

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 784 of 2007**

1. Bali Ram son of Kishun Gond, aged about 40 years, resident of Bhavreli PS Saragaon, District Janjgir Champa, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Saragaon, District Janjgir Champa, Chhattisgarh.

---- Respondent

For Appellant	:	Shri F.S. Khare, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, PL

AND**CRA No. 800 of 2007**

1. Narsingh alias Narbali, son of Kishun Gond, aged about 32 years, resident of Bhavreli PS Saragaon, District Janjgir Champa, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Saragaon, District Janjgir Champa, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Yogeshwar Sharma, Advocate
For Respondents:	:	Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Judgment on Board by Pritinker Diwaker, J****11/04/2017**

As these two appeals arise out of the same judgment dated 04.08.2007 rendered by Sessions Judge, Janjgir Champa in Sessions Trial No. 58/2006 convicting the accused/appellants under Sections 302/34,

323/34 and 506 (Part-II) IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 3000/- under Section 302, pay fine of Rs. 1000/- u/s 323 and undergo rigorous imprisonment for one year u/s 506 (Part-II) IPC, plus default stipulations, they are disposed of by this common judgment.

2. As per the case of the prosecution, on 19.2.2006 at about 7 PM four persons from the deceased group namely Firangi, Firatram, Asharam and Dharmalal while returning from the Nursery started abusing each other, but the accused/appellants mistook it as if the abuses were aimed at them, they got furious and started assaulting Dharamlal (deceased) and Asharam (PW-3) with club. At 11 PM FIR (Ex.P-26) was registered at the instance of Dharamlal for the offences under Sections 294, 506-B, 323, 34 IPC and thereafter on 20.2.2006 he was medically examined by Dr. K.D. Singh (PW-5) who gave his report Ex. P-6. Injured Asharam (PW-3) was also medically examined by the same doctor vide report Ex. P-7. However, Dharamlal succumbed to the injuries on 28.2.2008 while taking treatment in the hospital. On the basis of information received from the hospital, *merg* Ex.P-15 was registered, inquest was conducted and the body was subjected to postmortem examination which was conducted by Dr. Ashutosh Tiwari (PW-16) who gave his report Ex. P-16-A. Court below framed the charge against the accused/appellants under Sections 294, 506-B, 307/34 and 302/34.

3. In order to prove its case the prosecution has examined 16 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties and going through the record the Court below has convicted the accused/appellants as mentioned in paragraph No. 1 of

this judgment.

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

- (i) that out of four eyewitnesses namely Asharam (PW-3), Siyaram Sahu (PW-4), Firangilal (PW-8) and Firturam (PW-9), it is only Firangilal who has supported the case of the prosecution, that too partially;
- (ii) that the trial Court has erred in law in treating the FIR as dying declaration of the deceased;
- (iii) that only one injury has been found on the body of deceased and it is not clear as to which of the accused has caused the same;
- (iv) that deceased succumbed the injury 9 days after the incident and therefore even if the case of the prosecution is taken as it is, accused/appellants cannot be convicted under Section 302 and at best their act may fall under Section 304 (Part-II) IPC;
- (v) that accused Baliram has remained in jail for 723 days and accused Narsingh for 880 days and therefore, if acquittal is not possible, they may be sentenced to the period already undergone after convicting them under Section 304 (Part-II) IPC; and in that event the accused/appellants would adequately compensate the family of the deceased.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that though P.Ws. 3, 4 and 9 have not supported the case of the prosecution, PW-8 has categorically stated that it is the accused/appellants who caused injuries to the deceased which resulted in his death. He submits that as the FIR was lodged by the deceased, the same has rightly been treated as his dying declaration by the Court below and that once this FIR has been proved by Budhram Baghel (PW-15), prosecution is not required to lead further evidence. State counsel thus does not see any error in the conviction of the accused/appellants

recorded by the Court below.

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

8. So called eyewitnesses - Asharam (PW-3), Siyaram Sahu (PW-4) and Firturam (PW-9) have not supported the case of the prosecution on material particulars. Assault to the deceased and the injured (PW-3) has though been supported by them but not even the one is sure about the assaulter. Firangilal (PW-8) – the other eyewitness supporting the case of the prosecution has stated that on hearing the abusive conversation between the members of the deceased party, the accused/appellants mistaking the same to be aimed at them, started assaulting Dharampal with club who on account of the blow given on head had fallen down. According to him, when Asharam (PW-3) tried to intervene, accused/appellants assaulted him also causing injuries on head and back. He has further stated that 15-17 days after the incident, Dharamlal died. Vijay Lal Singh Penkra (PW-1) is the Patwari who prepared spot map (Ex. P-1). Shiv Kumar (PW-2) is the witness to inquest notice Ex. P-2 and inquest Ex. P-3. Dr. K.D. Singh (PW-5) is the witness who medically examined Dharamlal and Asha Ram and gave reports Ex. P-6 and P-7. Medical report of Dharamlal mentions one lacerated wound on skull in the size of 3 x .5 x .5 cm caused by hard and blunt object whereas that of Asharam shows lacerated wound on forehead in the size of 3 x .5 x .5 cm and three contusions on back caused by hard and blunt object. Kumari Bai (PW-6) - the wife of the deceased is a hearsay witness. She is stated to have been informed by someone about the killing of her husband by the accused/appellants. According to her, full pant and shirt of the deceased were seized by the police and that while being taken to police station her husband was unconscious. Amardas (PW-7) is the witness to seizure of plain and blood stained soil made under Ex. P-12. J.K. Rathore (PW-10), Rahul

Tiwari (PW-12) and Ramphal Kashyap (PW-13) are the witnesses who assisted in the investigation. Ishwar Singh (PW-11) - the witness to memorandum, seizure and arrest of the accused/appellants has supported the case of the prosecution. Kushlal (PW-14) – another witness to memorandum and seizure has not supported the case of the prosecution but admitted his signature thereon. Budhram Baghel (PW-15) is the investigating officer who has duly supported the case of the prosecution. Dr. Ashutosh Tiwari (PW-16) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-16-A stating that he noticed a stitched wound on the right side of the parietal lobe, penetrating injury on inner side of left eye with bleeding and abrasion on left shoulder and contusion on lips. Cause of death, according to this witness, was extradural haemetoma due to the impact of heavy blunt object.

9. We have gone through the entire material on record including the evidence of the witnesses, which makes it clear that on 19.2.2006 at about 7 PM there was some heated conversation mixed with abuses between the two groups and in furtherance of which the accused/appellants caused club injuries on the skull of the deceased. They also inflicted injuries on the forehead of Asharam (PW-3) when he tried to intervene in the matter. Injuries suffered by Dharamlal ultimately proved fatal and resulted in his death about 09 days after the incident while taking treatment in the hospital. Though injured Asharam also suffered injury on forehead yet he was fortunate enough to survive. In this view of the matter, complicity of the accused/appellants in the crime in question is proved beyond doubt.

10. Now the next question to be decided by this Court is that under which Section the act of the accused/appellants would fall, whether under Section 302 or 304 (Part-I) or 304 (Part-II) IPC? There is evidence to show that on the date of incident after hearing the exchange of abusive words in between

the members of the deceased group, the accused/appellants mistook the same as if the said abuses were aimed at them and then caused injuries with club on the skull of Dharamlal and on the forehead of Asharam (PW-3). Dharamlal succumbed to the injuries in the hospital about 09 days after the hospitalisation but the other injured Asharam survived the same. Therefore, in these circumstances, it cannot be said that the accused/appellants had a common intention for causing the death of the deceased because the evidence of the witnesses does not reflect that there was any premeditation on their part to do so. Rather, the incident took place where the accused/appellants took the abusive language used by the members of the deceased party upon themselves and on the spur of moment opened assault on them in the heat of passion. The intensity of the single blow on the head was not as such that the deceased collapsed instantaneously but the evidence clearly says that he survived for about 09 days after the incident. Further, as per the medical evidence there is only one injury on the head of the deceased and therefore it is very difficult to say as to which of the accused caused it. Further, if really the accused/appellants were determined to commit the murder of the deceased, they could have dealt the repeated blows but they did not do that. It is also one of the mitigating circumstances in their favour. Thus considering the facts and circumstances of the case and the manner in which the incident took place, this Court is of the opinion that the act of the accused/appellants does not fall under Section 302 and at the most they can be convicted under Section 304 (Part-II) IPC.

11. Accordingly, the conviction of the accused/appellants under Section 302 IPC is set aside. However, they are convicted under Section 304 (Part-II) IPC. Further, taking into consideration the peculiar facts and circumstances of the case giving rise to the incident, they are sentenced to undergo rigorous imprisonment for five years. Appellants are however directed to pay an additional fine amount of Rs. 10,000/- each to be paid to the family of the

deceased as compensation in terms of Section 357 of the Code of Criminal Procedure. Appellants who are on bail be taken into custody forthwith and sent to jail for serving out the remaining part of the sentence imposed on them. Conviction of the accused/appellants under sections 323/34 and 506- (Part-II) IPC is however maintained.

12. If the fine amount as directed above is not deposited by the accused/appellants, they shall remain in jail for an extra period of one year.

13. Appeals thus succeed in part as above.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(RCS Samant)

Judge