

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 729 of 2010**

1. Rakesh Kumar S/o Pyari Panika aged about 35 years, r/o. Village Kaskela (Junapara), Police Station Bhatgaon, District Surguja (CG).
2. Nandkumar @ Nandlal S/o Pyari Panika r/o. Village Kaskela (Junapara), Police Station Bhatgaon, District Surguja (CG).

---- Appellants.**Versus**

- State of Chhattisgarh through Police Station Bhatgaon, District Surguja (CG).

---- Respondent

For Appellants	:	Mr. Shobhit Koshta, Advocate
For respondent/State	:	Mr. Bhaskar Payasi, Panel Lawyer

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

Oral Judgment**Per Ram Prasanna Sharma, J****(7-5-2018)**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 15-09-2010 passed by the Second Additional Sessions Judge (FTC), Surajpur, Sessions Division Surguja (CG) in ST No. 162 of 2010 wherein the said court has convicted the appellants under Section 302 read with Section 34 of IPC for committing murder of one Samaylal on 14-1-2010 at

about 8.00 pm at village Kaskela, Junapara and sentenced them to undergo RI for life and fine of Rs.1,000/-; each with default stipulations.

2. In the present case, name of the deceased is Samaylal. As per prosecution case, on 14-1-2010 at about 8.00 pm the deceased was in his house at village Kaskela, Junapara and was abusing his wife Sonia Bai by saying that she is cooking food very late. During this time, nephews of Samaylal namely Rakesh and Nandkumar knocked the door of the house of the deceased and on opening the door, both appellants asked the deceased as to why he is abusing them. On being asked, deceased replied that he is not abusing them, but he is abusing his wife and thereafter both the appellants started beating Samaylal by hands and legs. Samaylal slept in the house, but succumbed to the injuries on the next day. The matter was reported and investigated and after completion of trial the trial Court has convicted the appellants as mentioned above.

3. Learned counsel appearing for the appellants submits as under:

- i) Though Sonia Bai (PW/7) and Sohago Bai (PW/8) deposed that the appellants assaulted the deceased by kicks and punches but they did not disclose the aforesaid incident to anyone till the death of the deceased, therefore, their version is doubtful.

- ii) The trial Court did not appreciate the medical evidence in its true perspective and the injuries were not sufficient in the ordinary course of nature to cause death.
- iii) No one was examined from the locality where the incident took place and the version of the witnesses is contradicted in material aspect of the matter.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered while invoking jurisdiction of the appeal.
5. We have heard learned counsel for the parties and perused the material on record.
6. To substantiate the charge prosecution has examined as many as thirteen witnesses.
7. Dr. Maheshwar Singh (PW/12) conducted autopsy of the deceased on 17-1-2010 at Primary Health Centre, Bhatgaon and noticed the following injuries.

- i) Eyes semi opened. Pupils full dilated and fixed. Mouth semi opened.
- ii) Both upper limbs extended. Both lower limbs extended. Wore blue coloured elastic under wear.
- iii) Bruise on post aspect of right elbow and

shoulder.

- iv) Bruise on right shoulder. Rigor mortis present on all four limbs and yellowish discharge was coming from mouth. Not passed stool. External genitalia normal.

He opined that cause of death is shock due to abdominal injury and rupture of intestine. Version of this witness is unshaken during cross examination. There is no expert's opinion in rebuttal of the same, therefore, it is established that cause of death is rupture of intestine.

8. PW/7 Sonia Bai and PW/8 Sohago Bai are the witnesses of the incident who were present in the house where the incident took place. Both witnesses have deposed that the appellants assaulted the deceased by hands and legs. Version of these witnesses is unshaken even after searching cross examination, nothing could be elicited in favour of defence. Merg intimidation (Ex.P/6) was lodged by Sonia Bai (PW/7) on the date of incident in which both the appellants have been named as culprits. Both witnesses are firm in their statements from the day of the incident and their version is supported by FIR (Ex.P/7) and opinion of the expert.
9. Now the only point for consideration is whether act of the appellants falls within the definition of murder as defined in Section 300 of the 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”

10. As per prosecution case, appellants entered into the house of the deceased when he was abusing his wife and it appears that his voice was loud, therefore, it was spreading in the locality and both appellants entered into the house of the deceased. Both the appellants were not having any arms and they were empty handed, therefore, intention to kill the deceased cannot be gathered in the peculiar facts and circumstances of the case. Expert did not certify that the injuries sustained by the deceased

were sufficient in the ordinary course of nature to cause death. From the evidence of causing injury by hands and legs, it is difficult to attribute any knowledge to the appellants that the injuries inflicted by them were likely to cause death.

11. As per clause 5 of Section 320 of IPC, destruction or permanent impairment of the power of any member or joint is grievous hurt. As per medical expert, there was rupture of intestine and the same is destruction of power of member and it is grievous hurt as defined in the said provision, therefore, the act of both the appellants falls within the mischief of Section 320 (v) of the IPC read with Section 34 of the IPC. Their conviction under Section 302 read with Section 34 of the IPC is converted into Section 325 read with Section 34 of IPC.
12. From the record, it appears that both the appellants have suffered jail term from 17-1-2010 to 10-2-2014 during investigation/trial/appeal period which comes out to more than four years. Considering all the facts and circumstances of the case, we are of the view that ends of justice would be served if the sentence imposed by the trial Court is reduced to the period already undergone by them while altering conviction from under Section 302 of IPC to Section 325 of IPC. The appellants are convicted under Section 325 of the IPC and sentenced to the period already undergone by them. Fine amount imposed by the trial Court shall remain intact. Now the appellants are reported to

be on bail. Their bail bonds shall continue for a period of six months in view of Section 437-A of Cr.P.C.

13. Accordingly, the appeal is partly allowed to the extent indicated above.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)

Raju