

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 215 of 2012**

1. Arun Kumar Verma son of Ramkhilawan Verma, aged about 23 years, R/o Aadoliyapara, Ganyari, Police Station - Kota, District Bilaspur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Bilaspur, CG

---- Respondent

For Appellant : Shri Dharendra Pandey, Advocate
 For State : Shri Avinash K. Mishra, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board by Pritinker Diwaker, J**27/08/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 16.12.2011 passed by Additional Sessions Judge, Bilaspur in Sessions Trial No. 22/2011 convicting the accused/appellant under Section 302/34 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 100/-, plus default stipulation.

2. Case of the prosecution in short is that accused and the deceased were on inimical terms prior to the date of incident. On 3.11.2010 at about 6 PM the accused/appellant and the juvenile accused namely Shekhar alias Chunmun had assaulted Shiv Kumar with club and stone. Injured was immediately taken to Ganiyari hospital on 4.11.2010 from

where he was shifted to CIIMS Bilaspur. However, in CIIMS the victim succumbed to the injuries on the same night. After receiving information from CIIMS, un-numbered *merg* (Ex.P-16) was recorded on 5.11.2010 day at 8.15 AM followed by un-numbered FIR Ex.P-18 which was recorded at 5.20 PM on the same day by Mahesh Verma (PW-15) against the accused/appellant herein, juvenile accused Shekhar alias Chunmun and others. After drawing inquest Ex. P-8, the dead-body was sent for postmortem examination which was conducted by Dr. A.K. Kaushik (PW-9) who gave his report Ex. P-10. Thereafter, numbered FIR (Ex. P-19) and numbered *merg* (Ex.P-20) came to be registered against them for the offence punishable under Section 302/34 IPC. On the memorandum of the accused/appellant (Ex.P-14), a club was seized under Ex. P-12 but there is no FSL report on record. Court below framed the charge against the accused/appellant and the juvenile accused under Section 302/34 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 19 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant herein as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That looking to the evidence adduced by the prosecution it does not appear to be a case under Section 302 and at best the act of the accused/appellant would fall either under Section 304 (Part-I) or 304 (Part-II) IPC as the incident occurred all of a sudden and in the heat of passion where only one club injury was inflicted on the head of the deceased leading to his unfortunate death on 5.11.2010.

(ii) That there is no evidence to show that the death of the deceased was homicidal as the postmortem report does not say so.

(iii) That the evidence collected by the prosecution does not go to show any intention or premeditation on the part of the accused/appellant to commit the murder of the deceased.

(iv) That as the accused/appellant is in jail since 8.11.2010 and thereby has completed more than seven and a half year in prison, after convicting him either under Section 304 (Part-I) or 304 (Part-II) IPC, his sentence may be reduced to the period already undergone by him.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellant as described above are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that though the medical evidence does not state about the death being homicidal in nature yet considering the evidence of the witnesses and the part of the body where the injury was

caused, it can safely be taken to be as such.

7. Heard counsel for the parties and perused the material available on record.

8. Mahesh Verma (PW-15) – father of the deceased has stated that on the date of incident at 4 PM the accused/appellant came to his house carrying club and stone with him and started causing injuries to him and his family members. This witness suffered injuries in the leg, his wife on various parts of the body and his son (deceased herein) on head, hand and leg. Thereafter, on the same day at about 5 PM when his wife was returning from the market, the accused/appellant and the juvenile accused again caused injuries to her with club and stone. Report of this incident was lodged in the Kota police station and his son Shiv Kumar was administered medicines for the injuries suffered by him. He has further stated that on the next morning when his son Shiv Kumar had gone out for answering the call of nature, the accused/appellant again beat him with club. At about 4 PM his injured son was taken to Ganiyari hospital for treatment from where he was shifted to CIIMS Bilaspur, however, while taking treatment he died there at about 4 AM. This witness has admitted that few days prior to the incident, there was some quarrel between him and one Gama where the accused/appellant was the witness for Gama. Though in cross-examination of this witness there are certain minor contradictions yet on material particulars he remained firm to

what he has stated in the examination-in-chief. Keja Bai (PW-16) - mother of the deceased and wife of PW-15 has made almost similar statement as her husband has made. According to her, a day prior to the incident the accused/appellant and his nephew (the juvenile accused) came to her house and started beating the inmates with club and stone. Report of this incident is stated to have been lodged in Kota police station and then after being administered injection and medicines they got home. In the next morning when her son Shiv Kumar had gone to answer the call of nature, accused/appellant herein along with his nephew again assaulted him with club by chasing him on the bicycle. Thereafter, her son was taken to Ganiyari hospital from where he was referred to CIIMS and it is there he succumbed to the injuries suffered by him. Cross-examination of this witness also carries the same version as does the examination-in-chief, leaving aside certain minor contradictions. Laxmin Verma (PW-17) - the sister of the deceased has also supported the case of the prosecution stating that the accused/appellant had assaulted her brother with the help of club and stone. Her further testimony states almost the same thing as put forth by PW-15 and PW-16. Dr. A.K. Kaushik (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-10 stating that he noticed contusion over the left temporal region (above left ear) and that the cause of death was coma due to subdural haematoma on left temporal

region. Narsingh Ram (PW-19) is the investigating officer who has duly supported the case of the prosecution. Ku. Lata Verma (PW-1), Adhania Bai (PW-2), Smt. Siya Bai (PW-3), Ravishankar (PW-4) and Jitendra Verma (PW-5) have not supported the case of the prosecution. Sunil Verma (PW-6) and Raju Verma are the witnesses to inquest Ex. P-8. Rohit Prasad Sahu (PW-8) is the Patwari who prepared spot map (Ex.P-5). Ganesh Prasad (PW-10) is the witness to memorandum (Ex.P-14) and seizure of club made under Ex. P-12. Radhelal Rai (PW-11), D.P. Banjare (PW-14) and Punitram (PW-18) are the witnesses who assisted in the investigation.

9. Perusal of the record and the evidence of the witnesses reveals that a day before the incident also the accused/appellant and his nephew (the juvenile accused) had gone to the house of the deceased and manhandeled him, his mother and father in which they all had received some injuries. In the next morning at about 7 AM when deceased Shiv Kumar had gone out to ease himself, the accused/appellant and the juvenile accused reached there also and caused injury to him with the help of club and stone by chasing on bicycle. Thereafter the deceased returned home, was first taken to Ganiyari hospital, then was shifted to CIIMS and it is where he died in the next early morning. On the memorandum of accused/appellant seizure of club was also made under Ex. P-12 and postmortem report Ex. P-10 also shows one contusion over the left temporal region (above left ear). That apart, PW-15, PW-16 and PW-17 – parents and sister

of the deceased have also supported the case of the prosecution. Having thus seen the evidence referred to above, this Court has no hesitation in holding that it is the accused/appellant along with the juvenile accused who took active part in the assault of the deceased which ultimately led to his death in the following morning. His involvement in the crime in question is therefore approbated.

10. Now we have to delve upon the point whether the evidence adduced by the prosecution would make the accused/appellant liable for conviction under Section 302/34 or under some other section of the Indian Penal Code. Having gone deeper into the material on record, it emerges that after being assaulted in the field, the deceased returned home at 9 AM and thereafter upto 4 PM he remained untreated medically. Record shows that at 4 PM he was taken to Ganiyari hospital and then was referred to CIIMS where in the next early morning he died. Postmortem report Ex. P-10 shows only one contusion over the left temporal region (above left ear). Though on the memorandum of the accused/appellant, seizure of club was made under Ex. P-12 but there is no FSL report on record. What is more important to be noticed here is the evidence of the doctor (PW-9) conducting postmortem examination who has categorically stated in the concluding paragraph of his deposition that had the deceased been provided immediate medical aid, possibility of his survival was very much there. Thus looking to the number of injury caused to the deceased i.e. only one, that too not with any lethal

weapon and keeping in mind the statement of the doctor made in the concluding portion of his deposition, this Court is of the considered opinion that the accused/appellant had no intention or premeditation to do away with the deceased. Had he any intention of doing so, he could have made a repeated assault taking undue advantage or acting in a cruel or unusual manner. In this view of the matter, we are of the view that the act of the accused/appellant does not travel beyond section 304 (Part-II) IPC. Accordingly, the conviction of the accused/appellant under Section 302/34 IPC is set aside and he stands convicted under Section 304 (Part-II)/34 IPC and sentenced to the period already undergone which comes to more than seven and a half year. He, however, is directed to deposit a sum of Rs. 25,000/- in the Court below within a period of six months from today or else he would remain inside for a further period of two years. On deposit of the amount as directed, it would be paid to the parents of the deceased as compensation in terms of Section 357 of the Code of Criminal Procedure. As the accused/appellant is in jail, he be set free forthwith, if not required in any other case.

11. In terms of what is stated above, the appeal is allowed in part.

(Pritinker Diwaker)
Judge

(Rajani Dubey)
Judge