

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 607 of 2012

- Maniram Sahu S/o. Kunjram Sahu R/o Village Matia P.S. Bilaigarh Distt. Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through, P.S. Janjgir Distt.- Janjgir-Champa C.G.

---- Respondent

CRA No. 102 of 2014

- Sarju Prasad Kashyap, S/o Govind Ram Kashyap, aged about 21 years R/o Gram Bhatapara Naila, Police- Janjgir, Civil and Revenue District Janjgir Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh S/o Through Incharge PS Janjgir, Civil And Revenue District Janjgir-Champa (CG)

---- Respondent

And

CRA No. 797 of 2012

- Ashwani @ Pappu Mali, S/o Badku Mali, aged about 30 years, R/o Village - Malipara, Shashipur, Police Staiton Chandrapur, Distt. Janjgir-Champa C.G. At Presently In Jail - District Jail Janjgir, District Janjgir-Champa (CG)

---- Appellant

Versus

- State of Chhattisgarh S/o Through Incharge PS Janjgir, Distt. Janjgir-Champa (C.G.)

---- Respondent

Cr.A. No.607/2012

For Appellant : Shri Manish Nigam, Advocate
For Respondent : Shri Vivek Sharma, Govt. Advocate

Cr.A. No.797/2012

For Appellant : Shri Azad Siddique & Smt. Seema
Singh, Advocates.
For Respondent : Shri Vivek Sharma, Govt. Advocate

Cr.A. No.102/2014

For Appellant : Shri B.P. Rao & Smt. Seema
Singh, Advocates.
For Respondent : Shri Vivek Sharma, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay Agrawal

Judgement

Per P. Diwaker, J

14/03/2018

1. The above appeals since arising out of a common judgment, are heard together and being disposed of by this common judgment.
2. Challenge in the above appeals is to the judgment of conviction and order of sentence dated 14.6.2012 passed by the Additional Sessions Judge, Janjgir, District Janjgir Champa (CG) in Sessions Trial No.173/2011 thereby convicting the accused/appellants under Section 302/34 of the Indian Penal Code (henceforth 'the IPC') and sentencing each of them to undergo rigorous imprisonment for life and fine of Rs.5,000/-, in default to undergo additional RI for 1 year.
3. The prosecution case, in brief, is that Santosh Sriwas (since deceased) was incarcerated in District Jail, Janjgir on 30.4.2011 in connection with Crime No.42/11 registered at Police Station AJAK, Janjgir for commission of offence punishable under Sections 294, 526 & 324 of the IPC and

Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He was kept in Barrack No.1. On 2.5.2011 due to use of slippers in the barrack by the deceased, the accused/appellants tied his hands, legs and mouth with the cloth and beat him with hands, kicks, fists and stick and thereafter pushed him from stairs towards the ground due to which the deceased fell down from the stairs and sustained injuries on various parts of his body. Incident was witnessed by other inmates of barrack and Guards posted in jail. The deceased was brought to the jail hospital where he was given treatment and thereafter he was shifted to Barrack No.5. On 3.5.2011 when the health of deceased worsened, he was brought to District Hospital, Janjgir where he was declared brought dead by the doctor. Un-numbered merg (Ex.P-24) was registered at the instance of Jail Guard (PW-14) and based on which numbered Merg was recorded vide Ex.P-25 on 3.5.2011 itself. A team of three doctors, at District Hospital, Janjgir, conducted autopsy on the body of the deceased vide Ex.P-49. According to the team of doctors, who conducted post-mortem examination, cause of death was cardio respiratory failure as a result of multiple injuries and pathology of organs and their complications. Mode of death was asphyxia. On a query being made by the police regarding nature of death, Dr. A.K. Jagat (PW-25) stated that death appears to be homicidal in nature. After receipt of post-mortem report and conducting merg enquiry, FIR (Ex.P-27) was registered accused persons on 10.5.2011 under Sections 302 & 201 of IPC. Memorandum statement (Ex.P-7) of accused/appellant Ashwani @ Pappu Mali was recorded and on the basis of disclosure statement by him, one club and slippers were seized vide seizure memo Ex.P-8. On the basis of memorandum statement (Ex.P-5) of accused/appellant Maniram Sahu, one cotton cloth was seized vide Ex.P-6. Likewise at the instance of

accused/appellant Sarju Prasad one towel was seized vide Ex.P-10.

4. On completion of investigation, challan against four accused persons was filed under Sections 302, 34 of IPC followed by framing of charge by the trial Court under that section. The prosecution in order to prove its case examined as many as 34 witnesses. Statements of accused persons were also recorded under Section 313 of CrPC in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication. A magisterial enquiry was also ordered in the matter which was conducted by the Sub Divisional Magistrate, Janjgir. As per magisterial enquiry report, the deceased received injuries on account of beatings given by accused/appellants which ultimately resulted in his death.
5. After hearing counsel for the parties, the trial Court by the impugned judgment convicted and sentenced the accused/appellants in the manner as described above. However, co-accused Rakesh Kewant was not found guilty and he was accordingly acquitted of the charge.
6. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
7. Learned counsel for appellants submit that appellants have been convicted solely on the basis of statement of Itwari (PW-3) & Naresh (PW-5). According to Itwari (PW-3), it is accused/appellant Ashwini @ Pappu Mali who had beaten the deceased by hands, fists & kicks but not to the severity as mentioned in the medical report where number of injuries were found on the person of the deceased. According to Naresh (PW-5), accused/appellant Maniram & Sarju have only slapped the deceased that too after the beating by accused/appellant Ashwini was over. Thus, even if the entire prosecution story is taken as it is, the

appellants in no circumstances could be convicted under Section 302/34 of IPC and they could be convicted under Section 325/34 IPC because there was no intention to cause death of deceased on the part of the appellants nor such a knowledge can be so attributed to them. He further submits that appellants Sarju & Maniram have already remained in jail for about a year whereas appellant Ashwini @ Pappu Mali is in jail for the last about six years and therefore while converting their conviction under section 325/34 IPC, they may be sentenced to the period already undergone by them.

8. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that the manner in which the deceased was assaulted, the intention on the part of appellants to cause his death is writ large. Thus, the conviction of the appellants under Section 302/34 IPC and the resultant sentence is just and proper and no interference therewith is warranted.
9. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
10. Rahim Khan (PW-1), Sudhakar Singh (PW-2), Bharat Das (PW-3), Rishi Singh (PW-4), Bhagwat Prasad Rathore (PW-6), Nirajan Prasad (PW-7), Samme Singh Jagat (PW-9), Ravi Kumar (PW-12), Mohan Ram Bhagat (PW-21), Ramkrishna Rathore (PW-27), Santosh Singh (PW-28), Mahavir Prajapati (PW-30), Mukesh Tigga (PW-34) did not support the prosecution case and as such they have been declared hostile.
11. Leonai Tirkey (PW-11), J.R. Sidar (PW-14), M.R. Nikunj (PW-15), Philip Tirkey (PW-16) & Rajnikant Vaishnav (PW-19), Nehru Lal Kanwar (PW-26) are the formal witnesses and they do not in any way connect the present appellants with the crime in question, therefore their evidence need not be referred to in detail.

12. Naresh Kumar (PW-5), who was also incarcerated in District Jail, Janjgir and was residing in Barrack No.1 along with accused/appellants, has deposed that the deceased used to behave like a mental and used to murmur. He used to say that he wants to go to his wife & children. He does not sleep at night. He has further stated that the deceased was slapped by accused Sarju & Mani. He has further stated that after returning from the jail office, he was informed by other inmates of barrack that being slapped by accused/appellant Pappu Mali, the deceased had fallen down the stairs. Next day he came to know that the deceased was taken to the hospital for treatment and in the same evening he learnt about the death of deceased. In the cross-examination, he has admitted that apart from him, 2-3 other prisoners had also seen accused/appellant Pappu Mali assaulting the deceased. He has also admitted that he did not see accused/appellant Pappu Mali assaulting the deceased.
13. Itwari Bhardwaj (PW-13) was also residing in Barrack No.5 along with accused/appellants at the relevant point of time. According to this witness, the deceased was shifted from Barrack No.1 to Barrack No.5. On the fateful day, the deceased entered the barrack with sleepers whereupon he was dashed by accused/appellant Pappu Mali as a result of which he fell down and thereafter accused/appellant Pappu Mali gave beatings to him by fists & elbow. He also assaulted him by club. Immediately thereafter one officer of jail intervened and took away the deceased from there. Next morning he came to know that the deceased died. In the cross-examination he has admitted that the guards are always on duty outside the barrack and inside the jail and at the time when the incident had occurred, the Guard was present there.
14. Badri Vishal Patel (PW-16) is the person who gave initial medical treatment to the deceased in jail hospital. However, he did not support the

prosecution case in its entirety and as such declared hostile.

15. Dr. Mamta Jagat (PW-22) is the doctor who sent intimation (Ex.P-26) to the Station House Officer, Police Station Janjgir regarding the death of deceased. According to this witness, the deceased was brought dead to the hospital.
16. Santosh Das Manikpuri (PW-23) is the Patwari who prepared spot map Ex.P-48.
17. Dr. A.K. Bhagat (PW-25) is one of the doctors of the team which conducted post-mortem examination over the body of deceased. He has admitted that a team of doctors was constituted for conducting post-mortem examination over the body of deceased. He along with Dr. Sandeep Kumar and Dr. B.M. Markam were the members of said team. He has further stated that as per opinion of the team of doctors, the cause of death was multiple injuries and their complication. Mode of death was asphyxia and duration of death was 12 to 36 years within post-mortem examination.
18. Chunnilal (PW-29) is a prisoner who was also residing in Barrack No.1 of District Jail, Janjgir at the relevant point of time, but he has not deposed anything against the accused/appellants. However, he has deposed against the Jailor (PW-17) that he used to call the witnesses of this case in his chamber one by one and used to threaten them.
19. Close scrutiny of the evidence on record makes it clear that the incident started over a trivial issue, that is to say, the deceased came inside the barrack wearing *hawai* sleepers which was not liked by accused/appellants and therefore he pushed him down the stairs and thereafter gave beatings to him by hands, fists & kicks after tying his hands, legs & mouth with a piece of cloth (gamchha). The injuries caused to the deceased were proved to be fatal and therefore he was declared

dead when brought to the hospital. According to eyewitness i.e. Itwari Bharadwaj (PW-13), inmate of barrack where the deceased was also residing, it was accused/appellant Ashwini @ Pappu Mali who assaulted the deceased by hands, fists & elbow. According to PW-5 Naresh Kumar, another prisoner of Barrack No.1, it is accused/appellants Mani & Suraj who had slapped the deceased. The version that accused/appellants assaulted the deceased gets corroboration from the medical evidence, according to which, multiple contusions and abrasions were noticed on the body of deceased. To a specific query put to the doctor (PW-25) with respect to injuries suffered by deceased, he opined that injuries noticed on the body of deceased may come on account of beatings by hands, legs, club, sleepers, fists and also on account of fall from stairs due to forcible pushing by someone. This apart, a magisterial enquiry into the incident was ordered by the Government and accordingly the Sub Divisional Magistrate, Janjgir conducted the enquiry and submitted his report to the Collector, District Janjgir Champa. As per magisterial enquiry report, death of deceased was due to beatings given to him by accused/appellants herein. This magisterial enquiry report has remained unchallenged.

So far as the defence taken by the accused/appellant in their statement recorded under Section 313 CrPC that the deceased died due to excessive beating given to him by the jail personnel is concerned, from perusal of statements of PW-5 & PW-13, it is clear that the incident of beating took place inside the Barrack No.1 and it is the accused persons who caused injuries to the deceased. These witnesses were inmates of Barrack No.1 and have full opportunity to see the occurrence. Thus their presence at the place of occurrence is natural. Nothing is there to show that these witnesses were either inimical to the appellants or interested in

the jail personnel because of that they could have deposed against the appellants. Thus, the possibility of these witnesses falsely implicating the accused/appellants in crime in question, in our view, is completely ruled out.

In the light of above discussion, the complicity of accused/appellants in the crime stands well proved. All the accused/appellants with a common intention attacked and assaulted the deceased.

20. Now the question to be considered by this Court is whether the act of accused/appellants makes them liable to be convicted under Section 302/34 or 325/34 IPC?

21. In **Parusuraman @ Velladurai & ors v. State of Tamil Nadu** reported in **AIR 1993 SC 141** the Hon'ble Supreme Court has held thus:-

“Thirteen external injuries were found on the dead body of the deceased. Out of these 11 were on lower legs and arms. The intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of Section 325 of IPC. Keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the offence committed by the appellants comes within the mischief of Section 325 read with 34 of IPC and convicted them under Section 325 of IPC read with Section 34 of IPC, imposing the sentence of imprisonment already undergone by them, and the sentence of Rs.7,000/- each as fine, to be deposited before the Trial Court, within four months, which be paid to the father/mother of deceased.”

22. In **Chaku Khadia v. State of Orissa** reported in **2007 Cri.L.J. 4472 (Ori.)** the Hon'ble Supreme Court has held thus:-

9. In the instant case, admittedly the appellants while assaulting the deceased used no lethal weapon. P. Ws. 1,2,4 and 5 in their evidence stated about the dealing of fist blows and slaps by the accused persons. Only P. Ws. 1 and 5 stated about the lathi blows. Law is well settled that merely because death has been caused, intention or knowledge on the part of the accused cannot be assumed. The degree of guilt of the accused is not to be extended beyond what he had intended or known as the probable consequence of his act. In the absence of intention or knowledge, the offence committed may be one of causing grievous hurt or simple hurt, as the case may be. Therefore, basing upon the evidence of P. Ws. 1, 2, 4 and 5 coupled with the injuries sustained by the deceased, it can safely be concluded that the prosecution has made out a case under Section 325/34 IPC against the appellants and the trial Court has rightly convicted and sentenced them under the said section.”

23. From a bare reading of above it is clear that merely because the death has been caused, intention or knowledge on the part of accused cannot be assumed. The degree of guilt of accused is not to be extended beyond what he had intended or known as the probable consequence of his act. In the absence of intention or knowledge, the offence committed may be one of causing grievous hurt or simple hurt, as the case may be.

24. In the instant case, the accused/appellants have admittedly not used any kind of weapon while assaulting the deceased. PW-5 & PW-13 have also stated about the dealing of fists blows and kicks by the accused persons. In the absence of user of any dangerous weapon which would normally be used in such a situation where there is an intention to cause death a person, it can be safely inferred from the evidence that the

accused/appellants had shared a common intention of causing only grievous hurt by hands & fists. Nature of injuries caused by the accused/appellants also shows that there was no intention to kill nor was it possible to infer that any of accused/appellants had the knowledge that by fisting & kicking someone, they are likely to cause such an injury which is so imminently dangerous that it must in all probability cause death. Furthermore, the incident had occurred in a spur of moment and that too on a very trivial issue. Therefore, the act attributed to the accused/appellants comes within the parameters of Section 325/34 IPC and not under Section 302/34 IPC as has been done by the trial Court.

25. So far as the sentence part is concerned, considering the fact that there was no previous enmity between the appellants and the deceased, the incident took place all of a sudden on a trivial issue, as mentioned above, appellants Maniram & Sarju have already served jail sentence of about one year, this Court is of the view that the period of sentence already undergone by them deserves to be treated as sufficient sentence.

26. As regards the sentence to be imposed on accused/appellant Ashwani @ Pappu Mali under Section 325/34 of IPC, though the record reveals no previous enmity between the parties, yet at the same time it eloquently shows that it is he who was the main perpetrator of the crime in question and perhaps for that he did not get bail at the opportune time. However, by now, he already appears to have undergone the substantive sentence of more than six years and therefore the justice demands that he too can be given benefit of sentence being reduced to the period already undergone.

27. Accordingly, all the appeals are allowed in part. Conviction and sentence of accused/appellants under Section 302/34 of IPC are hereby set aside and instead thereof they are held guilty under Section 325/34 of IPC and

sentenced to the period of detention already undergone by them respectively.

28. Appellants Maniram & Sarju are reported to be on bail. Their bail bonds stand discharged. Appellant Ashwini @ Pappu Mali is reported to be in jail, therefore, he be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-
(P. Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge

roshan/-