

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 136 of 2013**

1. Ganesh Ram alias Tedgi S/o Len Das, aged about 44 years,
2. Vishram S/o Len Das, aged about 50 years,
3. Dhananjay S/o Vishram, aged about 20 years,

All cultivators and R/o village bade Mudpar, PS Dabhara, District Janjgir Champa, CG

---- Appellants**Versus**

1. State of Chhattisgarh through Police Station Dabhara, District Janjgir Champa, CG

---- Respondent

For Appellants	:	Shri Rajesh Jain, Advocate
For Respondent/State	:	Shri Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board by Pritinker Diwaker, J****21/02/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 22.12.2012 passed by Additional Sessions Judge Sakti, District Janjgir Champa in Sessions Trial No. 212/2011 convicting and sentencing the accused/appellants as described below:

Conviction (U/s)	Sentence
302/34 IPC	Imprisonment for life and fine of Rs. 50,000/- each
325/34 IPC	RI for seven years and fine of Rs. 10,000/- each
323/34 IPC	RI for six months and fine of Rs. 01,000/- each (on three counts)
294 IPC	RI for one month

506 (Part-II) IPC RI for one year and fine of Rs. 01,000/- each
(one five counts)

2. As per the case of prosecution, on 13.07.2011 Kheek Bai (PW-18) went to the public bore-well for fetching water where accused/appellant Ganesh Ram was already taking bath. When Kheek Bai asked accused Ganesh Ram to allow her to have water, he not only refused for the same but also started abusing her filthily. By that time, her husband (the deceased) also came there and asked the accused Ganesh Ram to permit his wife to get water, on which some altercation took place between them. Accused Ganesh Ram is also stated to have threatened the deceased of life. Hearing the hot-talks, accused/appellants Vishram, Dhananjay and juvenile accused Yaad Ram also came over there carrying axe and club with them and started assaulting Vijay – the deceased. Ganesh Ram is stated to have inflicted the blow with axe and others with club as a result of which he suffered injury on his head and fell down on the ground. Thereafter on hearing the cries of Kheek Bai (PW-18), Ram Kumar (PW-1), Sewak Ram (PW-2), Manmohan Lal (PW-7) also came there and when they intervened in the matter, accused/appellants herein as also the juvenile accused Yaad Ram subjected them to beating too. FIR (Ex.P-1) was lodged on the same day by Ram Kumar (PW-1) against the accused/appellants herein as also the juvenile accused Yaad Ram for the offences punishable under Sections 294, 506 (Part-II), 323, 34 IPC. Injured Vijay was medically examined by Dr. G.L. Miri (PW-9) vide report Ex. P-28 and x-ray report Ex. P-29; Ram Kumar (PW-1) was medically examined by the same doctor vide report Ex. P- 26 and x-ray report Ex. P-27; Sewak Ram (PW-2) was medically examined by the

same doctor vide his report Ex. P-22 and x-ray report Ex. P-23; Suresh Kumar was medically examined by the same doctor vide medical report Ex. P-20 and his x-ray report is Ex. P-21; Manmohan Lal (PW-7) was medically examined by the same doctor vide report Ex. P-24 and x-ray report Ex. P-25. However, injured Vijay died on 14.7.2011 in the hospital while taking treatment. Inquest Ex. P-3 was conducted on 14.7.2011 and then based on the information received from the hospital, *merg* Ex. P-36 was recorded on 15.7.2011. Thereafter, the dead-body was subjected to postmortem examination by Dr. R.N. Mandavi (PW-13) who gave his report Ex. P-35. After completion of investigation, police filed the challan and then the Court below framed the charge against the accused/appellants under Sections 302/34, 294, 506 (Part-II), 325/34 and 323/34 on three counts.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 18 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. One Mohar Lal Chandra (DW-1) has also been examined by the defence in support of its case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellants as mentioned above. Hence this appeal.

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

(i) That a very improbable story has been put forth by the prosecution that the accused persons had done to death Vijay

and subjected to beating Ram Kumar (PW-1), Sewak Ram (PW-2), Suresh (PW-3) and Manmohan Lal (PW-7).

- (ii) That there is no mention in the FIR that the incident occurred when Kheek Bai (PW-18) went to the bore-well to fetch water.
- (iii) That it is the complainant party which was aggressor.
- (iv) That a counter case was also registered against the complainant party where they were tried in Sessions Trial No. 72/2012 but ultimately acquitted by the judgment and order dated 22.12.2012.
- (v) That as members of both the sides suffered injuries in the incident, accused/appellants cannot be convicted under Section 302/34 IPC and looking to the material on record the act of the accused/appellants will fall within exception 4 to Section 300 leading to their conviction u/s 304 (Part-I) or (Part-II) IPC.
- (vi) That looking to the erroneous appreciation of the evidence of the witnesses, the conviction of the accused/appellants under Section 302/34 IPC may be set aside, they may be convicted u/s 304 (Part-I) or (Part-II) IPC and then the sentence imposed on them may be reduced to the period already undergone which comes to about six and a half month as they are in custody since 16.7.2011.
- (vii) That the sentence of fine imposed under all the sections is too much on the higher side.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity

in the same. According to him, taking into consideration the gravity of injuries caused by the accsued persons to Vijay their conviction is just and proper. He submits that the accused persons not only caused injury to Vijay but also to PW-1, PW-2, PW-3 and PW-7 who had come over the spot just to the rescue of Vijay. Overall submission of the State counsel, threfore, is that the Court below has been fully justified in recording all the findings against the accused/appellants and there is no scope of interference with the same.

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

8. Ram Kumar Satnami (PW-1) - one of the injured witnesses and also the lodger of the FIR has stated that on the date of incident at about 7-7.30 PM on hearing the cries of Kheek Bai (PW-18) coming from the side of bore-well "*maar daale maar daale*" he went there and saw the accused persons assaulting deceased Vijay with axe and club. According to this witness, when he tried to intervene in the matter, accused Vishram and Dhananjay assaulted him too with club and thereby caused injuries on his head, left hand and armpit. He has further stated that after suffering injury, Vijay fell down on the ground and then the accused persons ran away. Other witnesses such as PW-2, PW-3 and PW-7 are also stated to have been assaulted by the accused persons. Cross-examination of this witness also carried almost the same version as stated in the examination-in-chief. Sewak Ram (PW-2) - the father of the deceased and one of the injured witesses has also supported the case of the prosecution describing the entire incident and the

manner in which it had taken place. According to this witness, accused Ganesh Ram assaulted the deceased with axe and that other accused persons inflicted injury to him (this witness), PW-1, PW-3 and PW-7 with the help of club. There is no disparity in the version given by this witness either in examination-in-chief or in the cross-examination, and everywhere almost the same thing has been stated by him. Suresh Kumar (PW-3) – brother of the deceased and one of the injured witnesses has also made similar statement like PW-1 and PW-2 and thus duly supported the case of the prosecution. Dwarika Prasad (PW-4) is the witness to inquest Ex. P-3 and seizure of certain articles made under Ex. P-4. Rajesh Kumar (PW-5) is the witness to memorandum, seizure and arrest of the accused persons. He however has not supported the case of the prosecution and has been declared hostile. Sitaram Jaatwar (PW-6) has also not supported the case of the prosecution and has been declared hostile. Manmohan Lal (PW-7) – cousin of the deceased and one of the injured witnesses has also made similar statement like PW-1, PW-2 and PW-3 and thus duly supported the case of the prosecution. Har Prasad Nirala (PW-8) has not supported the case of the prosecution and has been declared hostile. Dr. G.L. Miri (PW-9) is the witness who medically examined the injured persons and gave his reports mentioning the injuries noticed by him in the following manner :-

Injured	Injuries noticed	Medical/ X-ray report
Ram Kumar (PW-1)	Lacerated wound – 3 x 1 cm x bone deep with swelling over left side of scalp Abrasion - 5 x 4 cm over left side of back of thorax Bruise – 3 x 2 cm in left fore-arm	Ex. P-26

	No fracture was found	Ex.P-27
Sewak Ram (PW-2)	Lacerated wound – 2.5 x 1.5 cm x bone deep with swelling over right side of scalp Lacerated wound – 2.5 x .5 x 1.5 cm with swelling over right forearm Bruise 6 x 2 cm over right scapula No fracture was found on scalp but right ulna bone was found fractured	Ex.P-22 Ex.P-23
Suresh (PW-3)	Lacerated wound – 1 x .3 cm x bone deep over the lateral side of right eye Abrasion – 2 x 2 cm with swelling over left side of thorax Abrasion – 4 x 2 cm with swelling over lower portion of left side of back of thorax No fracture was found	Ex.P-20 Ex.P-21
Manmohan (PW-7)	Lacerated wound – 3 x 1 cm x bone deep No fracture was found	Ex.P-24 Ex.P-25
Deceased Vijay	Lacerated wound – 3 x .5 x cm x bone deep over left side of scalp with swelling Abrasion – 1.5 x 1 cm over right knee joint Abrasion – 2 x 1 cm over exterior aspect of mid portion of left foot Fracture of middle portion of skull bone was found	Ex.P-28 Ex.P-29

This witness also gave query report Ex. P-30 stating that the blood-like spots mentioned by him are based on the colour thereof. Raj Kumar (PW-10) has not supported the case of the prosecution and has been declared hostile. Parmanand Nisad (PW-11) is the Patwari who prepared spot map Ex.P-34. Mool Chand (PW-12) is the witness who registered FIR Ex.P-1. Dr. R.N. Mandavi (PW-13) is the witness

who conducted postmortem examination on the body of the deceased and gave his report Ex. P-35 stating that he noticed injury on the left parietal region in the size of 5.5 cm x 1/2 cm x 1/2 cm and fracture of parieto-occipital bone was apparent. Cause of death, according to this witness was head injury and haemorrhagic shock and it was homicidal in nature. Beniram Pandey (PW-14), Dwvdas (PW-16) and Prakash Giri (PW-17) are the witnesses who assisted in the investigation. B.N. Banafar (PW-15) is the investigating officer who has duly supported the case of the prosecution. Smt. Kheek Bai (PW-18) is the wife of the deceased who has stated that on the date of incident at about 7.30 PM when she had gone to the nearby bore-well to fetch water, accused Ganesh Ram came over there and asked her to permit him to take water first for bathing, on which she told him that as had to cook food, let her take water first, on which he started abusing her filthily. In the meantime, her husband Vijay (deceased) came there and asked Ganesh Ram to allow his wife to take water but he did not do so and started taking bath. Accused Ganesh Ram, according to this witness, threatened the deceased and also abused him filthily. She has stated that on hearing the commotion accused Vishram, Dhananjay and juvenile accused Yaadram also came there carrying axe and club and assaulted her husband. On account of the injuries on head, her husband fell down on th ground. Clarifying further, she has stated that accused Ganesh Ram inflicted injury to her husband with axe and others with club. Thereafter, on hearing her cries, Ram Kumar (PW-1), Sewak Ram (PW-2), Suresh (PW-3) and Manmohan (PW-7) came there and they too were assaulted by the accused persons. Moharlal Chandra (DW-1) has made anattempt to prove the fact that on the date of incident accused

Vishram was somewhere else and not on the place of occurrence at the relevant time. Apart from the evidence of these witnesses, on the memorandum of accused Dhananjay (Ex.P-5), seizure of club was made under Ex. P-6; on the memorandum of accused Vishram (Ex. P-7), seizure of axe was made under Ex. P-8 and on the memorandum of accused Ganesh Ram (Ex.P-9), seizure of axe was made under Ex. P-10. The clubs and axe are said to have been stained with blood like substance. However, there is no FSL report on record though the seized articles were sent for chemical examination vide Ex. P-41.

9. We have heard counsel for the parties and gone through the evidence of the witnesses and other material available on record with utmost care and caution. All this arduous exercise reveals that on the date of incident in the evening hours deceased Vijay Kumar - the husband of Kheek Bai (PW-18), went to the nearby bore-well and on seeing his wife waiting there to have water, he asked accused Ganesh Ram to let his wife have water but these words of the deceased did not appeal to his temperament and enraged him to such an extent that he started hurling filthy abuses and also threatened him of doing away with. On hearing the war of words ensuing on the spot, other accused persons also reached there and caused injuries to Vijay with axe and club. Record also reveals that when PW-1, PW-2, PW-3 and PW-7 tried to save the deceased, the accused persons also pounced on them and inflicted injuries to them also with club. Seizure of axe and club, as described above, is also there on the memorandums of the accused/appellants, though FSL report is not the part of record. All the injured eyewitnesses (PW-1, PW-2, PW-3 and PW-7) as also the wife of the deceased (PW-18) have, in the same tone, spoken about the assault - verbal

and/or physical opened by the accused persons, first at the deceased and then to them, and thus lent full support to the case of the prosecution. In this view of the matter, complicity of the accused persons in the crime in question is fully established.

10. Now the question to be decided by this Court is whether the act of the accused/appellants would fall under Section 302/34 or any other Section of the Indian Penal Code. As per the evidence on record, the incident took place all of a sudden on account of fetching of water from the bore-well by Kheek Bai (PW-18) - the wife of the deceased where accused Ganesh Ram was already there and did not allow her to take water unless and until he took bath. Record also shows that in the meanwhile deceased also reached there, asked accused Ganesh Ram to allow his wife to fetch water and then the verbal feud ensued between them eventually culminating in the assault by the accused persons. No premeditation on the part of the accused persons is visible to reflect that they were determined to do away with the deceased. On the contrary, the evidence suggests that the assault was made by the accused/appellants under the momentary excitement and impulse of passion upon sudden provocation on account of the insistence and persistence of the deceased and his wife to fetch water first. In these circumstances, the act of the accused/appellants will safely fall within exception 4 of Section 300 IPC. Further, looking to the weapon used in the crime i.e. axe, part of the body i.e. head and gravity of the injuries, it is manifest that the accused/appellants had intention of causing such bodily injuries sufficient to cause death in the ordinary course of nature but the knowledge on their part about the injuries being fatal to his life was lacking. Being so, in the considered opinion of this Court, in stead

of Section 302/34, the accused/appellants are liable to be convicted under Section 304 (Part-I) IPC.

11. Accordingly, the conviction of the accused/appellants under Section 302/34 IPC is set aside and in turn they stand convicted under Section 304 (Part-I) IPC. However, looking to the evidence on record suggestive of hurling of filthy abuses coupled with threat of life followed by assault to PW-1, PW-2, PW-3 and PW-7 by the accused/appellants, conviction and jail sentence imposed on the accused/appellants under other Sections are hereby maintained as to that extent no illegality or infirmity is seen in the judgment impugned.

12. Accused/appellants are sentenced to undergo RI for 10 years with fine of Rs. 500/- each under Section 304 (Part-I) read with 34 IPC. In default of payment of fine, the appellants shall further undergo RI for two months. However, the sentence of fine imposed by the Court below under all the sections appears to be too much on the higher side and therefore it is hereby set aside. Nonetheless, pressing in service the provisions of Section 357 of the Code of Criminal Procedure, this Court thinks it just and reasonable to ask the accused/appellants to suitably compensate the wife of the deceased and Sewak Ram (PW-2) which, according to us, would work as an appeasing and soothing balm to the wounds on their psyche. We thus direct each of the accused/appellants to pay additional sum of Rs. 10,000/- totaling to Rs. 30,000/-, out of which Rs. 25,000/- will be paid to the wife of the deceased namely Kheek Bai (PW-18) and remaining 05,000/- to Sewak Ram (PW-2) who suffered fracture on right ulna bone.

13. Making all the sentences run concurrently, the appeal is allowed in part with the modification in the judgment impugned sketched in the preceding paragraphs. To emphasise, lapse on the part of the accused/appellants in payment of compensation would fetch one year extra simple imprisonment on their head.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Sanjay Agrawal)

Judge