

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 95 of 2013**

- Raju S/o Baldau Chandrawanshi, aged about 30 years, R/o village Lakhanpur, P.S. - Pipariya, District Kabirdham (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through – P.S. - Pipariya, District Kabirdham (C.G.)

---- Respondent

For Appellant	:	Shri Chandresh Shrivastava, Advocate.
For Respondent/State	:	Shri Adil Minhaj, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****12/07/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 09.01.2013 passed by the Sessions Judge, Kabirdham (Kawardha), in S.T. No.04/2011 convicting the accused/appellant under Sections 302, 307, 323 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.2000/-, R.I. for five years with fine of Rs.1000/-, and R.I. for six months respectively, plus default stipulation.

02. Brief facts of the case are that on 23.10.2011 at about 7.00 pm,

juvenile accused namely Manoj and Rajju came to the house of Dinesh (PW/3) on their motorcycle and started abusing him. Dinesh (PW/3) came out of the house and asked Manoj and Rajju not to use filthy language, however, both juvenile accused caught hold of Dinesh (PW/3) and started assaulting him. Upon hearing the commotion, Rajju (PW/2) reached the place of occurrence and asked juvenile Manoj and Rajju not to use such abusive language. In the meanwhile, Shivprasad (PW/1), Babuji (PW/7), Kapil (PW/8), Dilip and Jalesh also came there, intervened in the matter and during the said quarrel, juvenile accused Manoj made a call to the present appellant on his phone and called him. The accused/appellant reached the place of occurrence holding peg in his hand, at the same time, upon hearing the cries, deceased Naresh also reached the place of occurrence. The accused/appellant caused injury to deceased Naresh, who was just standing there, and thereafter he also caused injury to Rajju (PW/2) and Dinesh (PW/3). Injured Naresh was immediately taken to hospital, however, he was declared brought dead. Unnumbered merg intimation Ex.P/21 and numbered merg intimation Ex.P/21-A were recorded on 23.10.2011 itself. Thereafter, dehati nalisi Ex.P/20 was recorded at 9.50 pm and at the instance of Shiv Prasad (PW/1), at 11.35 pm, FIR Ex.P/20-A was registered against the accused/appellant and two juvenile accused namely Manoj and Rajju under Sections 302, 307, 294, 323, 506 and 34 IPC. Inquest on the body of deceased was prepared on 24.10.2011 vide Ex.P/13-A and dead body was sent for postmortem examination to Govt. Hospital, Kabirdham vide Ex.P/6-A where Dr. Aadesh Bangde (PW/4) conducted the postmortem on the

body of deceased and gave his report Ex.P/6 opining the cause of death to be coma due to head injury. The Doctor has also medically examined injured Rajju (PW/2) and Dinesh (PW/3) vide Ex.P/4 and P/5 respectively and found lacerated wound 2.4" above the right eye over frontal scalp and swelling around the right eye of Rajju (PW/2) and bruise with tenderness of 2 x 1" over right shoulder, tenderness on both side of back of chest and tenderness with swelling on nasal bone of Dinesh (PW/3). The Doctor has opined that the injuries sustained by the injured were caused by hard and blunt object. C.T. Scan report (Ex.P/25) of Rajju (PW/2) revealed fracture of head. Manoj and Rajju being juvenile were tried separately by the Juvenile Board, whereas after filing of charge sheet, the trial Court framed the charge against the accused/appellant under Sections 302, 307 read with section 34 (on two counts) and 506 (B) of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statement of the accused/appellant 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) That the case of the accused/appellant would fall under Exception 4 to Section 300 IPC. It has been submitted that he is

confining his argument to the extent that even if the entire prosecution case is taken as it is, the accused/appellant is liable to be convicted under Section 304 Part-II IPC.

(ii) That the accused/appellant is in jail since 28.10.2011, thereby has completed about 5 years and 9 months jail sentence and, therefore, after converting his conviction into Section 304 Part-II IPC, his sentence may be reduced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Shiv Prasad (PW/1) - eye-witness to the incident while supporting the prosecution has stated that he knew the accused/appellant and also the juvenile accused Manoj and Rajju. Injured Rajju, Naresh and Dinesh are his real brothers. On the date of incident, he had gone to the house of Babuji Chandrawanshi and was discussing about the thresher machine, at that time, he heard the sound of quarrel coming from Dinesh house, thereafter, he along with Babuji and Dilip went to the place of occurrence where they saw juvenile accused Rajju and Manoj assaulting his brother Dinesh with hands and fists and that they were also hurling abusive language. During the scuffle, Manoj called his brother Raju (accused/appellant) over his cell phone and in the meanwhile his (this witness) brother

Naresh also reached there, at the relevant time, accused/appellant assaulted Naresh on his head by wooden peg as a result of which he became unconscious and fell to the ground. Accused/appellant also caused injuries to his brother Rajju (PW/2) and Dinesh (PW/3). He has further stated that injured were taken to Govt. Hospital, Kawardha where Naresh was declared brought dead by the Doctor. Considering the serious condition of Rajju, he was referred to Raipur for further treatment. In cross-examination this witness remained firm and nothing could be elicited by the defence to discredit his testimony. This witness, in para 6 and 7, has admitted the fact that deceased Naresh joined the group subsequently and that scuffle was going on between the persons present. He has further admitted the fact that initially accused/appellant Raju was not there and he was called by Manoj.

09. Rajju (PW/2), Dinesh (PW/3), Babuji (PW/7), Kapil (PW/8) and Sukhdev (PW/12) are other eye-witnesses to the incident who have duly supported the prosecution case. All these witnesses have stated as to how the quarrel took place between the juvenile accused and Dinesh (PW/3) & Rajju (PW/2) and during the said quarrel, Manoj called the accused/appellant, who reached the place of occurrence after about 15 minutes, and caused single injury on the head of the deceased by wooden peg as also to Rajju (PW/2) and Dinesh (PW/3)

10. Dr. Aadesh Bangde (PW/4) is the witness who conducted postmortem on the body of deceased and gave his report Ex.P/6 noticing single lacerated wound in the size of 2.8 x 1 x 0.6" on right parietal post aspect with depressed fracture. The Doctor has opined the cause of death to be coma due to head injury. This witness has

also medically examined injured Rajju (PW/2) vide Ex.P/4 and found lacerated wound 2.4" above the right eye over frontal scalp and swelling around the right eye. He also examined injured Dinesh (PW/3) vide Ex.P/5 and found bruise with tenderness of 2 x 1" over right shoulder, tenderness on both side of back of chest and tenderness with swelling on nasal bone.

11. Dr. Amol Padegaonkar (PW/15) has proved C.T. Scan report Ex.P/25 of Rajju (PW/2) and noticed fracture on his head. Ashish Arora (PW/13) is the Investigating Officer who has duly supported the prosecution case.

12. Close scrutiny of the evidence available on record, makes it clear that on 23.10.2011 at about 7.00 pm, juvenile accused Manoj and Rajju came to the house of Dinesh (PW/3) and started abusing him. PW/3 objected to it whereupon they again started abusing him. The exchange of hot words led to a scuffle between them. Upon hearing commotion, Rajju (PW/2) also came there and asked juvenile accused not to use filthy language. In the meanwhile, Shivprasad (PW/1), Babuji (PW/7), Kapil (PW/8), Dilip and Jalesh also came there, intervened in the matter and during the said quarrel Manoj made a call to the present accused/appellant over his phone, who reached the place of occurrence and caused single injury to the deceased on his head by a wooden peg. The accused/appellant also caused injuries to Rajju (PW/2) and Dinesh (PW/3). The incident was witnessed by PW/1, PW/2, PW/3, PW/7, PW/8 and PW/12 who have duly supported the prosecution case and stated as to how the quarrel took place. According to postmortem report Ex.P/6, only one lacerated wound was

noticed on right parietal post aspect of the deceased. On opening skull, fracture on right parietal, left parietal and frontal bone was found and cause of death was coma due to head injury. The injury reports Ex.P/4 and P/5 of PW/2 and PW/3 respectively have been duly proved by PW/4. This apart, a wooden peg was seized by the prosecution at the instance of accused/appellant and as per query report Ex.P/7 given by the Doctor PW/4, the injuries found on the body of the deceased as well as on the body of injured PW/2 and PW/3 could have been caused by the said wooden peg. In these circumstances, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

13. Now the question which arises for consideration by this Court is whether in the given facts and circumstances of the case, the act of the accused/appellant makes him liable for conviction under Section 302 IPC or it is covered by any of the Exception to Section 300 IPC.

14. From the evidence it appears that initially a quarrel took place between the juvenile accused Manoj, Rajju & PW/2 and PW/3 and during quarrel Manoj made a call to the accused/appellant over his phone and called him. In the meanwhile deceased Naresh also reached there. At the relevant point of time, the accused/appellant also reached the place of occurrence and caused single injury on the head of deceased by wooden peg resulting in his death during treatment. Thus, considering the facts and circumstances of the case giving rise to the incident leading to death of the deceased, we are of the opinion that though the appellant had no intention of causing death of the deceased but taking into account the nature and extent of injury

inflicted by him on the deceased on his vital part, which led to his death, it can safely be inferred that the appellant had knowledge that the injury being inflicted by him on the deceased would result in his death. Being so his act would cover by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making him liable for conviction under Section 304 Part-II IPC. As regards the quantum of sentence, considering the fact that the appellant has already remained inside for about 5 years and 9 months, we are of the opinion that ends of justice would meet if his sentence is reduced to the period already suffered by him.

15. The other aspect that needs to be examined is whether any compensation be awarded in favour of the injured persons and bereaved family of deceased under Section 357 of the Code of Criminal Procedure, 1973.

16. The Apex Court on the decision in the matter of **Ankush Shivaji Gaikwad Vs. State of Maharashtra**¹ while elaborating the issue has held that while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise

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only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

17. In the result, the appeal is partly allowed. While maintaining the conviction of the appellant under Sections 307 and 323 IPC & sentences thereunder, conviction of the accused/appellant under Section 302 IPC is altered to Section 304 Part-II IPC and he is sentenced to the period already undergone by him.

18. This apart, the appellant to pay compensation of Rs.35,000/- to the legal heirs of deceased Naresh, Rs.15,000/- each to injured Rajju (PW/2) and Dinesh (PW/3) within three months from the receipt of copy of this judgment.

19. Appeal thus allowed in part.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge