

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 404 of 2012

1. Roopsingh Majhi, son of Kunjal Majhi, aged 30 years.
2. Kunwar Singh Markam S/o Arjun Markam, aged 45 years.

Both Residents of Village Kodomali, P.S. Mainpur, Distt. Raipur C.G.

---- Appellants (In Jail)

Versus

- The State Of Chhattisgarh, through Police Station Mainpur, District Raipur (CG)

---- Respondent

For Appellants	:	Shri P.L. Swarnkar, Advocate
For Respondent	:	Smt. Madhunisha Singh, Panel Lawyer

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

Judgment On Board

Per P. Diwaker, J

03/07/2017

1. Present appeal is directed against the judgment dated 29.2.2012 passed by the Additional Sessions Judge, Gariyabandh in Sessions Trial No.32/2011 convicting the accused/appellants for the offence punishable under Section 302/34 of the Indian Penal Code (for short 'IPC') and sentencing each of them to undergo RI for life and fine of Rs.100/-, in default to undergo SI for 5 days.
2. As per case of the prosecution, on 21.3.2011 at about 5.00 a.m. in the morning there was a scuffle between the appellants and Sop Singh (since deceased) and it is alleged that both the accused/appellants after knocking the deceased down gave beating to him by hands & fists which resulted into his instantaneous death. Further case of the prosecution is

that at the time of incident both the accused/appellants and the deceased had consumed liquor. As the distance between the police station and the village where the incident had taken place is more than 48 kilometer, FIR (Ex.P-8) was lodged on 22.3.2011 at 5.05 p.m. by Smt. Siya Bai (PW-1). Inquest on the body of deceased was conducted on 23.3.2011 vide Ex.P-1. Body of the deceased was sent for post-mortem examination which was conducted by Dr. R.K. Shrimali (PW-11) and he noticed fracture in left temporal bone & 4th 5th & 6th ribs; echomatic patch of 8"x6" on the chest & abdomen, lacerated wound of 1 x 0.5"x deep to cranium, lateral to left arbitral region. The cause of death assigned by the autopsy surgeon was shock due to injury to vital organs and the death was homicidal in nature. Statements of witnesses were recorded in the course of investigation.

3. After investigation, charge sheet against the accused/appellants was filed under Section 302/34 IPC and accordingly the charge was framed against them by the trial Court. The prosecution in order to bring home the charge levelled against the accused examined 12 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.
4. After hearing counsel for the parties, the trial Court by the impugned judgment convicted and sentenced the accused/appellants in the manner as described above.
5. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
6. Counsel for the appellant submits that in the facts of the present case the appellants could be convicted under Section 325/34 IPC but in no circumstances they could be convicted under Section 302/34 IPC because there was no intention to cause death of deceased on the part of the appellants nor such a knowledge can be so attributed to them. He further

submits that the appellants are in in jail for the last more than 6 years & 3 months, therefore, while converting their conviction under section 325/34 IPC, they may be sentenced to the period already undergone by them.

7. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that the manner in which the victim has been assaulted, the intention on the part of the appellant to cause his death is writ large.
8. Smt. Siya Bai (PW-1), wife of the deceased, is the eye-witness of incident and lodger of FIR (Ex.P-8). She has stated that house of accused/appellants is situated near her house. On the previous night of the incident an altercation took place between the accused/appellants and her husband. Next morning at 5 a.m. the accused/appellants assaulted her husband (deceased) near her house by hands and fists as a result of he died on the spot. She has further stated that she went to the police station and lodged report of the incident. In the cross-examination she has admitted that report was lodged by her at the instance of Kotwar and that there was no previous enmity between the accused and her husband.
9. Sudharam (PW-2) is the witness of Inquest (Ex.P-1), however, he did not support the prosecution case and turned hostile.
10. Ram Singh (PW-3) is the hear-say witness to whom incident was disclosed by PW-1, however, he did not support the prosecution case and turned hostile.
11. Lahar Singh (PW-4) has been though cited as eyewitness to the incident and he has stated also that hearing commotion when he came out of the house of his sister-in-law Siya Bai, he saw the accused persons assaulted the deceased by stick. However, this witness has been declared hostile by the prosecution.
12. Laharam (PW-5) did not support the prosecution case and turned hostile.

13. Kishore Kumar Bakod (PW-6) is the Patwari who prepared the spot map of Ex.P-6.
14. S.R. Netam (PW-7), Dhaneshwar Dhruw (PW-8) & Kamal Singh (PW-9) are the police persons who helped in the investigation.
15. Dr. R.K. Shrimali (PW-11) is the person who had conducted post-mortem examination over the body of deceased and noticed the injuries as described above. According to this witness, the cause of death was shock due to injuries on vital organs and death was homicidal in nature.
16. Bhusan Ekka (PW-12) is the investigating officer who has duly supported the prosecution case.
17. Close scrutiny of the evidence on record makes it clear that on 21.3.2011 the accused/appellants had caused grievous injuries to the deceased by hands and fists which resulted in his death on the spot itself. Incident was witnessed by PW-1 Siya Bai, who has categorically stated that it is accused/appellants who assaulted the deceased by hands and fists. Her version also gets support from the medical evidence, according to which, the cause of death of deceased was shock due to injuries to vital organs by hard and blunt object. The defence has not been able to bring anything on record to show false implication of accused/appellants by PW-1 Siya Bai on account of animosity, enmity etc. Thus, on the basis of aforesaid evidence, complicity of accused/appellants in commission of the offence stands proved beyond reasonable doubt.
18. Now the question to be considered by this Court is whether the act of accused/appellants makes them liable to be convicted under Section 325/34 IPC?
19. In **Parusuraman @ Velladurai & ors v. State of Tamil Nadu** reported in **AIR 1993 SC 141** the Hon'ble Supreme Court has held thus:-

“Thirteen external injuries were found on the dead body of

the deceased. Out of these 11 were on lower legs and arms. The intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of [Section 325, I.P.C.](#) Keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the offence committed by the appellants comes within the mischief of [Section 325](#) read with 34, [I.P.C.](#) and convicted them under [Section 325, I.P.C.](#) read with [Section 34, I.P.C.](#) imposing the sentence of imprisonment already undergone by them, and the sentence of Rs. 7,000 each as fine, to be deposited before the Trial Court, within four months, which be paid to the father/mother of deceased.”

20. In **Chaku Khadia v. State of Orissa** reported in **2007 Cri.L.J. 4472 (Ori.)**

the Hon'ble Supreme Court has held thus:-

9. In the instant case, admittedly the appellants while assaulting the deceased used no lethal weapon. P. Ws. 1,2,4 and 5 in their evidence stated about the dealing of fist blows and slaps by the accused persons. Only P. Ws. 1 and 5 stated about the lathi blows. Law is well settled that merely because death has been caused, intention or knowledge on the part of the accused cannot be assumed. The degree of guilt of the accused is not to be extended beyond what he had intended or known as the probable consequence of his act. In the absence of intention or knowledge, the offence committed may be one of causing grievous hurt or simple hurt, as the case may be. Therefore, basing upon the evidence of P. Ws. 1, 2, 4 and 5 coupled with the injuries

sustained by the deceased, it can safely be concluded that the prosecution has made out a case under [Section 325/34](#) IPC against the appellants and the trial Court has rightly convicted and sentenced them under the said section.”

21. From a bare reading of above it is clear that merely because the death has been caused, intention or knowledge on the part of the accused cannot be assumed. The degree of guilt of the accused is not to be extended beyond what he had intended or known as the probable consequence of his act. In the absence of intention or knowledge, the offence committed may be one of causing grievous hurt or simple hurt, as the case may be.
22. In the instant case, the accused/appellants have admittedly not used any kind of weapon while assaulting the deceased. PW-1 Siya Bai has also stated about the dealing of fists blows and kicks by the accused persons. In the absence of user of any dangerous weapon which would normally be used in such a situation where there is an intention to cause death a person, it can be safely inferred from the evidence that the accused/appellants had shared a common intention of causing only grievous hurt by hands & fists. Nature of injuries caused by the accused/appellants also shows that there was no intention to kill nor was it possible to infer that any of accused/appellants had the knowledge that by fisting & kicking someone, they are likely to cause such an injury which is so imminently dangerous that it must in all probability cause death. Therefore, the offence committed by the accused/appellant comes within the parameters of Section 325/34 IPC and not under Section 302/34 IPC as has been done by the trial Court.
23. As regards the sentence, considering the fact that there was no previous enmity between the appellants & the deceased, the incident took place all

of a sudden and the appellants are in jail for the last more than six years, this Court is of the view that it will be in the interest of justice to sentence the appellants to the period already undergone by them.

24. Accordingly, the appeal is partly allowed. While acquitting the appellants of the charge under Section 302/34 IPC, they are held guilty under Section 325/34 IPC and sentenced to the period already undergone by them. The appellants are reported to be in jail. They be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan/-