

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 315 of 2015**

1. Dayaram Nagwanshi alias Guddu son of Kriparam Nagwanshi, aged about 30 years,
2. Lalit Kumar Nagwanshi son of Kriparam Nagwanshi, aged about 27 years,

Both residents of village Sukwas Deepapara, police Station Lailunga, District Raigarh, CG

---- Appellants**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Lailunga, Civil and Revenue District Raigarh, CG

---- Respondent

For Appellants	:	Shri C.K. Sahu, Advocate
For Respondent/State:		Shri Anil Pillay, Dy. AG

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board by Pritinker Diwaker, J

13/08/2018

This appeal has been filed against the judgment of conviction and order of sentence dated 27.06.2014 passed by Additional Sessions Judge (FTC) Raigarh, in Sessions Trial No. 57/2013 convicting the accused/appellants under Section 302/34 IPC and sentencing each of them to undergo imprisonment for life and pay fine of Rs. 1000/-, plus default stipulation.

2. Name of the deceased in this case is Saadram Nagvanshi - the uncle of the accused/appellants. It is alleged that on

27.01.2013 the accused/appellant Dayaram Nagwanshi had invited the deceased to his house for celebrating the local festival known as *Chherchhera* where some dispute coupled with scuffle arose between the two. Noticing this, the deceased was taken home by his wife. Sometime thereafter, both the accused/appellants started abusing the deceased, dragged him out where accused Dayaram is stated to have assaulted him with the help of wooden log whereas the accused Lalit Kumar assaulted him with hands and fists. Further case of the prosecution is that the deceased was then taken to hospital by the villagers including the accused/appellants where he died on 31.01.2013 while taking treatment. After being taken to hospital, Saadram was first medically examined by Dr. Raj Kumar Gupta (PW-13) on 27.1.2013 who found one lacerated wound on parieto-temporal region of head in the size of 2 x 5 cm x bone deep. After receiving the information from the hospital, FIR Ex. P-20 was registered on 27.01.2013 at 10.10 PM against accused/appellant Dayaram Nagwanshi alias Guddu for the offence punishable under Sections 294, 506-II and 323 IPC. Information about the death of Saadram was also sent by the hospital on 31.01.2013 and based on that, *merg* Ex. P-9 came to be recorded. After drawing inquest Ex. P-4, dead-body was sent for postmortem examination which was conducted by PW-13 who gave his report Ex. P-18. Thereafter, on 1.2.2013 memorandum of accused/appellant Dayaram Nagwanshi was recorded vide Ex. P-11 based on which seizure of blood

stained wooden log was made under Ex. P-13. However, there is no FSL report on record. After completion of investigation, police filed *challan* against the accused/appellants u/s 294, 506-II, 323, 307, 302, 34 IPC followed by framing of charge by the Court below u/s 294, 506, 323, 302/ 34 IPC.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 15 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below acquitted the accused/appellants of the charges under other sections but has convicted and sentenced them as mentioned above in paragraph No.1 of this judgment.

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

(i) That there was no previous enmity between the accused/appellants and the deceased and that the incident occurred on account of some trivial dispute between the two while celebrating the *Chherchhera* festival, in furtherance of which accused Dayaram appears to have lost his temper and assaulted the deceased with a nearby lying wooden log.

(ii) That there was no intention or premeditation on the part of the accused/appellants to kill the deceased which can safely be inferred from the fact that they did not use any lethal weapon for doing so.

(iii) That the evidence of PW-1 shows that after seeing the deceased in injured condition, the accused/appellants had taken him to the hospital to ensure timely treatment, and had there been any ill intention on their part, after assaulting they would have run away.

(iii) That though the wooden log is said to have been stained with blood, there is no FSL report on record to prove its origin.

(iv) That looking to the article used for assault i.e. wooden log, the single blow caused to the deceased and also considering the fact that the incident took place on the spur of moment on account of some trivial dispute while celebrating the local festival, at best their act would fall under Section 304 (Part-II) and not under Section 302 IPC.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Section 302/34 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that the incident has been witnessed by PW-1, PW-2, PW-4 and PW-8 and they all have supported the case of the prosecution. He submits that even there is oral dying declaration of the deceased made before PW-7 who has categorically supported the case of the prosecution. According to the State counsel, PW-3 who is said to have heard the altercation between the accused and the deceased has also supported the case of the prosecution.

7. Heard counsel for the parties and perused the material

available on record.

8. Budhani (PW-1) - the grandmother of the accused/appellants and mother of the deceased has stated that on the date of incident she heard some quarrelsome activities between the accused/appellants and the deceased. Thereafter, according to this witness, her daughter-in-law (PW-2) informed her that the accused/appellants were thrashing the deceased. On being so informed, when this witness went to separate the three, accused Dayaram was seen assaulting the deceased on head with wooden log whereas the other accused namely Lalit was holding him. Subsequently, according to her, deceased was taken to hospital where he succumbed to the injuries sustained by him. In cross-examination, this witness stood firm on material particulars to what she stated in the examination-in-chief. Hirawati (PW-2) - wife of the deceased and eyewitness to the incident has stated that on the date of incident after calling the deceased to their house, the accused/appellants had picked up quarrel with him and in furtherance of that accused Dayaram caused injury on head with a wooden log whereas accused Lalit was holding him. She has further stated that on account of the injuries, her husband fell down on the ground and died. This version of PW-2 does not appear to be correct as according to the documents including the evidence of the doctor conducting postmortem examination, the deceased succumbed to the injuries in the hospital on 31.1.2013. On material particulars, this witness also stood firm in her cross-

examination to what she stated in the examination-in-chief. Bhagatram (PW-3) has stated that he heard the quarrel going on between the accused/appellants and the deceased and then son of the deceased came to him and informed about the fact that the accused/appellants had killed the deceased. Anil Nag (PW-4) - son of the deceased and one of the eyewitnesses to the incident has stated that on hearing the quarrel-like activities he rushed to the spot and saw the accused/appellants assaulting the deceased with club and when he tried to intervene in the matter, accused Dayaram caused injuries to him also. Vijay Kumar Nag (PW-5) is the witness who is said to have reached the spot after the incident had taken place. Sunil Kumar (PW-6) has not supported the case of the prosecution and has been declared hostile. Sukari (PW-7) - the second wife of the deceased has stated that on the date of incident she had gone somewhere to celebrate the festival where her son Sunil came and informed her that the accused/appellants had killed the deceased. According to her, when she returned home, the deceased was lying in the courtyard with injuries on head, neck and knee. Deceased is also stated to have made oral dying declaration before his mother and first wife to the effect that it is the accused/appellants who had caused injuries to him. Laxmi (PW-8) - niece of the deceased and an eyewitness to the incident has also supported the case of the prosecution stating that she saw the accused/appellants assaulting the deceased with a wooden log. Sundar Sai (PW-9) and Sudhu

(PW-11) have not supported the case of the prosecution and have been declared hostile. Dhobaram (PW-10) is the witness to memorandum Ex. P-11 and seizure made under Ex. P-13. Kuldip Prasad Gupta (PW-12) is the Patwari who prepared spot map Ex. P-6. Dr. Raj Kumar Gupta (PW-13) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-18 stating that he noticed a lacerated wound over parieto-occipital region, cause of death was the injury on temporal region with intracranial hematoma due to haemorrhagic shock, and the death was homicidal in nature. D.P. Bharadwaj (PW-14) is the witness who assisted in the investigation. I Tirki (PW-15) is the investigating officer who has duly supported the case of the prosecution.

9. We have given our thoughtful consideration to the arguments advanced by the counsel for the parties as also the evidence available on record. Almost all the witnesses have stated the same thing that on the date of incident the accused/appellants had called the deceased to their house for celebrating the *Chherchhera* festival where some dispute arose between them and in furtherance of that accused Dayaram assaulted him with club whereas the other accused Lalit Kumar was holding him. PW-1, PW-2, PW-4 and PW-8 are even stated to have even seen the incident of assault with their own eyes. This apart, there is dying declaration also made by the deceased before PW-7 to the effect that it is the accused/appellants who caused injuries to him. Seizure of

blood stained club from the spot also speaks about the involvement of the accused/appellants in the crime in question. Thus in these circumstances where the eyewitnesses – four in number, have categorically stated that they saw the accused/appellant Dayaram assaulting the deceased with club and the other one namely Lalit Kumar was facilitating him in the assault by holding him, we have no hesitation to hold that the accused/appellants were actively involved in commission of the crime where the deceased has lost his life because of their act. Their complicity in the crime in question is thus quite established.

10. Now the next question to be answered by this Court is whether the act of the accused/appellants would fall under Section 302/34 or under some other section of the Indian Penal Code? Record does not speak any previous enmity between the accused and the deceased which could have led to commission of the offence. Entire incident appears to be the out-come of some minor scuffle in the house of the accused/appellants where they picked up the wooden log and inflicted just a single blow on the head of the deceased leading to his unfortunate death in the hospital about four days after the actual occurrence. The fact that the accused/appellants did not intend to cause death can be gathered from the fact that after the assault was over, the accused themselves, as is evident from the statement of PW-1, took the deceased to hospital for treatment. Of course, there is recovery of blood stained club from the spot but there

is no FSL or serological report on record to ascertain whether the said blood was human blood and that too of the blood group of the deceased. One of the mitigating circumstances in this case is the postmortem report which says that only one blow was suffered by the deceased on head. Even the weapon used in the commission of crime was a wooden log which was picked up by the accused/appellants from the near by area. There is nothing to show that the accused/appellants caused the injury with an lethal weapon. Apparently, the assault was made by the accused with the help of wooden log which was picked up by them from the nearby area. In this cumulative view of the matter the act of the accused/appellants can be held to be a culpable homicide not amounting to murder as it was committed without premeditation in a sudden quarrel and that too in the heat of passion without their having taken undue advantage or acted in a cruel or unusual manner, their act is covered within exception 4 to Section 300 IPC. Accordingly, the accused/appellants' conviction under Section 302/34 is not sustainable in the eye of law and instead they are liable to be convicted under section 304 (Part-II) read with section 34 IPC. It is held so.

11. In the result, the appeal is partly allowed. Their conviction under Section 302/34 IPC is set aside and now they are convicted under Section 304 (Part-II) read with Section 34 IPC and each of them are sentenced to undergo RI for seven years. At the same time, accused/appellants are directed to deposit Rs. 5,000/- each (totaling to Rs. 10,000) in the Court

below within a period of one year to be payable to the widow of the deceased as compensation in terms of Section 357 of the Code of Criminal Procedure. Failure to do this would require the accused/appellants to be in jail for a further period of six months. This amount would be in addition to the fine imposed on the accused/appellants by the Court below.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge