

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 863 of 2011

- Lakeshwar @ Lekeshwar And Another S/o Umendra Kumendra Singh, Both Are R/o Village Dargaon, P.S. Baghbahara, Distt.-Mahasamund, C.G.
- Tukeswar S/o Umendra Kumendra Singh, Both Are R/o Village Dargaon, P.S. Baghbahara, Distt.-Mahasamund, C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through D.M. Mahasamund, C.G.

---- Respondent

For Appellants	: Shri Rajkumar Pali, Advocate
For Respondent/State	: Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board by Pritinker Diwaker J.

09/03/2018

This appeal arises out of judgment and order dated 19.09.2011 passed by the Second Additional Sessions Judge, Mahasamund, District Mahasamund in S.T. No. 16/2011 convicting the accused/appellant under Section 302/34 of IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 5,000/- with default stipulation.

2. As per prosecution case, on 12.11.2010 in the evening there was some quarrel between the appellants and the deceased. Said dispute was pacified by Mayaram PW-2 and it is said that both the appellants returned to their home. After about 10-15 minutes the

appellants again returned to the place of occurrence i.e. nearby to shop of the deceased and caused club injuries on the head and forehead of the deceased. The incident was witnessed by Mayaram PW-2 father of the deceased, Khileshwari PW-3 mother of the deceased, Aisram (PW-4), Ram Sai(PW-5) and Santosh (PW-7). Injured Bhuneshwar was shifted to Community Health Centre Bagbehra where his MLC was conducted vide Ex. P-21 by Dr. Vijay Pratap Singh (PW-13). In the meanwhile, FIR Ex.P-1 was lodged on 12.11.2010 at 9.00 p.m. by Shankar Lal Nishad brother of the deceased. Considering the serious condition of the injured Bhuneshwar he was shifted to Raipur however during treatment on 13.11.2010 he succumbed to his injuries at Ram Krishna Hospital, Raipur. Based on information received from the hospital unnumbered merg was recorded and thereafter numbered merg Ex.P-11 was recorded at police station Bagbehera. Inquest Ex.P-2 on the body of deceased was prepared and body was sent for postmortem examination which was conducted by Dr.S.K.Wagh (PW-14) and according to him cause of death was due to cardio respiratory failure as a result of head injury and its complication and death was homicidal in nature. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 294 and 302/34 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 14 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned,

has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is as under :

i) In the FIR lodged by Shankar Lal, initially name of accused Lakshwar was not there and after interpolation the same was added in the FIR.

ii) that as per the statement of Aisram (PW-4) Lakeshwar caused injury to the deceased by hand and fist and thus under no circumstances he can be liable for committing the murder of the deceased.

iii) that the appellants had no intention to cause death of the deceased and it appears that they simply wanted to teach him lesson and therefore caused injuries to him by hand and fist and also with club and therefore the case of the appellants would fall under exception 4 of Section 300 IPC and accordingly appellants are liable to be convicted for some lesser offence instead of Section 302/34 IPC.

iv) that there is no evidence against the appellants on which basis Section 34 can be added.

v) that though on the memorandum of the accused persons certain seizures like wooden log, club have been made but in absence of FSL report the said seizure is of no consequence.

9. On the other hand supporting the impugned judgment it has been argued by the State counsel that :

i) under no stretch of imagination case of the appellant would fall under Exception 4 of Section 300 IPC.

ii) after initial altercation the appellants went back to their house and when the deceased was leaving his shop to his house, they came again armed with *lathis* and then assaulted the deceased.

lii) that the injuries have been caused by the accused on the head and forehead of the deceased and considering the nature of injuries and the fractures on skull their conviction under Section 302/34 IPC is in accordance with law.

iv) that even when the deceased fell on the ground the appellants continued to assault him and therefore they have rightly been convicted under Section 302/34 IPC.

10. We have heard counsel for the parties and perused the record.

11. Mayaram (PW-2) is the father of the deceased. He has stated that on the date of incident between 8-9.00 p.m. he saw the accused/appellant and the deceased quarrelling and he made them understand and then the accused persons left the place. After about 10-15 minutes when his son was going towards his house accused/appellant came there armed with *lathis* and caused injuries to him. He has clarified that the dispute arose between the appellants and the accused over payment of some previous dues. In lengthy cross examination but for minor contradictions he remained firm. Khileshwari (PW-3) wife of the deceased has stated that at first the accused persons came to the shop and started abusing him in filthy language and when the matter was intervened by her father in law the appellants returned. She has stated that after about 8-10 minutes when

her husband was going towards his house for taking meals, they came carrying *lathi* and caused injuries with club. This witness also remained firm in her cross-examination. Aisram (PW-4) is the friend of the deceased and another eyewitness to the incident. He too has stated that when the deceased fell down even thereafter he was assaulted by the accused persons. In para 4 he has stated that accused Lakeshwar caused injuries to the deceased with hand and fists however if the entire statement is read, it is apparent that both the appellants caused injuries to the deceased with hand and club. Santosh (PW-7) and other eyewitnesses who have supported the prosecution case have categorically stated that after sustaining injuries when the deceased fell down he was again beaten by the accused persons. Dr. Vijay Pratap Singh (PW-14) is the doctor who conducted postmortem examination on the body of deceased vide Ex.P-21 and according to him cause of death was due to cardiorespiratory failure as a result of head injury and its complication and death was homicidal in nature. On the basis of memorandum of accused/appellant No.1 Ex.P-5 seizure of wooden log vide Ex.P-7 was given effect to and on the memorandum of accused/appellant No.2 Ex.P-4 seizure of *lathi* Ex.P-6 was given effect to. Vinod Kumar Mandavi (PW-12) is the Investigating Officer who has done the investigation.

12. Close scrutiny of the evidence makes it clear that on 12.11.2010 accused/appellants came to the shop of the deceased started abusing him and started quarreling however on seeing the quarrel it was intervened by Mayaram (PW-2) father of the deceased and the appellants left the place but after to-15 minutes later when the deceased was leaving the shop to his house they apprehended and assaulted him causing injuries on head and forehead. The incident has

been witnessed by Mayaram (PW-2), Kuleshwari (PW-3), Aisram (PW-4) and Sanotsh (PW-7) and all the witnesses have duly supported the prosecution case and stated that even when the deceased fell down, appellants continued to assault him. As per the autopsy surgeon, injuries sustained by the deceased were on head and forehead and fractures were found on the skull. Considering the act of the appellants, the intensity of the injuries, the body parts where the injuries have been caused and the manner in which the assault was made we find no substance in the argument of the appellant that the case of the appellants would fall under Exception 4 of Section 300 IPC. After initial quarrel when the matter was intervened by father of the deceased, accused/appellants returned home and within 10-15 minutes time, came back carrying *lathi* and caused injuries and thus it cannot be said that the incident occurred all of a sudden in a sudden fight, in a grave provocation or the accused/appellants had no premeditation.

13. Considering the statement of the eyewitnesses we are of the view that the trial court was justified in convicting the appellants under Section 302/34 IPC. We further find no substance in the argument of the counsel for the appellants that there is overwriting in the FIR and that accused/appellant Lokeshwar has been falsely implicated. S.D. Baghel (PW-11) who registered the FIR has specifically denied the fact that the name of Lokeshwar has been added subsequently. Even otherwise if the diary statement of Shankar Lal (PW-1) is seen it is apparent that name of both the appellants as assailants has been given by Shankarlal. Even otherwise all other witnesses have named both the appellants as assailants and have assigned the role. Appeal thus being devoid of any substance is liable to be dismissed and it is

hereby dismissed. Judgment impugned is affirmed. Appellant No.1 is reported to be on bail. He be taken into custody to undergo the remaining part of the sentence imposed on him. Appellant No.2 is in jail. Being already inside, no order in his respect is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge

suguna