally that his skull bone got fractured, brain matter came out, right hand's radius and ulna bone as also right leg's tibia and fibula bone got fractured and despite being under medical treatment for about two days he succumbed to these injuries on 14.7.2010 while being taken to Raipur. Thus considering the manner in which the appellants assaulted the deceased on his vital parts, it can safely be presumed that while inflicting injuries on the deceased they not only had 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.

14. For the reasons stated above, we are of the opinion that the prosecution has successfully proved guilt of the appellants beyond all reasonable doubt on the basis of evidence adduced by it and the trial Court has rightly convicted and sentenced them under Section 302/34 and 323/34 of IPC by just and proper appreciation of the evidence so adduced.

15. In the result, the appeal being bereft of any substance meets the fate of dismissal. Ordered accordingly. Appellants are reported to be in jail, therefore, no order regarding their arrest etc. is required.

Sd/

**(Pritinker Diwaker)**

**Judge**

Sd/

**(R.P. Sharma)**

**Judge**