

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 748 of 2004

1. Maujiram @ Munji Ram, S/o Dhan Singh Sahu, aged about 40 years,
2. Amritlal, son of Umedram Sahu, aged about 35 years,

Both are resident of village Boridar, P.S. Chhura, Distt. Raipur (CG)

---- Appellants

Versus

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

---- Respondent

For Appellants	:	Shri HS Ahluwalia, Advocate.
For Respondent/State	:	Smt. Smitha Ghai, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

23/06/2017

This appeal arises out of the judgment of conviction and order of sentence dated 10.8.2004 passed by the 4th Additional Sessions Judge, Raipur in S.T. No.62/04 convicting the appellants under Section 302 of IPC and sentencing each of them to undergo imprisonment for life and pay a fine of Rs.1000/- with default stipulation.

02. As per the prosecution case, on account of some old land dispute on 7.1.2004 at about 6 pm the accused persons caused injury to Umendram by fists and kick resulting in his death. The incident was witnessed by Ku. Peelabai (PW-1) and Lenbai (PW-2) who are

daughter and wife of the deceased respectively. FIR (Ex.P/1) was lodged on 8.1.2004 at 7.30 am by PW-1 Peelabai against the accused persons under Section 302/34 of IPC. Immediately thereafter mereg intimation Ex.P/2 was recorded on 8.1.2004. Inquest on the dead body was conducted on 8.1.2004 vide Ex.P/7 and then it was sent for postmortem which was conducted on the same day by PW-4 Dr. Saroj Gandharv vide Ex.P/4 wherein she noticed swelling and abrasions on the left elbow and on internal examination found that liver was pale, spleen was enlarged having abrasion and urinary bladder was ruptured. In her opinion, the cause of death was shock due to hemorrhage. After filing of charge sheet, the trial Court framed charge against the accused persons under Section 302 and alternatively, 302/34 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined 9 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 witness.

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 them as mentioned above. Hence this appeal.

05. During pendency of this appeal, accused/appellant No.2 Amritlal has expired and therefore, the present appeal is now confined only in

respect of appellant No.1 Moujiram.

06. Counsel for the appellant submits that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 325 of IPC. He submits that as per statement of the doctor (PW-4) spleen of the deceased was enlarged and this could be because of some old disease. He submits that the present is an unfortunate case where because of some disease the deceased died. It has been argued that the appellant has already remained in jail for about four years and therefore, after conversion of his conviction into Section 325 of IPC, he may be sentenced to the period already undergone by him.

He placed reliance on the judgment in the matter of ***Ram Chandra and others Vs. State*** reported in ***2006 Cr.L.J. 2966***.

07. On the other hand, State counsel supporting the impugned judgment has submitted that the conviction of the appellants is strictly in accordance with law and there is no infirmity in it warranting interference by this Court.

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

09. PW-1 Pilabai, daughter of the deceased, has stated that on the date of incident when the deceased was working in his thrashing field, she heard the noise of beating someone and then she saw the accused/appellant, who was her uncle in relation, and deceased/accused, beating the deceased and the appellant was also pressing his neck. Upon hearing her cries, her mother also reached

there and thereafter, the accused persons fled away from the spot. In cross-examination she remained firm and reiterated as to the manner in which her father was done to death by the accused persons. She, however, states that in her diary statement she informed the police that the appellant was pressing neck of the deceased but if the same is not recorded she could not tell the reason.

10. PW-2 Lenbai, wife of the deceased, too has stated that her husband was beaten by the appellant and the deceased/accused by fists and kick and when she along with others reached the spot, the accused persons fled from there. This witness also remained firm in her cross-examination. PW-4 Dr. Saroj Gandharv conducted postmortem on the body of the deceased and noticed swelling and abrasions on the left elbow and on internal examination found that liver was pale, spleen was enlarged having abrasion and urinary bladder was ruptured. In her opinion, the cause of death was shock due to hemorrhage. She has admitted the fact that during postmortem she did not notice any injury on the neck or symptom which could suggest that the neck of the deceased was pressed. PW-5 Karan Singh, Village Kotwar, prepared seizure memo Ex.P/5. PW-7 VK Sharma, investigating officer, has supported the prosecution case. PW-8 Jai Singh is a witness of inquest Ex.P/9. PW-9 Sananda Bhoi helped in the investigation.

11. DW-1 Natthu Singh has stated that the deceased was suffering from some ailment for the last 15 years and was unable to do any work. He has also admitted that there was some old land dispute between the appellant and the deceased and they were not on talking

terms.

12. Close scrutiny of the evidence makes it clear that there was some old land dispute between the appellant and the deceased and their relations were strained. From the unrebutted evidence of PW-1 Ku. Pilabai and PW-2 Lenbai, daughter and wife of the deceased respectively, it stands proved that it is the accused/appellant who beat the deceased by fists and kicks, which ultimately proved to be fatal and led to his death. Medical evidence also lends due support to the eyewitness account. Thus, from the evidence available on record, complicity of the appellant in commission of the offence stands proved beyond reasonable doubt.

13. Now the next question which arises for consideration of this Court is whether the act of the appellant makes him liable to be convicted under Section 302 of IPC or for any other offence?

14. From the medical evidence, it is clear that spleen of the deceased was enlarged. There is no evidence on record to show that the appellant was aware of enlargement of the said organ of the deceased and further, on question being asked to him in this regard in his statement under Section 313 of Cr.P.C., he has pleaded ignorance about the same.

15. Almost similar question arose before the High Court of Calcutta in the case of ***Emperor Vs. Saberali Sarkar, AIR 1920 Calcutta 401***, wherein the accused having found that a young man had approached his kept mistress for the purpose of having sexual intercourse with her,

thought that he would be justified in teaching him a lesson by giving him a good thrashing and beat him by kicks and blows which resulted in his death. As the deceased was of a weak constitution and had an enlarged spleen, he succumbed to those injuries. In the aforesaid fact situation, the High Court held that in the circumstances of the case it was doubtful whether the accused had either intended or knew it to be likely that he would cause grievous hurt and as the case seemed to be on the boarder line between Sections 323 and 325, the accused might be given the benefit of doubt and should be convicted of an offence under Section 323.

16. Likewise, in the case ***of Ramakrishna Panichker Vs. State of Kerala, AIR 1959 Kerala 372***, the victim was having a spleen of diseased condition which got ruptured and in the said fact situation it was held that when the injury is not serious and there was no intention to cause death or grievous hurt, nor did the accused have knowledge that it was likely to cause grievous hurt or death, he is guilty of causing hurt and not death even though death is caused.

17. A similar question arose before the Divisional Bench of Allahabad High Court in the case of ***Sri Prakash Vs. State, 1990 CrLJ 486*** wherein beating given by the accused to a child having enlarged spleen resulted into his death and evidence do not show that the accused had knowledge of enlarged spleen of the deceased. On the fact situation, the High Court held the accused guilty under Section 323 of IPC.

18. Following the above principles of law, Gujarat High Court in the

matter of ***State of Gujarat Vs. Babu Kava, (2003) 4 GLR 892*** held that as the accused persons were not aware of the enlarged spleen of the deceased while making assault, they cannot be held guilty under Section 304 Part-II but are liable to be convicted under Section 323 of IPC.

19. Likewise in the matter of ***Ram Chandra*** (supra) where the deceased was assaulted with fists and kicks, the doctor did not find any visible injury and death was caused due to spleen rupture, accused could not be attributed with the knowledge that by such act they were likely to cause death to deceased nor it could be said that they intended to cause that particular injury which they caused, their conviction was altered to Section 323/34 from 302/34 of IPC.

20. Modi in his Medical Jurisprudence under the heading of “Spleen” has given specific opinion that an enlarged spleen becomes softened and brittle. Hence it is liable to rupture from a fall or from violence of a very slight degree. Enlarged spleen may sometimes rupture spontaneously from contraction of the abdominal muscles during the act of sneezing, coughing, vomiting or straining.

21. In Illustration (b) of Clause Fourthly of Section 300 of IPC, it has been provided that if the offender knowing that the victim is labouring under such disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury and the victim dies in consequence of the blow, the offender is guilty of murder although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if the offender not knowing that the victim is labouring under any disease,

gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health and the victim dies, the offender is not guilty of murder.

22. In the present case, the evidence goes to show that the appellant assaulted the deceased only by fists and kicks and no weapon was used in making assault. PW-1 Pilabai, daughter of the deceased, while deposing before the Court appears to have exaggerated by saying that the appellant was also seen pressing the neck of the deceased because the said fact is not there in her diary statement (Ex.D/1) and further, the autopsy surgeon has categorically stated in cross-examination that she did not notice any injury on the neck of the deceased or symptom which could suggest that the neck of the deceased was pressed. The defence witness Natthu Singh has stated that the deceased had been suffering from some ailment for the last 15 years and he used to remain ill. As per postmortem report, spleen of the deceased was found enlarged and the cause of death was splenic hemorrhage. As already stated above, the prosecution has utterly failed to prove that the appellant had the knowledge of enlarged spleen of the deceased or that he inflicted injuries with this knowledge on that organ so as to cause his death. Being so, it would not be safe to hold the appellant guilty of committing murder of the deceased and as such, his conviction under Section 302 of IPC is liable to be set aside. However, considering the facts and circumstances of the case, the manner in which the appellant assaulted the deceased, he can safely be held guilty of voluntarily causing grievous hurt to the deceased, which unfortunately resulted in his death. This being the position, he is liable to be convicted under Section 325 of IPC.

As regards the quantum of sentence, considering the fact that the incident is of the year 2004; the appellant has already remained in jail for about four years and has been on bail since 2008; by now he must be a middle aged person, this Court is of the view that ends of justice would meet if he is sentenced to the period already suffered by him.

23. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 325 of IPC and sentenced to the period already undergone by him. As the appellant is on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.C.S. Samant)
Judge