

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 568 of 2012**

- Ramsingh Dhanuvar @ Kuniram son of Ramji Dhanuvar, aged about 19 years, residence Dhanuvar Para, Sothi, Police Station Bamhanidih, District Janjgir-Champa, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh, Through Police Station Champa, District Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant	:	Shri Vivek Pandey, Advocate
For Respondent/State	:	Shri Arun Sao, Dy. Advocate General

Hon'ble Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Justice Pritinker Diwaker****Order on Board****Per Pritinker Diwaker, J.****09.09.2017**

1. This appeal arises out of impugned judgment and order dated 08.05.2012 passed by the Sessions Judge, Janjgir-Champa in Sessions Trial No.135/2011 convicting the appellant under Section 302/34 of IPC sentencing him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, Section 201/34 of IPC sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.200/- and Section 323/34 of IPC sentencing him to undergo rigorous imprisonment for one year with default stipulation.
2. As per case of the prosecution, one month prior to occurrence of the present incident there was some quarrel between juvenile accused Rajkumar and PW-1 Rajendra Giri Goswami, however the matter was settled between them. It is said that on 13.11.2014, all the accused persons, PW-1 Rajendra Giri Goswami and other friends had gone towards Hathnewra in their motorcycle, on the way

the accused Ramsingh Dhanuvar and two juvenile accused after stopping their vehicle started beating PW-1 Rajendra Giri Goswami by hand and fist. It is said that deceased Dilip Giri Goswami was passing through the same place, he stopped the vehicle and intervened in the matter and further asked the accused persons as to why they are beating PW-1 Rajendra Giri Goswami. Further case of the prosecution is that leaving PW-1 Rajendra Giri Goswami, all the accused persons started beating deceased by hand and fist and they also hit him against the stone, as a result of which the deceased died. Merg intimation Ex.P-5 was recorded on 14.04.2011 at 10.30 am at the instance of PW-1 Rajendra Giri Goswami. After merg inquiry, FIR Ex.P-23 was registered against the appellant and two juvenile accused persons on 15.04.2011 under Sections 302/34. Inquest Ex.P-2 on the dead body was conducted and the body was sent for autopsy which was conducted by PW-8 Dr. Harisingh Chandel vide Ex.P-12, who noticed following injuries :

- (i) Diffuse swelling over left side of forehead 3x2 cm friction abrasion over swelling;
- (ii) 1 x 1 cm reddish friction abrasion over left maxillary prominence;
- (iii) Fracture in sternum in middle 1/3; fracture in 3rd right rib and left side flail chest multiple fractures.

Cause of death was due to shock and hemorrhage as a result of head injury, multiple fractures, visceral injuries and its complications.

3. While framing the charge, the trial Judge has framed the charge against the accused/appellant under Section 302/34, 201/34 and 323/34 of IPC. The juvenile accused have been tried separately by the Juvenile Justice Board.
4. So as to hold the accused guilty, the prosecution examined 14 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C., in which he denied the circumstances appearing against him in the prosecution

case, pleaded innocence and false implication.

5. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned above. Hence, this appeal.
6. Counsel for the appellant submits that :
 - (i) even if the case of the prosecution is taken as it is, at best the appellant can be convicted under Section 304 Part-I of the IPC;
 - (ii) the appellant and the other accused persons had no intention to commit murder of the deceased and while they were beating PW-1 Rajendra Giri Goswami to teach him some lesson, it appears that deceased Dilip Giri Goswami intervened and he too was beaten by the accused persons;
 - (iii) the accused/appellant is in jail since 18.04.2011 and conviction may be altered to Section 304 Part-I of IPC and sentence be reduced to the period already undergone.
7. On the other hand, counsel for the Respondent/State supports the judgment impugned and has argued that conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.
8. PW-1 Rajendra Giri Goswami is an eyewitness to the incident. While supporting the prosecution case, he has stated that about a month prior to the incident, he (this witness) had a quarrel with juvenile accused Rajkumar. However, subsequently, they became friend and started talking to each other. On the date of incident accused/appellant Ramsingh, juvenile accused Rajkumar came to him and offered him to go to a nearby village and then some friends gathered there. He states that the other juvenile accused also came there on motorcycles they had left for the nearby village. On the way, all the three accused persons started beating him by hand, fist and stone and at that time deceased Dilip Giri was passing through the said place and asked the

accused persons as to why they are beating this witness and then leaving him the accused person started beating the deceased. He states that he hid himself in a pit and witnessed the entire incident. He further states that after beating, the accused persons threw him in another pit and he thought the deceased might have been killed. He further states that he informed the entire incident to PW-5 Raju @ Guddu and PW-6 Raju Sabaria. In cross-examination, he remained firm and nothing could be elicited from him which may help the appellant. PW-5 Raju @ Guddu and PW-6 Raju Sabaria were informed about the incident by PW-1 Rajendra Giri Goswami, have also supported the prosecution case. PW-3 Rajesh Giri lodged merger intimation vide Ex.P-5 and he came to know about the incident from other witnesses. PW-4 Savita Goswami is a hearsay witness. PW-7 Mohan Lal Yadav is a witness to the memorandum of the accuse/appellant Ex.P-6 and seizure of stone Ex.P-7. PW-8 Dr. Harisingh Chandel conducted postmortem vide Ex.P-12. PW-9 Manoj Kumar Ambasht is the Patwari who had prepared spot map. PW-11 Rajesh Joshi, PW-12 Hetram Sidar and PW-13 Ramesh Kumar have assisted in the investigation. PW-14 Parivesh Tiwari is the investigating officer.

9. Close scrutiny of the evidence makes it clear that prior to the date of incident PW-1 Rajendra Giri Goswami had a quarrel with juvenile accused Rajkumar, however, there was some patch up between them and they again became friend. On the date of incident all the three accused persons came to PW-1 Rajendra Giri Goswami and they decided to go to a nearby village. On the way, the accused persons stopped their vehicle and started beating PW-1 Rajendra Giri Goswami. Coincidentally, the deceased Dilip Giri was passing through the said area, he intervened in the matter and asked the accused persons as to why they are beating PW-1 Rajendra Giri Goswami. The accused persons, leaving PW-1 Rajendra Giri Goswami, started beating the deceased, resulting into his unfortunate death. PW-1 Rajendra Giri Goswami, eyewitness to the

incident, has duly supported the prosecution case and immediately after the incident he narrated the entire incident to PW-5 Raju @ Guddu and PW-6 Raju Sabaria and both these two witnesses have also supported the prosecution case. Postmortem of the deceased also confirms the story of the prosecution and considering all these, the complicity of the accused/appellant in commission of the offence has been duly proved by the prosecution beyond doubt.

10. The next question which arises for consideration before this Court is as to what offence has been committed by the accused/appellant. From the evidence it appears that the accused persons had intention to beat PW-1 Rajendra Giri Goswami, but incidentally, the deceased Dilip Giri reached there, intervened in the matter, was beaten by the accused persons, resulting into his unfortunate death. Considering this evidence, the act of the accused/appellant would fall under Section 304 Part-I of IPC. As regards conviction and sentence of the appellant under Section 201/34 and 323/34 IPC, the same being based on proper appreciation of the entire evidence, ocular and medical, available on record, need no interference by this Court and are hereby affirmed.
11. Accordingly, the conviction of the accused/appellant under Section 302/34 IPC is altered to Section 304 Part-I IPC and he is sentenced to undergo rigorous imprisonment for ten years.
12. The appeal is thus partly allowed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge