

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 682 of 2001

- Mangal Prasad Yadav, S/o. Shri Janaki Prasad, Aged about 45 years, resident of Village Kote, P.S. Batauli, District Surguja (CG)

---- Appellant

Versus

- State Of C.G.

---- Respondent

For Appellant	: Shri Manoj Mishra, Advocate
For Respondent/State	: Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgement on Board

20/11/2017

This appeal arises out of the judgment and order dated 11.07.01 passed by the Sessions Judge, Ambikapur in Sessions Trial No. 390/2000 convicting the accused/appellant under Section 325 IPC and sentencing him to undergo RI for three years.

2. As per prosecution case, deceased Bodhan stood as guarantor in purchasing the tractor by the accused persons who are father and son. The pass book (*rin pustika*) of the deceased was deposited with the bank however subsequently deceased was in need of the said pass book as he wanted to purchase manure and he requested the accused persons to return the same. It is said that on repeated demand being raised by the deceased, appellants were annoyed with him and on 05.08.00 when the deceased was working in his field accused/appellant along with his son went there quarreled with him and at first gave a club

blow on his chest with hand and fist and then assaulted him with club on his legs causing number of injuries to him. On the report lodged by Bodhan entry was made in the *rojnamcha sanha* Ex.P-6 on 05.08.2000 at 10.30 p.m. On the same day injured Bodhan was medically examined by Dr. G. R. Kurre (PW-8) and he advised for X-ray of tibia and fibula of right limb and referred to District Hospital Ambikapur. On 21.08.00 X-ray of injured Bodhan was done by Dr.M.K.Jain and as per Ex. P-4 (report) and Ex. P-5 X-ray plate, there was fracture of right tibia and fibula. After receiving the X-ray report on the basis of *sanha*, FIR (Ex.P-8) was registered against the accused persons on 22.08.00 under Section 325/34 IPC. During treatment, due to increased risk of infection gangrene developed on the injuries sustained by him on the leg and resultantly on 26.09.2000 he died. On the same day itself merger intimation Ex.P-1 was recorded. Postmortem on the body of deceased was conducted by Dr. Roop Singh Parihar (PW-9) vide Ex.P-14 on 26.09.2000 and according to him deceased died of syncope due to cardiac arrest caused by increased risk of infection, gangrene developed in right leg and death was homicidal in nature. After filing of the charge sheet, trial Judge has framed charge against the accused persons under Section 302/34 IPC.

3. So as to hold the accused persons guilty, the prosecution has examined 9 witnesses. Statement of the accused were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded their innocence and false implication in the case.

4. By the judgment impugned the Court below has acquitted accused No.2 Kisun Ram of all the offences whereas the present

appellant has also been acquitted under Section 302 IPC but has convicted and sentenced him under Section 325 IPC. Hence this appeal.

5. Contention of counsel for the appellant is that

i) even if the entire prosecution case is taken as it is, offence under Section 325 IPC is not made out against the appellant.

ii) had proper medical treatment would have been taken by the deceased, he would not have died and it appears that due to lack of the same, he died.

iii) the deceased died on account of increased risk of infection on the injuries gangrene developed and had he remained in the hospital he would have survived.

iv) that the eyewitnesses are interested witnesses and therefore they ought to have been disbelieved.

v) that the incident occurred in the year 2000, now 17 years have expired and therefore no needful purpose would be served in sending him back to jail. He submits that the appellant has already remained in jail for about 38 days, he may be sentenced to the period already undergone by him.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the court below has already taken a lenient view by convicting the appellant under Section 325 IPC and by acquitting him under Section 302 IPC.

7. Heard counsel for the appellant and perused the evidence available on record.

8. Mulo Bai (PW-1) has stated that on the date of incident, when she was working in the field and deceased was also in his field, accused/appellant and his son came to the field, quarrelled with him and then assaulted the deceased with club and caused number of injuries as a result of which he sustained injury on his right leg. She has stated that thereafter accused ran away from the spot. In cross-examination she remained firm. Basanti Bai (PW-3) is also eyewitness to the incident while supporting the prosecution case has categorically stated that accused/appellant reached the place of occurrence carrying axe in his hand and then he caused injury on the body of deceased with club whereas acquitted accused assaulted him with hand. In cross-examination she also remained firm. Nan Bai (PW-2) wife of the deceased is a hearsay witness. Chandeshwar (PW-4) has stated that after coming to know about the incident when he came to the place of occurrence, deceased was lying in injured condition and he noticed fracture on his leg and then he lifted him to the police station where FIR was lodged and upon being asked by him deceased made oral dying declaration before him that it is the appellant who caused him injury. Suresh Kumar Gupta (PW-5) is a witness to seizure of bicycle. Dr. M.K.Jain (PW-6) is the radiologist who conducted X-ray Ex.P-4 and the X-ray plate is Ex.P-5. C.D.Lehare (PW-7) is the Investigating Officer. Dr.G. R. Kurre (PW-8) is the Assistant Surgeon who had medically examined the deceased vide Ex.P-7 when he was brought to hospital. Dr. Roop Singh Parihar (PW-9) is the autopsy surgeon who conducted postmortem (Ex.P-14) and according to him deceased died of syncope due to cardiac arrest caused by increased risk of infection, gangrene developed in right leg and death was homicidal in nature.

9. Close scrutiny of the evidence makes it clear that on 05.08.2000

it is the appellant who caused injury to the deceased. PW-1 and PW-3 are the eyewitnesses to the incident who have duly supported the prosecution case. Most importantly on the report of the deceased *rojnamchaha sanha* ex.P-6 was recorded and after the death of deceased this can be treated as his dying declaration. The oral dying declaration made by the deceased before Chandeshwar (PW-4) who too has supported the prosecution case. Thus the complicity of the appellant in the commission of the offence has been proved by the prosecution.

10. The question which arises for consideration before us is as to what would be the appropriate sentence to be imposed on the appellant.

11. Undisputedly, the incident occurred as the accused persons were annoyed with the deceased who stood as guarantor when the accused persons had purchased the tractor and on his repeated request to return the pass-book deposited with the bank, appellant along with his son went to the field and assaulted him and caused injuries however due to increased risk of infection, gangrene developed on the injuries and he died. Considering the nature of injury caused by the appellant to the deceased and further considering the medical report Ex.P-4 and P-5, trial court was fully justified in convicting the appellant under Section 325 IPC.

12. So far as the sentence imposed upon the appellant is concerned, considering the fact that the incident occurred about 17 years back, appellant is now aged about 62 years, has already remained in jail for about 38 days, ends of justice would be served if the appellant is sentenced to undergo RI for one year from that of three years.

13. However he is imposed with fine of Rs. 10,000/- which is to be deposited before the trial court within six months and the same shall be disbursed to the wife of the deceased. If he fails to deposit the fine amount within six months he shall undergo the entire sentence of three years. Accused/appellant is on bail. He be sent to jail to undergo the remaining part of the sentence imposed on him.

14. In the result, the appeal is partly allowed.

Sd/-

(Pritinker Diwaker)
Judge