

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 271 of 2010**

- State of Chhattisgarh through Police Station Jashpur, District Jashpur (CG)

---- Appellant**Versus**

1. Firuram s/o. Chotiram Bhagat aged about 55 years.
2. Ashok s/o. Firuram aged about 30 years.

Both residents of village Devidadagoan, Thana Jashpur, District Jashpur (CG).

--Respondents

For Appellant/State	:	Mr. Arvind Kumar Dubey, Panel Lawyer
For respondent	:	None

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Oral Judgment**Per Ram Prasanna Sharma, J****(15-2-2018)**

1. This acquittal appeal is preferred against the judgment dated 29-4-2004 passed by the Sessions Judge, Sessions Division Jashpur (CG) in Sessions Trial No. 43 of 2003 wherein the said Court acquitted the respondents of the charges under Section 302 read with Section 34 and 452 of IPC, but sentenced respondent Ashok for commission of offence under Sections 326 of IPC and sentenced him to undergo RI for four years and to pay fine of Rs.5000/- and convicted respondent Firuram for commission of offence under

Section 323 of IPC and sentenced him to undergo RI for two months and to pay fine of Rs.500/-.

2. In the present case, name of the deceased is Leranguram. It is alleged that Leranguram and his wife Lalki Bai were in the house situated at village Devidadgaon on 16-4-2003 at about 8.pm and at the same time respondents entered into the house of Leranguram and charged Leranguram that he is a black magician and thereafter they assaulted Leranguram and his wife Lalki Bai using battle axe and club. The matter was reported to Police Station Jashpur. After registration of first information report, injured Leranguram was sent for medical examination to hospital where injuries were found on his face, jaw and teeth. Injured Leranguram was admitted in hospital at Ranchi where he died on 22-4-2003 during course of treatment. Earlier offence was registered under Section 325 of the IPC and after death of Leranguram it was converted into Section 302 of IPC. The matter was investigated and charge sheet was filed against the respondents. After completion of trial, respondents were convicted as mentioned above.

3. Learned State counsel submits as under:

- i) As death is caused due to assault by the respondents, there is sufficient evidence to convict the respondents under section 302 of IPC.
- ii) Both respondents proceeded in furtherance of common intention, but the trial Court ignoring this fact convicted the respondent Firuram for offence under Section 323 of IPC which is nothing but miscarriage of justice.
- iii) Marshaling of medical evidence by the trial court is improper and conclusion suffers from material

irregularity.

4. We have heard learned counsel for the appellant/State and perused the record.
5. For establishing offence of murder, prosecution has to establish facts as mentioned in Section 300 of IPC which may be read as under.

“300. Murder.—Except in the cases hereinafter excepted,
culpable homicide is murder,

(I) if the act by which the death is caused is done with the
intention of causing death, or—

(ii) if it is done with the intention of causing such bodily
injury as the offender knows to be likely to cause the
death of the person to whom the harm is caused, or—

(iii) If it is done with the intention of causing bodily injury to
any person and the bodily injury intended to be inflicted
is sufficient in the ordinary course of nature to cause
death, or—

(iv) If the person committing the act knows that it is so
imminently dangerous that it must, in all probability,
cause death or such bodily injury as is likely to cause
death, and commits such act without any excuse for
incurring the risk of causing death or such injury as
aforesaid”

For commission of offence under Section 304 Part I or Part II of IPC and Section 307 of IPC, intention of the culprit has to be established as mentioned above.

6. In the present case, PW/5 Dr. V.S. Bhagat examined the injured Leranguram on 17-2-2003 at District Hospital, Jashpur and noticed the following injuries.

(i)	Lacerated wound on superolateral aspect of right eye-brow 3 cm x 0.3 cm x 0.3cm
(ii)	Lacerated wound on inner aspect of upper lip of mouth on left side measuring 1.5 cm x 0.5cmx0.3cm
(iii)	Two abrasions on the palm of left knee (0.5x0.5cm each)
(iv)	Right 1st upper incision , upper left 1st incision and left 2nd upper incision are broken and its root and shocket is covered with blood clots and bleeds on separation of clottings.
(v)	(1) x-ray skull lateral vein with mandible and (2) x-ray chest PA with both clavicle. As pt was irrigable and cannot stay hence the quality of x-ray is very poor, therefore, report cannot be made according to x-ray and advised re-x-ray and C.T.Scan.

He opined that the injuries were caused by hard and blunt object and they are grievous in nature. The injured expired on 24-2-2003 and his postmortem report is admitted by the defence side.

7. PW/1 Lalki Bai is the injured eye-witness. As per version of this witness respondent Ashok entered into the house with battle axe and respondent Firuram with club and they assaulted Leranguram. She deposed that respondent Ashok assaulted her husband by battle axe. Version of this witness is supported by version of medical expert and again it is supported by the first information report (Ex.P/20) and seizure of battle axe from respondent Ashok Bhagat and other

articles from the spot. Though human blood was not found on battle axe as per report of FSL, but when there is direct evidence, the other piece of evidence is only corroborative in nature which is not required compulsorily to establish the guilt. As per version of PW/1 Lalki Bai both respondents have assaulted her with legs and fists and the trial Court convicted the respondent Firuram for causing voluntarily simple hurt to her.

8. From the evidence of prosecution, it is established that respondent Ashok assaulted Leranguram by battle axe and as per version of PW/1 Lalki Bai it is not a case that he assaulted Leranguram repeatedly. As per version of PW/1 Lalki Bai, respondent Ashok assaulted her husband by battle axe only once which shows that he has no intention to cause death of Leranguram. In any case, death of injured is different and intention to cause death is different.
9. From the facts and circumstances of the case, we are of the view that intention of the respondent Ashok was to cause grievous hurt by means of battle axe but at any rate he has no intention to kill Leranguram. When intention to cause death is not proved, voluntarily causing grievous hurt by battle axe is punishable under Section 326 of IPC for which the trial Court convicted the respondent Ashok and we are in agreement with the view expressed by the trial Court. Again causing simple injury to Lalki Bai falls within mischief under Section 323 of IPC for which the trial Court convicted the respondent Firuram and that is also not liable to be interfered with.

10. On overall assessment of the evidence, we are of the view that the finding arrived at by the trial Court is based on cumulative effect of relevant facts and the same is not liable to be reversed or modified.
11. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)

Raju