

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 631 of 2009**

1. Rajesh Nishad, aged 40 years, S/o Jivrakhan Nishad, R/o Near Shiv Mandir, Purani Basti, Bhilai-3, District Durg.
2. Smt. Rambai, aged 36 years, W/o Rajesh Nishad, R/o Near Shiv Mandir, Purani Basti, Bhilai-3, District Durg.

**---- Appellants**

**Versus**

- The State Of Chhattisgarh, Incharge Police Station, GRP Bhilai, District Durg.

**---- Respondent**

And

**CRA No. 57 of 2010**

- Manoj Kumar Thandi S/o Dhani Kumar Thandi R/o Near Shiv Temple Bada Puraaina Basti, Bhilai 3, Durg

**---- Appellant**

**Versus**

- The State Of Chhattisgarh, Incharge Police Station, GRP Bhilai, District Durg.

**---- Respondent**

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| For Appellants | : | Shri Kishore Bhaduri, Advocate          |
| For Respondent | : | Shri Vivek Sharma, Government Advocate. |

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

**Judgement**

**P. Diwaker, J**

**11/10/2017**

1. Since the above appeals arise out of the same judgment, they are being disposed of by this common judgment.
2. The above appeals are directed against the judgment dated 7.7.2009

passed by the 7<sup>th</sup> Additional Sessions Judge (FTC), Durg in Sessions Trial No.142/2008 convicting the accused/appellants for the offence punishable under Sections 302/34 & 323 of the Indian Penal Code (for short 'IPC') and sentencing each of them to undergo RI for life and fine of Rs.1,000/- and SI for 1 year & fine of Rs.100/- respectively.

3. In the present case name of deceased is Vinod Singh, husband of accused/appellant Rambai.
4. As per case of the prosecution, accused/appellant Rambai was married to the deceased and out of their wedlock, one son namely Dipak (PW-2) was born. It is admitted fact that the deceased was a dipsomaniac. Accused/appellant Rambai had developed illicit relation with accused/appellant Rajesh and 4-5 months prior to the incident, they started residing together after ousting the deceased and his son Deepak (PW-2) from the house. It is further case of the prosecution that in the midnight of 12.5.2008 when the deceased and his son Dipak were sleeping on a sand mount near Dump Square, all the three accused persons armed with club and stick came there, abused the deceased filthily and assaulted him by club & stick and caused injuries. They also caused injuries to Dipak (PW-2). Said Vinod Singh was admitted in the hospital where he was treated till 15.5.2008 and the treating doctor noticed following injuries;-

- Abrasion of 3x2cm in size over cheek, reddish in colour.
- Abrasion of ½ x ½ cm over left elbow, reddish in colour.
- lacerated wound of 1 x 1/3 cm, subcutaneous deep.
- diffuse swelling over left arm lower half & elbow

Looking to the condition of said Vinod Singh, he was shifted to Sector-9 Hospital, Bhilai for better treatment where he breathed his last on 17.5.2008 while undergoing treatment. Meanwhile, on 12.5.2008 report of

the incident was lodged by Dipak Sahu (PW-2) and based on which FIR under Sections 294, 323, 506(B) read with Section 34 of IPC has been registered against all the accused persons. After the death of deceased, un-numbered merg was recorded vide Ex.P-25 and thereafter numbered merg was recorded on 18.5.2008 vide Ex.P-26. Inquest on the body of deceased was conducted vide Ex.P-28. Body was sent for post-mortem examination to the District Hospital, Durg where Dr. R.K. Nayak (PW-6) conducted post-mortem examination vide Ex.P-14 and noticed following injuries;-

- Abrasion of 3x2cm in size over cheek, reddish in colour.
- Abrasion of ½ x ½ cm over left elbow, reddish in colour.
- stitched lacerated wound of 1 x 1/3 cm, subcutaneous deep.
- diffused swelling over left arm lower half & elbow

The cause of death assigned by the autopsy surgeon was shock due to septicaemia resulting from peritonitis. Statements of witnesses were recorded in the course of investigation. After the death of the deceased, the offence was converted to the one under Section 302 of IPC.

5. On completion of investigation, charge sheet against the accused/appellants was filed under Sections 294, 323, 506B, 302, 34 of IPC and accordingly the charges were framed against them by the trial Court. The prosecution in order to bring home the charges levelled against the accused persons examined 13 witnesses in all. Statements of accused were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
6. After hearing counsel for the parties, the trial Court by the impugned judgment convicted and sentenced the accused persons in the manner as described above.
7. We have heard learned counsel for the parties and perused the material

available on record including the impugned judgment.

8. Accused/appellant Rajesh in Criminal Appeal No.631/2009 is reported to have expired during the pendency of this criminal appeal and this fact has also been confirmed by the State Counsel. Accordingly, this appeal as regards appellant Rajesh stands abated and dismissed as such.
9. Mr. Bhaduri, learned counsel appearing on behalf of appellant in Criminal Appeal No.631/2009 submits that as per Ex.P-12, the deceased had not suffered any fracture or bony injuries; medical history of the deceased also disclosed that the deceased had not gone any surgical operation; the injuries suffered by the deceased were simple in nature and according to the doctor, the death occurred as a result of shock due to septicaemia following peritonitis. Thus, it is clear that the deceased had developed peritonitis and septicaemia which resulted in his death. In other words, the death of the deceased had resulted not directly from the injury sustained by him but from peritonitis and septicaemia. In these circumstances, it cannot be said that the appellants are responsible for the death of deceased or that it is a case where the deceased died due to injuries caused to him by appellants. Therefore, if the entire prosecution case is taken as it is, the appellants could be convicted under Section 323/34 IPC and not under Section 302/34 of IPC as has been done by the trial Court.
10. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that conviction of the appellants is strictly in accordance with law and there is no illegality or infirmity in the same.
11. Devraj Meshram (PW-1) is the witness of spot map (Ex.P-1).
12. Dipak Kumar (PW-2) is a child witness and son of deceased. He has been examined by the trial Court without oath after satisfying himself that the child witness was capable of understanding the duty to speak truth

and nature of queries being put to him. He has stated that on the date of incident he along with his father (deceased) was sleeping on the sand mount near Dump Square. At about 2.30 in the midnight, the accused persons came there and started assaulting his father with club. He has further stated that despite dark, he had identified all the three accused persons. He has further stated that he was assaulted in the ground whereas his father (deceased) was assaulted near the culvert. He has stated that injuries marks were present over chest, back, head etc. of his father. In the cross examination he has admitted that due to stomach ache his father (deceased) used to drink alcohol.

13. Dhannu Nag (PW-3) is the person who reached the spot after the incident had taken place. He has stated that on being asked by Dipak as to who had assaulted his father, he told the names of accused persons as the assailants.
14. Videshi Chura (PW-4) is the another person who reached the spot after the incident was over and he too was informed by Dipak (PW-2) that it is the accused persons who assaulted his father (deceased).
15. Dr. Rajkumar Nayak (PW-6) is the person who conducted post-mortem over the body of deceased and opined the cause of death as shock due to septicaemia resulting from peritonitis. According to this witness, Injury No.1, 2 & 4 were simple in nature. In the cross-examination this witness has admitted that external injuries were simple in nature and could be cured within a week. He further admitted in his cross-examination that peritonitis may also result from damage to liver of a person who is a habitual drinker. He has further admitted that on gaining consciousness, the deceased used to demand liquor and that he has been shown as 'chronic alcoholic' in Ex.P-12 i.e. indoor patient admission ticket. During the course of cross-examination, he has admitted that generally the liver

of an alcohol addict gets damaged.

16. Dr. K. Thakur (PW-8) has also stated that damage to intestines & septicaemia is possible due to excessive consumption of liquor.
17. Dr. Rajeev (PW-8) is the person who sent the intimation regarding death of deceased to the police station.
18. Varun Chhura (PW-9) did not support the prosecution case and turned hostile.
19. Bheemraj (PW-10) is the another person who witnessed the incident. According to this witness, at the time of quarrel between deceased and accused Rajesh, accused Rambai was also present there. Both the accused persons said to deceased that "*today they would not leave him*". He has further stated that on hearing cries, he went near the spot and when he tried to save the deceased, he too was assaulted by them. He somehow managed to save himself from the hands of accused persons and ran away. Next day of the incident, the accused persons threatened him by saying that if he report the incident to the police, they would kill him.
20. B.M. Paikra (PW-11) is the police person who assisted in the investigation.
21. Yogendra Pandey (PW-12) is the investigating officer who has duly supported the prosecution case.
22. Close scrutiny of the evidence on record makes it clear that on 12.5.2008 the accused/appellants had caused injuries to the deceased by club & stick. Incident was witnessed by PW-2 Deepak, who has categorically stated that it is accused/appellants who assaulted the deceased. Before recording the statement of Deepak, a child witness, the trial Judge has satisfied itself that the witness was capable to depose. It has been recorded in the deposition sheet that though the witness is of tender age but capable of understanding the questions put to him and was capable of

giving rational answers to those questions. He knew the difference between the truth and the falsehood and knew that only truth has to be deposed before the Court. He also understands the meaning of 'oath'.

Evidence of Deepak (PW-2) finds corroboration from the statement of PW-10 Bheemraj, who had also deposed that it is the accused/appellants herein who attacked and assaulted the deceased. His evidence in Court is consistent with statement made by him before the Police and supported by medical evidence also. The defence has not been able to bring anything on record to show false implication of accused/appellants by Deepak (PW-2) on account of animosity, enmity etc.

No doubt, it is well established principle of law that the testimony of the interested and related witnesses has to be carefully considered and the Court has to cautiously scrutinize the evidence and thereafter it has to come to a right conclusion. It has been also held by the Apex Court that merely because the witnesses are related and interested, their testimony cannot be discarded. Thus, it is clear that the statements of alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story, but this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. In that backdrop, if evidence of PW-2 coupled with the evidence of PW-10 is perused, there is a consistency and corroboration to the alleged incident. PW-2 is the eyewitness who had actually seen the accused persons causing injuries to the deceased and when he tried to intervene, he too was assaulted by them. Statement of PW-2 about causing injuries is duly supported by the medical evidence, as well as by the statement of PW-10 Bheemraj, another eyewitness to the incident.

Thus, we do not find any error in the findings recorded by the trial Court that Deepak (PW-2) was present at the spot and had actually seen the occurrence.

Thus, on the basis of aforesaid evidence of Deepak (PW-2), complicity of accused/appellants in commission of the offence stands proved beyond reasonable doubt.

23. Next question that comes up for our consideration is what is the nature of the offence that appellants have committed?

24. Accused/appellants have admittedly not caused injury on any vital part of the body of deceased and the injuries caused were simple in nature, which is also evident from the medical evidence. The doctor (PW-6) who conducted autopsy on the body of the deceased has opined that cause of death was shock due to septicaemia resulting from peritonitis. This witness has also admitted in his cross examination that Injury Nos.1, 2 & 4 are not sufficient to cause death of the deceased and likewise, Injury No.3 being fracture was also simple in nature. He admitted in his cross-examination that peritonitis may result from damage to liver of a person who is a chronic alcoholic.

A thin layer of issue covering the inside of abdomen and most of its organs called the peritoneum. Peritonitis is inflammation of the peritoneum. The inflammation is usually the result of fungal or bacterial infection caused by an abdominal injury. In 'A companion in Surgical Studies' by Ian Aird, 2nd Edition Page 762, the reasons for developing peritonitis are given as under:

- directly from an abdominal wound;
- from a supportive process in one of the intra peritoneal viscera (as in appendicitis).
- after operation upon a hollow abdominal viscus with an infected

content;

- by blood infection;
- rarely by downward lymphatic infection from the pleura;
- by direct spread along the female genital tract from the exterior.

Here in this case, admittedly the deceased was a dipsomaniac and was suffering from pain in abdomen, as stated by Dipak (PW-2), son of deceased, which is one of the symptoms of peritonitis. Medical history of the deceased reflects that he had not gone any surgical operation. Any cut injury was not noticed on the stomach of deceased. Therefore it cannot be said that internal organs like kidney or intestines are injured and toxic matter enters the peritoneal cavity and the death follows. This shows that the injuries inflicted upon the deceased would not result in peritonitis. Therefore, the death of the deceased is not directly attributable to the injuries caused by the appellant and it can be safely held that the same took place on account of any supervening or extraneous reason other than the injuries inflicted by the appellants, may be due to damage of liver on account of regular consumption of liquor by the deceased, as admitted by the autopsy surgeon during the course of cross-examination that generally the liver of an alcohol addict gets damaged which could result in peritonitis. In other words, the immediate cause of death was peritonitis not caused due to the injuries sustained by deceased and if it had not intervened, it might be there was a chance of survival of the deceased.

25. Thus, on overall scrutiny of the facts and circumstances of the case coupled with the opinion of the autopsy surgeon, we are of the view that the offence would be one punishable under Section 323 read with Section 34 IPC and not under Section 302/34 of IPC as has been done by the trial Court.

26. Accordingly, both the appeals are partly allowed. While acquitting the appellants of the charge under Section 302/34 IPC, they are convicted under Section 323/34 of IPC for voluntarily causing hurts to deceased and sentenced to undergo RI for 1 year. However, their conviction and sentence under Section 323/34 IPC for voluntarily causing hurts to injured Deepak (PW-2) are hereby maintained.

27. The appellants are reported to be on bail. Since the appellants have already suffered rigorous imprisonment of one year, they need not surrender. Their bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)  
Judge

Sd/-

(RP Sharma)  
Judge

roshan/-