

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1027 of 2008

1. Phoolsai aged about 51 years, son of Doulatram Satnami
2. Chitragupt aged about 19 years, son of Phoolsai
3. Chitra Sagar aged about 18 years son of Phoolsai

All residents of Godi, PS Balco Nagar, Korba, CG

---- Appellants

Versus

1. State of Chhattisgarh through Police Station Balco, Korba, CG

---- Respondent

For Appellants	:	Shri Yogeshwar Sharma, Advocate
For Respondent/State	:	Shri Avinash K. Mishra, PL

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

Judgment on Board by Pritinker Diwaker, J

04/04/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 18.09.2008 passed by the Additional Sessions Judge (FTC) Korba, in Sessions Trial No. 19/2007 convicting the accused/appellants under Sections 302 and 324 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 5000/- u/s 302 and rigorous imprisonment for one year with fine of Rs. 1000/- u/s 324 IPC, plus default stipulations.

2. Case of the prosecution in brief is that accused/appellant Phoolsai had borrowed Rs. 20,000/- from his brother Doojeram (PW-10) but returned to him Rs. 15,000/- only. When Doojeram made demand of the remaining amount of Rs. 5,000/-, accused Phoolsai refused to give the same saying that unless partition of the house

which is unauthorizedly in possession of Doojeram was made properly, the remaining amount would not be given back. Further case of the prosecution is that on 5.12.2006 at about 7 PM when Doojeram was returning from the shop of Manoj Kumar and by the time he had reached the house of some D.S. Deheria, he saw the accused/appellants and the juvenile accused Tetku standing there carrying *lathis*, and on seeing him they abused and asked him to stop. On account of fear, Doojeram sat down in the veranda of D.S. Deharia and at that point of time son of Doojeram namely Laxminarayan also came there and on seeing him the accused persons further started abusing and assaulting him with clubs. In the said incident, Laxminarayan suffered head injury and fell down on the ground. On seeing this, when Doojeram tried to intervene, all the accused persons abused and assaulted him too with club causing number of injuries on various parts of his body. It is further alleged that on account of the injuries suffered by him he fell down, and thereafter the accused persons ran away. Laxminarayan and Doojeram were then taken to hospital. Laxminarayan was medically examined by Dr. M.S. Paul (PW-4) who gave his report Ex. P-5. FIR Ex.P-15 was registered on 6.12.2006 at the instance of Doojeram (PW-10) for the offences under Sections 341, 294, 506-B, 323, 34 IPC. However, on 29.12.2006 i.e. 22 days after the incident injured Laxminarayan died in the hospital at Raipur while taking treatment. On the basis of information received from the hospital, *merg* Ex. P-23 was recorded on 29.12.2006 and after inquest Ex. P-17, body of the deceased was sent for postmortem examination which was conducted by Dr. Shivnarayan Manjhi (PW-9) who gave his report Ex. P-14. After completion of investigation, *challan* was laid by the police against all the accused persons under Sections 341, 294,

506-B, 323, 34, 302 IPC. Trial Court however framed the charge against the three accused persons under sections 302, 324 and 506-B IPC whereas the juvenile accused Mrityunjay alias Tetku has been tried separately by the Juvenile Justice Board.

3. To hold the accused/appellants guilty, prosecution has examined 15 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied the allegations made against them and pleaded their innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellants as detailed in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submits as under:

(i) That the accused/appellants have been convicted solely on the basis of statement of Doojeram (PW-10) which is not reliable at all because though he too is said to have suffered injury in the incident, there is no medical report on record in respect of him and therefore, his version gets falsified and loses reliability as a whole.

(ii) That there are material contradictions and omissions in the statement of Doojeram as somewhere he has stated that he did not lodge the report in the police station but the police itself came to the hospital for recording his statement whereas according to the case of the prosecution the report was lodged by Doojeram himself.

(iii) That according to Doojeram the report was lodged by his son Jageshwar (PW-11) but in his statement Jageshwar has stated that the report was lodged by Doojeram.

(iv) That when the report itself has not been proved, question of involvement of the accused/appellants in the crime in question does not arise.

(v) That the deceased could have suffered injuries because of fall and this fact has been admitted by the autopsy surgeon.

(vi) That at the time of incident there was plaster in the right leg of accused Phoolsai and therefore, question of his participation in the incident does not arise.

(vii) That deceased died 22 days after the incident which had occurred on account of sudden provocation and therefore, even if the entire case of the prosecution is taken as it is, the accused/appellants cannot be convicted under Section 302 and at best their act would fall under Section 304 (Part-II) IPC.

(viii) That accused/appellants Chitragupt and Chitrasagar have already remained in jail for more than 5 years and therefore, they be sentenced to the period already undergone after convicting them under Section 304 (Part-II) IPC.

(ix) That accused/appellant Phoolsai - the father of accused/appellants Chitragupt and Chitrasagar, has also remained in jail for more than a year and therefore, considering his old age, he may also be sentenced to the period already undergone by convicting him under Section 304-II IPC.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the Court below has been justified in recording the conviction on the basis of material available on record and there is no infirmity in the same. He submits that the minor contradictions, if any, in the statement of

Doojeram (PW-10) are required to be ignored as being a rustic villager he cannot be expected to know the legal fine art while deposing the things. According to the State counsel, even if this witness has stated that he did not lodge the report, the fact remains that FIR was duly lodged under his signature, and whether it was registered in the hospital or in the police station, hardly makes any difference particularly when he has categorically stated that deceased was assaulted by the accused persons. State counsel submits that looking to the act of the accused/appellants, their intention of committing the murder of the deceased can very well be gathered. State counsel thus submits that the conclusion drawn by the Court below holding them guilty for commission of murder of the deceased is fully justified.

7. Heard counsel for the parties and perused the material on record.

8. Doojeram (PW-10) – the sole eyewitness to the incident has duly supported the case of the prosecution stating that accused/appellant Phoolsai was his brother whereas accused/appellants namely Chitragupt and Chitra Sagar are his nephews. According to this witness, there was no previous quarrel between him and the accused/appellants. He has stated that earlier accused/appellant Phoolsai had taken Rs. 20,000/- from him but had returned only Rs. 15,000/- and 8 days prior to the incident when he demanded back the remaining amount of Rs. 5000/-, he had told him that he would pay the said amount only after the partition of the house which was in his (this witness) possession. On the date of incident at about 7 PM when he was sitting in the house of one D.S. Deharia, his son Laxminarayan came there and on seeing him the accused persons reached there and caused club

injuries to him. This witness has further stated that when he came forward to intervene in the matter, accused persons assaulted him also. He has stated that after being assaulted, he had fallen down and become unconscious. Thereafter, he and his son Laxminarayan were taken to hospital at Korba where he remained under treatment but looking to the condition of his son Laxminarayan he was shifted to Raipur where he died during treatment. According to this witness, the report was lodged by his another son Jageshwar. He has further stated that he did not go the police station and his statement was recorded by the police in the hospital and he had put his signatures thereon. This witness has stated that when the FIR was shown to him, he has admitted his signature thereon. He has stated that on account of being illiterate he cannot tell as to on which paper he had put his signature. In paragraph No. 12 he has stated that the report was reduced to writing when the police had come to his house. In his cross-examination except some minor contradictions he remained firm regarding the assault made by the accused persons to him and also to his son. It is relevant to mention here that though this witness is a rustic villager but even then he has been subjected to lengthy cross-examination. However, if his overall statement is seen, it becomes apparent that on material particulars he had been very firm regarding the assault made to him and his son. Dr. Shivnarayan Manjhi (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-14 stating that there was black, dried wound on right parietal region and surgically stitched wound. While answering the query as to how many injuries were noticed by him on the head of the deceased, he has stated that as the injuries were spread throughout the head he could not tell with

certainty about the number of injuries. He however has stated that the injuries could have been suffered on account of fall twice. Cause of death, according to this witness, was cardio-respiratory failure as a result of head injury and its complications. Dr. M.S. Paul (PW-4) is the witness who first treated Laxminarayan in the hospital at Korba and noticed following injuries on his body:

- (I) Swelling of upper eyelid, blood was present;
- (ii) Lacerated wound over fronto-temporal area 1 x 1½ x 1¼ inch. These injuries could be caused by hard and blunt object.

It is relevant to note that Doojeram (PW-10) is also said to have suffered injuries but there is no medical report on record pertaining to him.

Durga Prasad Miri (PW-1), D.S. Deharia (PW-2) - the eyewitnesses to the incident, Shyamlal (PW-3) - the witness to seizure made under Ex. P-1 and P-2, Gendram Tandon (PW-6) and Bhuvanlal (PW-7) have not supported the case of prosecution and have been declared hostile. A.S. Painkra (PW-8), Nandan Singh (PW-13) and M.R. Nirmal (PW-14) are the Police Sub Inspectors who assisted in the investigation. Jageshwar (PW-11) - the son of Doojeram (PW-10) has stated that the report was recorded by the police in the Hospital at Korba at the instance of his father Doojeram. Shanti Bai (PW-12) - the wife of Doojeram is said to have reached the spot after the incident. Prakash Kumar (PW-15) - the witness to seizure has not supported the case of the prosecution.

9. Having heard the contentions put-forth by the rival parties patiently and perused the evidence of the witnesses carefully this Court has arrived at the conclusion that on 5.12.2006 it is the accused/appellants herein along with one juvenile accused dealt

two *lathi* blows to Laxminarayan which led to his death in the hospital when he was taking treatment. Initially, many claimed to be the eyewitnesses to the incident but by and by almost all showed their back to the prosecution and chose to turn hostile. Doojeram (PW-10) one of the eyewitnesses has, however, supported the case of the prosecution giving a graphic description of the manner in which the accused persons came across and started assaulting Laxmiarayan with club, amid abuses. Statement of this witness is such that no other incriminating material needs to be looked for. Of course, there are minor contradictions in his statement as to where and by whom the report was lodged but since the existence of such report under his signature that too containing the details regarding occurrence, is not in dispute, all such trivial technicalities should not receive that much attention. In these circumstances, complicity of the accused/appellants in the crime in question where Laxminarayan suffered number of injuries on various parts of the body including head and ultimately succumbed to the same, may be after 22 days while taking treatment, is established beyond doubt.

10. Now under which Section – whether 302, 304 (Part-I) or 304 (Part-II), the accused/appellants can be held guilty, would be the next question to be decided. Material collected by the prosecution indicates that accused/appellant Phoolsai had borrowed Rs. 20,000/- from his brother Doojeram (PW-10) but returned to him Rs. 15,000/- only. When Doojeram made demand of the remaining amount of Rs. 5,000/-, accused Phoolsai refused to give the same saying that unless and until partition of the house which was unauthorizedly in possession of Doojeram was made properly, the remaining amount would not be given back. This appears to be all

what led to the occurrence where Laxminarayan suffered club blows and succumbed to the same 22 days after the incident while taking medical treatment in the hospital at Raipur. Thus it is apparent from the evidence on record that the incident took place on account of some trivial issue involving scanty money transaction between the parties which eventually made the accused persons lose temper and fall in fury culminating into the assault. There does not appear any premeditation on the part of the accused/appellants to chalk out an evil design against the deceased and then execute the same in a pre-planned manner. More importantly, there is evidence of the doctor conducting postmortem examination to the effect that the deceased had sustained only two injuries and remained alive for a period of 22 days. This also indicates that while inflicting club injuries to the deceased the accused persons, four in number, had no prior intention to do away with him, rather they just wanted to assuage their emotional turmoil as Doojeram was in an unauthorized possession of a house and instead of settling the same he was persistently raising the demand of outstanding amount of Rs. 5,000/-. Act of the accused/appellants, therefore, does not make them liable for conviction under Section 302 IPC and at the most they can be held guilty under Section 304 (Part-II) IPC.

11. In view of the aforesaid factual backdrop of the case, this Court is of the considered opinion that the findings recorded by the Court below convicting the accused/appellants under Section 302 IPC are not based on proper appreciation of the evidence on record and being so they are hereby set aside. However, looking to the fact that the accused/appellants caused injuries to the deceased, may be two in number, which he succumbed to while taking

treatment in the hospital 22 days thereafter, they are bound to be convicted under Section 304 (Part-II) IPC. We hereby do so. Having thus been convicted under Section 304 (Part-II), the accused/appellants are sentenced to undergo rigorous imprisonment for seven years and pay the fine amount as has been slapped by the Court below.

12. As regards conviction of the accused/appellants under Section 324 IPC, in the absence of any medical examination report in respect of Doojeram (PW-10) who too is alleged to have sustained some injuries, the same is hereby set aside and they are acquitted of the said charge.

13. Accused/appellants are reported to be on bail. Their bail stands cancelled and they are directed to be put behind the bars forthwith for completing the sentence so imposed.

14. Appeal allowed in part.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge