

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 180 of 2012**

[Arising out of judgment/order dated 28.12.2011 in Sessions Trial No.17/2011 of the Sessions Judge, Mahasamund (C.G.) ]

1. Mahesh Ram @ Pardeshi S/o Bodhan Satnami, Aged about 50 years, R/o Village Kewtapali, Amlitikra, P.S. Basna, District Mahasamund, Chhattisgarh.
2. Narsingh Kurre, S/o Mahesh Ram @ Pardeshi, Aged about 21 years, R/o Village Kewtapali, Amlitikra, P.S. Basna, District Mahasamund, Chhattisgarh.
3. Hiraram Kuree, S/o Mahesh Ram @ Pardeshi, aged about 19 years, R/o Village Kewtapali, Amlitikra, P.S. Basna, District Mahasamund, Chhattisgarh.

---- Appellants

**Versus**

- State Of C.G. Through – Police Station Incharge, Police Station – Basna, District Mahasamund, Chhattisgarh.

---- Respondent

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| For Appellants       | :Shri Manoj Paranjpe and Shri Ankit Singhal,<br>Advocates |
| For Respondent/State | :Shri Ravindra Agrawal, Government Advocate               |

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**Hon'ble Shri Pritinker Diwaker &  
Hon'ble Shri Sanjay Agrawal, JJ**

**Judgment on Board**

**21.02.2018**

**Per Sanjay Agrawal, J.**

1. This criminal appeal has been preferred by the appellants under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C. in short) against the judgment dated 28.12.2011 passed by the Sessions Judge, Mahasamund, in Sessions Trial No. 17/2011 whereby the appellants have been

convicted and sentenced as under:-

| <b><u>CONVICTION</u></b>                         | <b><u>SENTENCE</u></b>                                                                              |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| 302/34 of Indian Penal Code (for short, the IPC) | Life imprisonment with fine of Rs.5000/- each. In default to pay fine amount, RI for one year each. |

2. In the present case, it is not disputed that the deceased Rohit Kurre and appellant No.1 Mahesh Ram are real brothers and Janki Bai, who has lodged the report, is their mother.
3. Case of the prosecution, in short, is that on 24.12.2010 at 4.00 pm, a quarrel took place between the two brothers, namely Rohit and Mahesh Ram Kurre with regard to removal of log placed by the deceased Rohit in the orchard (*Baadi*) of Mahesh Ram. It is alleged that on fateful day, when the deceased came out towards lane, by abusing filthy language, the appellant Mahesh came along with his two sons, namely Narsingh and Hiraram (appellants No. 2 & 3 respectively) with wooden stick (pick-axe) and started beating the deceased. Further prosecution story is that the appellant Mahesh assaulted the deceased with wooden stick of pick axe (गैती) while his two sons, with their hands and fists, as a result of which, the deceased Rohit Kurre received multiple injuries and expired on the spot.
4. Based upon the aforesaid incident, F.I.R. (Ex.P.8) was lodged by the deceased's mother Janki Bai Satnami on 25.12.2010 at 09.30 AM against the appellants under Section 302/34 IPC. The matter was thereafter investigated and the wooden stick of pick axe (गैती) was seized at the instance of the appellant Mahesh on 25.12.2010 at 11.45 AM vide seizure memo Ex.P.6, while blood stained "soil"

and “Gamcha” were recovered from the spot vide seizure memo Ex.P.5. Inquest was conducted on the body of the deceased vide Ex.P.1 on 25.12.2010. After the inquest, the dead body of the deceased was sent for autopsy to Community Health center, Baroli (Basna), District Mahasamund where Dr. Jai Prakash Pradhan (P.W.4) has conducted post-mortem examination and submitted its report vide Ex.P.3 on 25.12.2010 by opining that the death of deceased occurred due to cardio-pulmonary arrest as a result of circulatory failure due to puncture of left atrium (one of the chambers in heart) by fracture of left 5<sup>th</sup> rib and sternum and ruptured muscles and on account of fracture of lower jaw

5. After usual investigation of the matter as such, the offence punishable under Section 302/34 IPC has been registered against the appellants by the concerned Station House Officer, Basna, who submitted its final report on 02.02.2011 before the Judicial Magistrate First Class, Saraipali and the matter was thereafter committed to the District and Sessions Judge, Mahasamud for its trial.
6. After considering the prima facie materials available on record, charge under Section 302/34 of IPC has been framed against the appellants on 15.03.2011. The appellants pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to be tried.
7. In order to prove the guilt of the appellants, the prosecution examined as many as 11 witnesses, while none was examined by the appellants in their defence.

8. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellants and sentenced them as aforesaid.
9. Being aggrieved, the appellant has preferred this appeal. Shri Manoj Paranjpe and Shri Ankit Singhal, learned counsel for the appellants submits that the judgment under appeal as passed by the trial Court is apparently contrary to law as the same has been passed without considering the evidence in its proper perspective. They submit further that even if the entire prosecution story is accepted as it is, then also they could not have been convicted under Section 302/34 IPC as held by the trial Court. They, therefore, submit that the judgment as passed by the trial Court, be set aside and/or be modified to that of Section 304 Part-II IPC by placing their reliance in the matter of ***Kusha Laxman Waghmare v. State of Maharashtra, (2014) 10 SCC 298***.
10. On the other hand, Shri Ravindra Agrawal, learned Government Advocate for the State supported the impugned judgment by submitting, inter alia, that it has been passed upon due and proper consideration of the evidence of prosecution witnesses, and therefore, does not require to be interfered.
11. We have heard learned counsel for the parties and perused the entire record carefully.
12. Ku. Mamta Kurre (P.W.1) is the daughter of deceased Rohit Kurre. She has stated in her evidence that the appellant Mahesh Ram is elder brother of her father while appellants Narsingh and Hiraram are his sons. She has stated further that in the evening, at about

4.00 PM the appellants assaulted her father several times with a wooden stick of pick axe (गैती), as a result of which, her father expired on the spot at lane. This witness was confronted with her case diary statement (Ex.D.1) recorded under Section 161 of Cr.P.C. where she has stated that her father was assaulted by the appellant Mahesh with wooden stick of pick axe (गैती) while others, with their hands and fists. This witness has, thus, improvised her statement in the Court but was firm in her cross-examination except with the said improvement.

13. Sonbai Kurre (P.W.2) is the wife of the deceased and has stated in her evidence that the alleged incident took place at about 3.00 PM when her husband was sitting at lane. She has stated that at that relevant time, her husband's elder brother Mahesh Ram came by bicycle and that by using filthy language had dragged her deceased husband towards the lane and called his two sons by stating that they will kill her husband today and all of them started beating her husband with a wooden stick of pick axe (गैती). She has stated further that when she tried to intervene the matter, she was stopped by the appellant Mahesh's wife. This witness has, however, stated at para 9 that the alleged incident has taken place all of a sudden. This witness was also confronted with her case diary statement (Ex.D.2) where she has deposed that her husband was assaulted by the appellant Mahesh with a wooden stick of pick axe (गैती) while others, i.e., his sons Narsingh and Hiraram, with their hands and fists. Thus, this witness has also improvised her statement in the Court, like the statement of her daughter (P.W.1), but remained firm with regard to the commission of alleged crime in

question.

14. Janki Bai (P.W.6) is the mother of deceased Rohit and has stated in her evidence that the log was kept in the orchard (*Baadi*) of the appellant Mahesh Ram, who had requested him for its removal from his *Baadi*. According to this witness, the appellant Mahesh Ram had told the deceased on an earlier occasion also for the removal of log and deceased had assured him to remove the same. She has stated further that since it was not removed despite requests being made by the appellant Mahesh Ram, therefore, the appellants started beating the deceased Rohit Kurre and on account of the alleged assault, her son has expired on the spot and immediately thereafter, she lodged the report vide Ex.P.8.
15. Ramlal Burman (P.W.3) is the witness to the inquest report (Ex.P.1) and came to know about the alleged incident on the next day morning. Puran Das (P.W.5) is a Kotwar but was not present at the time of commission of alleged incident. He is the witness to the seizure memo by which blood stained “soil and Gamcha” were recovered from the spot vide Ex.P.5, while the wooden stick of pick axe (गैती) was recovered at the instance of the appellant Mahesh Ram vide Ex.P.6. Similarly, Kanhaiya Lal Bhoi (P.W.7) is a Patwari, who prepared the spot map (*Najri Naksha*) (Ex.P.7). Thus, these witnesses are formal witnesses, as far as commission of alleged crime is concerned. Likewise, Rakesh Thakur (P.W.8), Nand Kishore (P.W.9), Bholaram Gupta (P.W.10) and Sajan Ram Thakur (P.W.11) are also formal witnesses.
16. Dr. Jai Prakash Pradhan (P.W.4) has conducted the post-mortem examination on the dead body of deceased Rohit and submitted its

post-mortem report vide Ex.P.3 noticing the following injuries :-

1. Lacerated wound of 3 cm x 3 mm x 7 mm on lower lip in random shape.
2. Lacerated wound of 5 cm x 1 cm x bone deep on chin and right side cheek in wave spindle shape.
3. Lacerated wound of 2.5 cm x 1 cm x bone deep on left side chin in wage spindle shape.
4. Lacerated wound of 4 cm x 1 cm x bone deep mid occipital region.
5. Lacerated wound 51 cm x 7 cm to 21 cm in blackish bruise mark with half circle and random shape over abdomen and chest in middle and left side.
6. Multiple abrasions of superficial and small over left elbow posterior side with around soil particles.
7. Abrasions of superficial x 5 mm x 4 mm over third MP joint, posterior side of left hand.
8. Abrasion of small and superficial over 2<sup>nd</sup> MP joint, posterior side and 3<sup>rd</sup> proximal phalanx posterior side of right hand.
9. Expulsion of fluid over genital part.

On dissection:

1. Lacerated wound of 5 cm x 1 cm x broken lower jaw with ruptured of supported tissues on right chin and cheeks in wave spindle shape.
2. Lacerated wound of 2.5 cm x 1 cm x broken lower jaw in and surrounding tissue on left side chin.
3. Lacerated wound of 3 cm x 3 mm x 7 mm on lower lip in random shape.
4. Lacerated wound of 4 cm x 1 cm x bone deep on middle occipital region.

17. A close scrutiny of the aforesaid statements would show that a quarrel took place on a fateful day on 24.12.2010 on account of removal of log kept by the deceased Rohit Kurre in the orchard (*Baadi*) of his brother Mahesh Ram. The evidence on record would show further that when it was not removed by the deceased Rohit despite requests being made by the appellant Mahesh Ram, the alleged quarrel took place. As a consequence of it, exchange of hot talks took place and the deceased Rohit was assaulted all of a

sudden by appellant Mahesh Ram with a wooden stick of pick axe (गैती) while others assaulted him by their hands and fists. Consequently, deceased Rohit Kurre has died instantaneously. We, therefore, based upon the aforesaid evidence, hold that it is a case of sudden fight without any premeditation and accordingly Exception 4 to Section 300 IPC would be attracted in the facts and circumstances of the case. We, however, observe further, as reflected from the evidence, that appellant No.1 alone had inflicted his brother Rohit with a wooden stick, while others (i.e., sons of the appellant Mahesh Ram) with their hands and fists but without there being any intention to kill him.

18. In the matter of ***Kusha Laxman Waghmare v. State of Maharashtra, (2014) 10 SCC 298***, as relied upon by the counsels for appellants, wherein the weapon used by the appellant was a wooden stick, the conviction was converted by the Supreme Court to one under Section 304 Part II IPC instead of Section 302 IPC by observing at para – 9 as under :-

“9. After giving our anxious consideration in the matter and after analysing the entire evidence, we are of the view that it is not a fit case where conviction could be sustained under Section 302 IPC. The weapon used by the appellant is a wooden stick and as per the prosecution case, the deceased was severely beaten by the said stick. As a result thereof, she died. There is no cogent evidence to show that the appellant had beaten the deceased with an intention to cause her death. In such circumstances, the conviction of the appellant under Section 304 Part II IPC will be just and proper.”

19. By applying the aforesaid principles in the present case, we modify the judgment of the trial Court converting the conviction of the appellant No.1 Mahesh Ram to Section 304 Part II IPC from Section 302/34 IPC and sentencing him to rigorous imprisonment for 7 years without imposing any fine amount on him. Similarly, we

also convert the conviction of the appellants No. 2 & 3 to Section 304 Part II IPC from 302/34 IPC and sentence them to the period already undergone by them.

20. Although we are not imposing any fine amount upon appellant No.1 Mahesh while converting his conviction, as indicated herein above, but we have found that the wife (Sonbai) of the deceased has suffered a lot on account of alleged act done by him. Therefore, he (Mahesh Ram) may be directed to compensate adequately to her, as per the provisions prescribed under sub-section (3) of Section 357 Cr.P.C., which reads as under :-

“357. Order to pay compensation.----- (1) xxxx    xxxx    xxxxx

(2)    xxxx                xxxx                xxxx                xxxx                xxxx

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4)    xxxx                xxxx                xxxx                xxxx                xxxx

(5)    xxxx                xxxx                xxxx                xxxx                xxxx”

21. The aforesaid provision empowers specifically the Court that it “may” award compensation even in such cases where sentence imposed does not include a fine amount.

22. In the matter of **Manohar Singh v. State of Rajasthan and others, (2015) 3 SCC 449**, the Hon'ble Supreme Court, while considering the catena of decisions dealing with Section 357 Cr.P.C., has compensated the victim by taking recourse to the

aforesaid provision at para – 16 as under:-

“16. In the present case, in the absence of any evidence about the medical expenses, loss of earning, etc. and the financial capacity of the accused, we are of the view that the appellant needs to be paid a sum of Rs.50,000 as compensation under Section 357(3) within two months by the surviving respondents. In default, the surviving respondents will undergo rigorous imprisonment for three months. Since compensation is being directed to be paid, we set aside the sentence of fine of Rs.5000.”

23. By applying the aforesaid principles, we are of the considered view that Sonbai (P.W.2), the wife of deceased Rohit Kurre needs to be paid a sum of Rs.10,000/- (Rupees Ten thousand only) by appellant No.1 Mahesh Ram as an amount of compensation under Section 357 Cr.P.C. within a period of 3 months from today. In default, the appellant No.1 Mahesh Ram shall undergo rigorous imprisonment for six months.
24. Consequently, the appeal is allowed in part in the above stated terms. Since appellant No.1 is stated to be in jail, he shall be released forthwith, if not required in any other case. So far as appellants No. 2 & 3 Narsingh Kurre and Hiraram Kurre are concerned, they are on bail. Their bail bonds shall remain effective for a period of 6 months, in view of the provisions prescribed under Section 437-A of the Code of Criminal Procedure, 1973.

Sd/-  
(Pritinker Diwaker)  
**JUDGE**

Sd/-  
(Sanjay Agrawal)  
**JUDGE**