

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 561 of 2010

- Ram Singh, S/o. Chakradhar Baghel, 26 years, R/o. Village Asna, P.S. Jagdalpur, District Bastar (CG)
- Manish Rathore @ Chotu, S/o. Narendra Rathore, R/o. Thakur Road, Jagdalpur district Bastar (CG)

---- Appellants

Versus

- State Of Chhattisgarh, Through Police Station Jagdalpur, District Bastar

---- Respondent

CRA No. 441 of 2010

- Surendra Nath Panigrahi S/o Brahmanand Panigrahi, Age 27 years, Caste Brahmin, Profession Job in Kirana Store, R/o Vill. Dongaghat, Ps Jagdalpur, Bastar

---- Appellant

Versus

- State Of Chhattisgarh, Through Police Station Jagdalpur, District Bastar

---- Respondent

For Appellants	:	Shri Wasim Miyan and Shri Alok Dewangan, Advocates
For Respondent/State	:	Shri Neeraj Mehta, P.L.

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

Judgement on Board by Pritinker Diwaker J.

18/09/2017

As these two appeals arise out of the judgment and order dated 07.06.2010 passed by the Sessions Judge (Atrocities), Bastar

Jagdalpur in Sessions Trial No.187/2006 convicting the accused/appellant No.1 in Cr. A. No. 561/2010 under Sections 294, 323 and 302/34 IPC and sentencing him to undergo RI for 3 months u/s. 294; to undergo RI for 6 months u/s. 323 and to undergo imprisonment for life u/s. 302 and pay fine of Rs. 5,000/-; whereas convicting the accused/appellant No.2 under Sections 323 and 302/34 IPC and sentencing him to undergo RI for 6 months u/s. 323 and to undergo imprisonment for life u/s. 302 whereas convicting accused/appellant in Cr.A. No. 441/2010 under Sections 302/34 and 323 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 5,000/- u/s. 302 and to undergo RI for 6 months u/s. 323 IPC with default stipulations, they are being disposed of by this common judgment.

2. As per prosecution case, on 04.05.08, FIR Ex.P-24 was lodged by Santosh Pujari (PW-6) alleging that on the request of accused/appellant Ram Singh on 01.05.08, bamboo was supplied from the forest depot to Ram Singh on his rickshaw and fare of Rs.200/- was to be paid by Ram Singh. It is said that on 02.05.08 when nephew of Santosh Pujari namely Vinod had gone to collect the said amount the same was not paid and he was beaten by him with hand and fists. Thereafter in the evening when Vinod (PW-7), Balram and Kartik had gone to collect the said fare they were beaten by Ram Singh, Surendra Nath, Chhotu and one juvenile accused Bade. In the incident all the three i.e. Vinod (PW-7), Balram (not examined) and Kartik (deceased) suffered club injuries. Vinod was medically examined vide Ex.P-7 by Dr.R.B.P.Gupta (PW-1) and he found abrasion on nose, left elbow, chin, left side scapula and swelling on the left side of neck and lips. Likewise deceased Kartik was also examined by PW-1 vide Ex.P-3 and he found contusion on right scapular region, right shoulder front

region, contusion on right side of chest, abrasion and clot on frontal region, chin and deformity swelling of left arm. Based on the FIR lodged by Santosh Pujari, offence under Section 294, 506 Part II, 323 and 34 IPC was registered against three appellants and juvenile accused Bade. During treatment Kartik succumbed to his injuries in the hospital on 06.05.08. Based on this information received from the hospital medical examination Ex.P-16 was recorded on 06.05.08. Inquest on the dead body was made vide Ex.P-18 on 07.05.08 and postmortem examination was conducted by Dr. K.K.Nath (PW-12) and according to him according to him cause of death was hemorrhage and shock due to visceral injuries. On the memorandum Ex.P-20 of accused appellant Ram Singh, seizure Ex.P-21 was effected and a bamboo club was seized. On the memorandum Ex.P-8 of Manish seizure of club vide Ex.P-10 was made. On the same day memorandum Ex.P-9 of accused Surrendra was recorded and seizure of club was made vide Ex.P-11 however there is no FSL report in respect of the seized articles. After framing the charge, trial judge has framed charge against the accused/appellants under Sections 294, 506 Part II, 323, and 302/34 IPC.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 14 witnesses. Statement of the accused/appellants were recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellants is that

i) the appellants have been convicted solely on the statement of Santosh Pujari (PW-6) and Vinod (PW-7) however even if the statement of these witnesses are considered as it is, appellants Surrendra Panigrahi and Manish cannot be convicted under Section 302 IPC and at best these two appellants can be convicted under Section 323/34 IPC for causing injury to Vinod.

ii) that both Manish and Surendra Nath have already remained in jail for more than four years and therefore after converting their conviction into Section 323/34 they can be set free.

iii) in respect of accused/appellant Ram Singh it has been argued that considering the role placed by this appellant, at best he can be convicted under Section 304 Part II IPC, he has already remained in jail for more than five years and four months and therefore his sentence be reduced 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 conviction of the appellants is in accordance with law and there is no infirmity in the same. He further submits that Santosh Pujari (PW-6) and Vinod (PW-7) eyewitnesses to the incident have duly supported the prosecution case and there is no reason for this Court to disbelieve the same. He further argues that deceased made oral dying declaration before Shankar Mandavi, father of the deceased who too have supported the prosecution case.

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

8. Santosh Pujari (PW-6) is the informant and eyewitness to the incident. He has stated that on the date of incident at about 8.00 p.m. he met Ram Singh near the Kanji house and at that time he also saw Kartik who was being beaten by Ram Singh with club. He has stated that Balram (not examined) and brother of Kartik were also present there. He has stated that it is Ram Singh alone who beat Kartik. Vinod (PW-7) is the injured eyewitness to the incident and brother of the deceased has stated that on the date of incident when he was going to the house of Arjun, on the way near panchayat, he met Ram Singh and other appellants however Ram Singh abused them and at first he assaulted the elder brother of Kartik and then assaulted him and Kartik by throwing them on the bricks. Thereafter Chhotu and Bade lifted them and then one of them caused injury with club however he could not see as to who had assaulted them and then he became unconscious. He has further stated that after two days of the incident Kartik died in the hospital. In cross-examination he has stated that the incident of *maar-peeth* with him and his brother Kartik was intervened by the accused/appellant Manish and juvenile accused Bade. He has stated that accused/appellant Ram Singh, Manish and juvenile Bade had not caused any injury to him. Dr. R.B.P.Gupta (PW-1) is the doctor who medically examined Vinod (PW-7) vide Ex.P-1 and noticed abrasion on nose, left elbow, chin, left side scapula and swelling on the left side of neck and lips. He also examined Balram vide Ex.P-2 but he had not been examined. This witness has also done MLC of deceased Kartik vide Ex.P-33 and noticed following injuries:

- i) contusion on right scapular region,
- ii) right shoulder front region,
- iii) contusion on right side of chest,

- iv) abrasion and clot on frontal region,
- v) abrasion on chin
- vi) deformity swelling of left arm.

He admits that he had not clarified the nature of injuries sustained by the injured and the deceased. Surendra Nath Shrivastava (PW-5) did part of the investigation. Shankar Mandavi (PW-8) father of the deceased before whom oral dying declaration was allegedly made by the deceased has stated that he was assaulted by Ram Singh, Surendra Nath and Chhotu. Subsequently this witness has been declared hostile. He also gave query report Ex.P-24. B.N.Sharma (PW-13) is the Investigating Officer who has done the investigation. G.R.Baghel (PW-14) assisted in the investigation.

9. Close scrutiny of the evidence in particular statement of Santosh Pujari (PW-6) makes it clear that the main injury was caused to the deceased by Ram Singh and not by any other accused. So far as the injuries sustained by Vinod is concerned, it is not very clear as to who caused him injury. However the evidence reflects that appellants Manish and Surrendra caused some injuries to Vinod and Balram and as per the autopsy surgeon the main injury which was sustained by Kartik was on his abdomen and as per the witnesses, the accused persons were carrying bamboo clubs in their hand. Ram Singh is alleged to have assaulted the deceased with bamboo club. Evidence also shows that there is no premeditation on the part of the accused to commit the offence and the incident occurred in a sudden quarrel on a spur of moment in the heat of passion.

9. Taking the cumulative effect of the evidence we are of the view that the accused/appellant Ram Singh in Cr.A. No. 561/2010 is liable to be convicted for the death of the deceased Kartik. However considering

the facts and circumstances of the case as narrated above, he is liable to be convicted under Section 304 Part II and not under Section 302/34 IPC as has been done by the court below. So far as the appellants Manish Rathore in Cr.A. No. 561/2010 and Surendra Nathnath Panigrahi in Cr.A. No. 441/2010 are concerned, no specific role has been assigned to them for assaulting the deceased Kartik and therefore they cannot be convicted under Section 302/34 IPC as has been done by the court below. In fact there is no clinching evidence that these two accused have caused injuries to the deceased and considering the role played by these appellants we are of the view that they are liable to be convicted under Section 323 IPC for causing injury to Vinod and Balram. As a result of this, conviction of the appellants Surendra Nath and Manish under Section 302/34 IPC is set aside. Instead thereof they are convicted under Section 323 IPC. As the appellants have remained in jail for more than four years and therefore their sentence is reduced to the period already undergone by them. Order accordingly.

10. Accordingly, conviction and sentence awarded to the accused/appellant Ram Singh u/s. 302 IPC is set aside. Instead thereof, he is convicted under Section 304 (Part-II) IPC. As the appellant has already remained in jail for about 5 years and 4 months and also considering the fact that the incident occurred about 9 years back, we are of the view that ends of justice would be served if his sentence is reduced to the period already undergone by him. Order accordingly. Appellant Ram Singh, however would pay Rs. 5,000/- under Section 357 Cr.P.C. to the family of the victim Kartik Ram. Let this be done within six months from today. In the eventuality of depositing the said amount before the trial court the court below shall ensure for disbursing the amount to the wife of Kartik and if the wife is

not alive, to the LRs of Kartik Ram. If the appellant fails to deposit the said amount he shall undergo further jail sentence of one year. Appellants are on bail. Bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Ram Prasanna Sharma)

Judge