

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 555 of 2013**

1. Jagjeet Ram S/o Thakurdin Aged About 57 Years
2. Thanu Ram S/o Jagjeet Ram Aged About 30 Years
3. Dashmet W/o Jagjeet Ram Aged About 55 Years

All R/o Village Mandar Baigapara , P.S. Odgi , Distt. Surajpur Rev. And Civil
Distt. Surajpur C.G.

---- Appellants**Versus**

- State of Chhattisgarh Through – Station House Officer, P.S. Odgi , Distt. Surajpur C.G.

---- Respondent

For Appellants	:	Ms. Savita Tiwari, Advocate
For Respondent-State	:	Shri SRJ Jaiswal, PL for the State

Hon'ble Shri Justice Goutam Bhaduri &**Hnon'ble Shri Justice Rajendra Chandra Singh Samant****Order On Board****24/02/2018****Per Rajendra Chandra Singh Samant, J**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by learned 1st Additional Sessions Judge, Surajpur in Sessions Trial No.403/11 dated 31.01.2013, whereby the appellants have been convicted under Section 302/34 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.50/-, each, with usual default stipulation.
2. The facts of this, in brief, are that on the date of incident i.e. 23.06.2011,

when deceased Gulzara was taking rest after having meals at about 8 pm in the night, his father Jagjeet Ram (A1), his mother Dashmet (A3) and his brother Thanu Ram (A2) came to his resident disputing on account of some dispute of partition of lands and the altercation took place in between them. Jagjeet Ram (A1) caught hold of the deceased Gulzara and brought him to the courtyard of the house, where Thanu Ram (A2) caught hold of his feet and let him fell down on the ground. Appellant No.3 was carrying an axe, main appellant Jagjeet Ram snatched the axe from appellant No.3 and assaulted the deceased on his head, causing injuries to him. Deceased was immediately shifted to the hospital in Odgi, he succumbed to injuries during the course of treatment. Merg intimation was recorded at 15.30 am on 24.06.2011. Inquest procedure was conducted vide Ex. P-3 and on the basis of the inquest report, the FIR (Ex. P-6) was lodged on 24.06.2011 at 9.10 AM. The Postmortem examination report (Ex. P-9) revealed that the cause of death was head injury which resulted into coma of the deceased. The statement of witnesses were recorded and on completion of investigation, the charge-sheet was filed before the concerned trial Court.

3. The trial Court charged the appellants under Section 302/34 of the I.P.C. and the appellants pleaded in denial and prayed for trial. Prosecution on its behalf has examined six witnesses. On examination under Section 313 Cr.P.C. the appellants denied all the incriminating evidence against them and pleaded innocence & false implication. No witness was examined in defense. On completion of trial, the impugned judgment was passed in which the appellants stand convicted and sentenced as mentioned hereinabove.
4. Learned counsel for the appellants submits that the incident has taken place due to the altercation over a dispute regarding partition. She would further

submit that because of the altercation, the deceased fell down and suffered injuries due to falling on the hard surface. It is further submitted that even if it is taken as it is, appellant No.1 Jagjeet Ram has assaulted the deceased with the axe, it can be made out very clearly that the injuries sustained by the deceased were not caused by the sharp edged side of the axe as postmortem report Ex. P-9 discloses, that all the injuries were lacerated wound which could be caused only by hard and blunt object. She would further submit the appellants had no intention to cause death of the deceased, because the appellants left the place after causing injuries to the deceased and the deceased was still alive and he was taken for treatment to the hospital and it was there he succumbed to injuries and not at the place of incident. Hence under these circumstances it is prayed that no case is made out under Section 302/34 of the I.P.C. against the appellants and on the other hand it is a clear case of under Section 304 IPC and the appellants may be convicted under Section 304 (II) I.P.C. and they may be sentenced for the period of detention already undergone by them.

5. Per contra, learned State counsel opposes the grounds raised in appeal and submits that the order of conviction is well merited and submits that it is a clear case of murder supported by the eyewitnesses namely Lal Kunwar (PW-1) & Deepa (PW-2), who were present on the spot and had witnessed this incident. From the evidence of these witnesses, it is clear that the appellants came with preparation to cause fatal injury to the deceased and in this manner they carried out the intention by causing injuries on the head of the deceased knowing well that it could result in his death. Hence the impugned judgment does not suffer from any infirmity and needs no interference in this appeal.
6. The question for determination in this appeal is whether on the basis of the

evidence of prosecution before the trial Court offence under Section 302 IPC is made out or not.

7. We have perused the statements of the witnesses and the documents on record.
8. Lal Kunwar (PW-1) has stated before the Court that on the date & time of incident the appellants came in front of the house of this witness and were exhorting the deceased to come out. Then appellant No.1 Jagjeet Ram entered into the house and using force pulled out the deceased in the courtyard where appellant No.2 Thanu Ram by holding the feet of the deceased made him fall down. At that time, the appellant No.3 Dashmet was carrying an axe, appellant No.1 took that axe from Dashmet and assaulted the deceased on his head causing injuries to him. Thereafter, after such assault, the deceased was taken to the hospital at Odgi and from there the witnesses and others were planning to take him to the Ambikapur but in the meantime the deceased died. In cross-examination this witness has remained firm on his statement and denied all the adverse suggestions given by the counsel for the defense and there is no admission as such which could be regarded as a contradiction to statement given by her in the cross-examination-in chief.
9. Deepa (PW-2) has fully supported the statement given by Lal Kunwar (PW-1) about witnessing the incident. Her statement also remained un-rebuted in the cross-examination.
10. Vishwanath (PW-3) was informed by Lal Kunwar (PW-1) about the incident and then he made arrangements for taking the deceased to the hospital and his statement has not been challenged in the cross-examination.

11. Inspector C.P. Bara (PW-5) has stated about the recording of FIR (Ex. P-6) on the basis of the Merg enquiry and also given statement about the investigation conducted by him. There is no statement as such in his cross-examination to rebut the statement given by him in examination in chief.
12. Dr. S.N. Kujur (PW-6) has proved the postmortem report (Ex. P-9). According to him three injuries were found on the frontal part of the head of the deceased and all injuries were lacerated wound and the brain was found depressed in the inner examination. On the basis of the finding in the postmortem examination, he has opined that because of head injury caused to the deceased, he went in coma and that has resulted in his death. In cross-examination he has admitted that he has not given this opinion that the death is of homicidal nature or not and also admitted that if the deceased had fallen forcefully on some hard surface, the injuries that were found could have been caused. But there is no other witness in support of this admission made by this witness as none of the eyewitness admitted in cross-examination that at the time of the incident the deceased had fallen in such manner to have suffered injuries on that part of the head, wherein the injuries have been found in the postmortem examination and no witness was examined in defence in support of this defence.
13. On close scrutiny of all the witnesses of the prosecution, we are of the clear opinion, that the evidence of the prosecution is beyond all reasonable doubt in respect to the fact that all the appellants came to the house of the deceased with a common intention and during the altercation with the deceased, the main accused Jagjeet Ram/appellant No.1 by using an axe assaulted the deceased on his head causing injuries, which resulted in his death.

14. Considered on the contention made by the counsel of the appellants and the question whether the appellants had intention to cause death of the deceased or not.
15. Lal Kunwar (PW-1) has made a statement in her examination in chief that there had been a dispute between the deceased Gulzara with the appellants regarding cultivation of land. Considering the statement given by the eyewitness that during altercation the main accused i.e. the appellant No.1 was not armed with an axe but the axe was carried by the co-accused i.e. appellant No.3. This fact has to be noticed that the postmortem report (Ex. P-9) does not show that any injury was caused from the sharp edged side of the axe, which is suggestive of the fact that the injuries were caused from the blunt side of the axe and further this fact is also to be noticed that the deceased was not done to death on the spot and there was time to provide treatment to him, as the case is that the deceased has succumbed to injuries on the way to the hospital. For that no question was put to the doctor in examination whether the deceased could have survived, if he would have been provided with the proper treatment in time.
16. Hence, taking into consideration these facts on the basis of the statement of eyewitnesses, we are of this considered view that the appellants though were present on the spot had participated in the altercation and assaulted the deceased, whether they had intention to cause death of the deceased is not clearly made out. Hence, on the point of intention this doubt has arisen and benefit of doubt is always given to the accused persons. Therefore, for these reasons we are of this view that the offence under Section 302 IPC is not made out in this case. On the contrary the offence committed by these appellants falls under Section 304 (II) I.P.C.

17. Consequent to this finding, this appeal is allowed in part. The conviction of the appellants is converted from Section 302/34 I.P.C. to Section 304 (II) I.P.C.

18. Appellant No.1 Jagjeet Ram is sentenced with Rigorous imprisonment of 10 years along with the fine as imposed by the Court below.

19. Whereas, Appellant No.2 Thanu Ram, who has already suffered 6 years, 7 months & 28 days of jail sentence and Appellant No.3 Dashmet, who has suffered 6 years, 6 months & 20 days of jail sentence. Both these appellants namely; Thanu Ram & Dashmet, appellants No.2 & 3, respectively, are sentenced to the period already undergone by them along with the fine as imposed by the concerned trial Court. Appellants No.2 & 3 are in jail, they be released forthwith on deposition of fine amount, if not required in any other case.

SD/-

Goutam Bhaduri
Judge

SD/-

Rajendra Chandra Singh Samant
Judge

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