

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 341 of 2010**

1. Guharam Chouhan, S/o Thakur Ram, aged about 46 years,  
Occupation – Labourer,
2. Ashok Kumar Chouhan, S/o Guharam, aged about 23  
years, Occupation – Labourer,
3. Sahnuram Chouhan, S/o Bodhiram, aged about 30 years,  
Occupation – Labourer.

All R/o Village – Choranga, P.S. Lailunga, Distt. Raigarh  
(CG)

**---- Appellant**

**Versus**

- State Of Chhattisgarh Through: Police Station - Lailunga,  
Distt. Raigarh (C.G.)

**---- Respondent**

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For Appellant : Shri Abhishek Saraf, Advocate.  
For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

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**Hon'ble Shri Justice Pritinker Diwaker,**  
**Hon'ble Shri Justice Arvind Singh Chandel,**

**Judgment on Board by Justice Pritinker Diwaker**

**14/12/2017:**

This appeal arises out of the judgment of conviction and order of sentence dated 31.3.2010 passed by the IV Additional Sessions Judge (FTC), Raigarh in ST No.57/2009 convicting the appellants under Section 302/34 of IPC and sentencing them to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. In the present case, name of the deceased is Kamal Singh

Paikra. It is said that on 20.1.2009 at about 3 pm Kamal Singh came near Community Hall of Gram Panchayat in a drunken condition where constructions activities were going on, enquired as to who is doing the construction and thereafter beat accused/appellant No.1 Guharam. Guharam in turn informed his son Ashok and nephew Sahnuram (appellants No. 2 & 3 herein), who along with Guharam came together and beat the deceased by hands, fists, slippers and club. After sustaining injuries, Kamal Singh was taken to hospital and in the meanwhile, FIR (Ex.P/1) was lodged by PW-3 Samaribai, wife of deceased Kamal Singh, against the appellants under Section 506, 323/34 of IPC. However, during treatment Kamal Singh died in the hospital on 21.1.2009 at about 10 pm. Unnumbered merg Ex.P/30 was recorded at Police Station—City Kotwali on 21.1.2009 on the information given by Ward Boy. Inquest over the dead body was conducted on 22.1.2009 vide Ex.P/7 and thereafter, the body was sent for postmortem which was conducted on the same day vide Ex.P/20 by PW-13 Dr. J. Shrivastava. The autopsy surgeon noticed lacerated wound on right parietal of head, contusion over right shoulder upper part caused by hard and blunt object, intra-cerebral hematoma over right side of brain. In his opinion, the cause of death was coma due to intra-cranial hemorrhage on account of injury over head. However, no definite opinion could be given regarding nature of injury and it would depend upon circumstantial evidence. Numbered merg Ex.p/32 was thereafter recorded 24.1.2009. On the memorandum of accused/appellant No.1 Guharam Chouhan (Ex.P/14), seizure of clubs was effected vide Ex.P/15 and as per FSL report (unexhibited) blood was found on it. The incident is said to have been witnessed by PW-1

Jaisingh, PW-2 Amaru and PW-5 Bachan Sai. After filing of charge sheet, the trial Court framed charges under Sections 302/34 and 506 Part-II of IPC against the appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 25 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.

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 the incident occurred all of a sudden when the deceased Kamal Singh first beat appellant No.1 and it appears that out of anger, all the appellants assaulted the deceased by hands, fists, slippers and club which unfortunately led to his death. Thus, it is apparent that there was no intention on the part of the appellants to commit murder of the deceased and in fact, the incident occurred all of a sudden in the heat of passion upon a sudden quarrel. He submits that at best the appellants are liable to be convicted under Section 304 Part-II/34 of IPC and further considering their detention period which is more than four years, after conversion of their conviction into one under Section 304 Part-II, they may be sentenced to the period already undergone by them. He submits that the appellants are ready to suitably compensate the widow of the deceased.

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 illegality or infirmity in the impugned judgment warranting interference by this Court.

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

08. PW-1 Jaisingh is an eyewitness to the incident. While supporting the prosecution case he has stated that at the place of construction of Community Hall, the deceased came in a drunken condition and enquired as to who is raising construction and then beat appellant No.1 Guharam and thereafter, appellant No.1 informed about the beating to other accused persons. All the accused persons came there, appellant Guharam was carrying club, all of them assaulted the deceased and caused him injuries. PW-2 Amaru and PW-3 Smt. Samaribai, other eyewitnesses to the incident have made almost similar statement as has been made by PW-1 that after the deceased beat appellant No.1 Guharam, all the accused persons came to the spot and caused injuries to the deceased as a result of which he died. In their lengthy cross-examination, all these witnesses remained firm and nothing could be elicited by the defence to its advantage.

09. PW-13 Dr. Jayant Shrivastava conducted postmortem on the body of deceased on 22.1.2009 vide Ex.P/20 and noticed lacerated wound on right parietal of head, contusion over right shoulder upper part caused by hard and blunt object, intra-cerebral hematoma over right side of brain. In his opinion, the cause of death was coma due to intra-cranial hemorrhage on account of injury over head. However, no

definite opinion could be given regarding nature of injury and it would depend upon circumstantial evidence. This apart, in cross-examination he admits the suggestion that the above injuries could be caused due to fall.

10. PW-4 Pitamber, PW-5 Bachan Sai, PW-6 Bhanupratap, PW-7 Smt. Shantibai and PW-8 Shivcharan have turned hostile. PW-9 Taransai is a hearsay witness. PW-10 Lalit Kumar Paikra is a witness to spot map Ex.P/2 and panchanama Ex.P/3. PW-11 Fakirchand, PW-15 Padumlal Sidar, PW-18 Silbiryus Kujur, PW-19 SS Khan and PW-23 Ravishankar Raj, police personnel, assisted in the investigation.

11. PW-12 Patiram witness to memorandum (Ex.P/14) and seizure (Ex.P/15) has supported the prosecution case. PW-14 Dr. Yogeshwar Singh treated the deceased first on 20.1.2009 when he was taken soon after the incident in injured condition and noticed certain simple injuries on the person of the injured vide EX.P/21. He was also asked by the police for recording dying declaration of the deceased but considering the serious condition of the deceased he found the deceased unable to give such statement and gave report Ex.P/22 to this effect to the police. He also examined the weapon of offence club and opined that the injuries suffered by the victim could be caused by this weapon vide Ex.P/24. This witness also medically examined appellants Guharam vide Ex.P/25, appellant Sahnuram vide Ex.P/26 & appellant Ashok Kumar vide Ex.P/27 and found that they too had suffered simple injuries. PW-16 Kanhaiyalal, Patwari, prepared the spot map. PW-17 Uddoram Sidar, Ward Boy, gave merg intimation Ex.P/30. PW-20 Gangaram is a witness to seizure Ex.P/28. PW-21 Laxminbai has

turned hostile. PW-22 Motilal Suryavanshi is a witness to inquest Ex.P/7. PW-24 Sonsai, witness to memorandum and seizure, has turned hostile. PW-25 DR Verma, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 20.1.2009 at about 3 pm the deceased came in a drunken condition to the place where construction of Community Hall of Gram Panchayat was going on and enquired as to who is doing the construction and thereafter beat accused/appellant No.1 Guharam, who in turn, called appellants No. 2 & 3 and then all of them beat the deceased by hands, fists, slippers and club. The deceased was admitted in hospital where he was medically treated by PW-14 Dr. Yogeshwar Singh and he found certain simple injuries on his person, however, dying declaration of the deceased could not be recorded by him due to his serious condition rendering him unable to give such statement. During the course of treatment, the deceased expired and as per postmortem report, the deceased had suffered lacerated wound on right parietal of head, contusion over right shoulder upper part caused by hard and blunt object and intra-cerebral hematoma over right side of brain and his cause of death was coma due to intra-cranial hemorrhage on account of head injury. However, no definite opinion could be given regarding nature of injury and the doctor stated that it would depend upon circumstantial evidence. The incident has been witnessed by PW-1 Jaisingh, PW-2 Amaru and PW-5 Bachan Sai. From their evidence it is clear that all the appellants participated in the said incident of beating of the deceased and the defence could not elicit anything from them in the cross-examination to make their evidence unreliable or shaky.

Thus, from the ocular evidence coupled with medical evidence, complicity of the appellants in commission of the offence stands proved beyond all reasonable doubt.

13. Now the next question which arises for consideration is whether the act of the appellants make them liable for conviction under Section 302/34 of IPC or is covered by any of the exceptions to Section 300 of IPC?

14. Admittedly, it was the deceased who first beat appellant No.1 Guharam in a drunken condition over construction of Community Hall and then Guharam called other two appellants and all of them beat him. No motive has been attributed to the appellants for commission of the crime. Thus, considering the peculiar facts and circumstances of the case giving rise to the incident, the overall conduct of the appellants, the manner in which assault was made, it appears that there was no premeditation on the part of the appellants to commit the crime. The incident occurred all of a sudden in the heat of passion upon a grave provocation by the deceased. Being so, the act of the appellants is covered by Exception 4 to Section 300 of IPC i.e. culpable homicide not amounting to murder. However, regard being had to the manner of assault, in particular one made on the vital part head causing lacerated wound, which proved fatal and ultimately led to death of the deceased, there is no denying the fact that while making such assault on the deceased though the appellants had no intention of causing such bodily injury as would result in his death but had every knowledge that infliction of such injury would result in his death. This being the case, the appellants are definitely liable for conviction under

Section 304 Part-II/34 of IPC.

15. As regards the sentence part, from the record it is found that the appellants have remained inside for more than four years, they are on bail since 28.2.2013, the incident is of the year 2009 and therefore, in our considered view, no fruitful purpose would be served in sending them back to jail at this stage and rather the ends of justice would meet if they are sentenced to the period already suffered by them and are directed to pay a sum of Rs.10,000/- each to PW-3 Samaribai, widow of the deceased, as compensation under Section 357 of CrPC.

16. In the result, the appeal is allowed in part. While acquitting the appellants of the charge under Section 302/34 of IPC, they are held guilty under Section 304 Part-II/34 of IPC and are sentenced to the period already undergone by them. However, each of them shall deposit a sum of Rs.10,000/- with the concerned trial Court within six months from today, which shall be disbursed by the trial Court to PW-3 Samaribai, widow of the deceased, after due verification as compensation under Section 357 of CrPC. It is made clear that in case of default in payment of the said amount, the defaulting appellant(s) shall have to suffer additional RI for two years.

**Sd/-  
Pritinker Diwaker  
Judge**

**Sd/-  
Arvind Singh Chandel  
Judge**