

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 718 of 2012**

- Baleshwar Tirki S/o Chonhas Tirki Aged About 45 Years R/o Village Ranpur, Thana Jashpur Distt. Jashpur C.G.

---- Appellant

Versus

- State Of C.G. Through PS Jashpur, Distt. Jashpur C.G.

---- Respondent

&

CRA No. 745 of 2012

- Pramod Tirki S/o Mohipal Tirki Aged About 30 Years R/o Village Ranpur, PS Jashpur, Distt. Jashpur C.G.

---- Appellant

Versus

- State Of C.G. Through PS Jashpur, Distt. Jashpur C.G.

---- Respondent

&

CRA No. 751 of 2012

- Monto Toppo S/o Mangra Toppo Aged About 27 Years R/o Village Ranpur, PS Jashpur, Distt. Jashpur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Jashpur, Distt. Jashpur C.G., Chhattisgarh

---- Respondents

For Appellants	:	Shri A.N.Pandey and Shri Sanjay Agrawal, Advocates
For State	:	Shri Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

11/10/2018

Per Manindra Mohan Shrivastava, J.-

The aforesaid appeals are directed against the impugned judgment of conviction and order of sentence dated 19/07/2012 passed by the Sessions Judge, Jashpur in Sessions Trial No.84/2011 whereby and whereunder, the appellants in the aforesaid three appeals have been held guilty of commission of offence under Section 302/34 of IPC and sentenced to undergo life imprisonment with fine of Rs.1000/- each (in default of payment of fine, additional R.I. of one month).

2. The prosecution story, as revealed from the records of the case is that morgue intimation in Ex.P/2 was received in outpost – Lodaam, P.S. - Jashpur on 04/08/2011 wherein, it was stated that Lalmait Tirki was assaulted by appellants – Baleshwar Tirki, Pramod Tirki and Monto Toppo by hands and fists and an old club used as axe on the head. Before she could be provided treatment, she died. FIR was registered in Ex.P/1 and the investigating officer proceeded to the scene of occurrence, prepared inquest report over the dead body and sent the same for post mortem. Dr. Sunil Lakra (PW11) conducted post mortem and found three injuries on the head, out of which, one was cut injury and one of them was swollen injury. According to the opinion of the doctor, the death was caused due to injury on the head resulting in coma. In his opinion, it was homicidal in nature and the time of death was stated to be within 24 hrs. of the post mortem. The appellants were apprehended and seizure of club was said to be made from the appellant – Baleshwar. Upon completion of usual investigation, charge sheet was filed before the jurisdictional Magistrate which was in turn committed for trial. On the basis of material contained in the charge

sheet, learned Trial Court framed charges of commission of offence under Section 302/34 of IPC against the appellants. The appellants abjured guilt and was subjected to trial.

3. In order to prove its case, the prosecution examined in all 11 witnesses. The appellants were also examined under Section 313 CrPC in respect of the incriminating material and circumstances appearing against them in the evidence led by the prosecution. The appellants denied having committed offence. No defence witness was examined.

4. Learned Trial Court, relying upon the evidence led by the prosecution, particularly the eye witness account of Kishun Tirki (PW1), held the appellants guilty of commission of offence and sentenced as described above.

5. Learned counsel for the appellants, at the outset, argued that the entire case of the prosecution, at the most, only establishes that all of a sudden, the appellant – Baleshwar, carrying an impression that due to witchcraft played on his buffalo by Lalmaid, the calf died, a quarrel arose and at the spot, *laathi* blows were given. Out of three injuries on the head, the grievous injury is the wound which is the probable cause of death. The eye witness has been given a suggestion that this incised wound could be caused due to fall on the wooden part of the door frame. The prosecution has failed to explain how the deceased sustained a cut injury because according to the prosecution, a club was used and not any sharp edged weapon. Learned counsel for the appellants argued that in these circumstances, the case of the appellants would be covered under Exception 4 of Section 300 IPC and the appellants, at the most, could be held guilty of commission of offence of culpable homicide not amounting to murder. The appellants have already undergone more than 7 years of imprisonment and in these circumstances, the sentence may be

altered to one under Section 304 Part II for the period already undergone by them.

6. On the other hand, learned State counsel submits that the evidence of Kishun Tirki (PW1) clearly shows that the appellants were the aggressors and assailants. They came to the house of the deceased and started making false allegations and then gave her repeated assaults on her head. As many as 3 injuries were found on the head of the deceased. The intention is clearly proved that those assaults were made with the intention of causing death. Moreover, it is argued that the appellants acted in a cruel and unusual manner. Therefore, it would not come under Exception 4 of Section 300 IPC. As the evidence of eye witness is firm, the judgment of conviction may not warrant any interference.

7. The entire case of the prosecution is based mainly on eye witness account of the sole witness Kishun Tirki (PW1), who is the husband of the deceased Lalmait. In his evidence, he has deposed that buffalo belonging to Baleshwar died due to which, Baleshwar came to his house at about 12 in the night and thrown the corpus in front of his house, blamed his wife as *Tonhi* (one who plays witchcraft) and locked the doors from outside. He further deposed that on the next date, at about 6 – 7 AM, he opened the door, dragged his wife out of the house and tied her with the dead corpus of buffalo and started quarreling with him and also insisting him that he should eat his dead buffalo and at the same time, wielding club held by him. According to this witness, thereafter, appellants – Pramod and Monto reached the spot and then all of them gave 5 – 6 *laathi* blows, due to which, his wife started bleeding and died. In his cross examination, however, this witness has been confronted with the contents of the morgue intimation (Ex.P/2) and his own case diary statements (Ex.D/1) to elicit improvement upon the prosecution case and to bring out an omission that in the merg intimation and the case diary statement, first part of the evidence that in the

night, the appellant had come, thrown the dead body of buffalo in front of the house of this witness and locked the house from outside, has not been stated and for the first time, these kind of statement is made in the Court. No explanation has been given for this either by them or by the investigating officer. Therefore, we find that the eye witness account, to the extent it relates to the incident of previous night, appears to be an exaggeration and not reliable. This leaves the only incident which happened next morning i.e. on 05/08/2011 at about 6-7 AM. The evidence of this witness shows that the buffalo of Baleshwar died and Baleshwar suspected that it was the result of witchcraft played by Lalmait. In these circumstances, he came to her house, dragged her out from her house and she was also tied down with the dead body of buffalo and he started quarreling with the witness – Kishun Tirki, husband of the deceased and then followed assault by him and Pramod and Monto on the head of the deceased resulting in injury. The genesis of dispute, therefore, appears to be an impression on the mind of the appellant – Baleshwar that due to witchcraft played by Lalmait, his buffalo died and in this state of mind, he came to the house of the deceased where she was assaulted.

8. According to the prosecution, a club is said to have used and not sharp edged weapon alleged to have been used nor seized from any of the appellants.

9. The evidence of Dr. Sunil Lakra (PW11) further shows that Lalmait had received three injuries on her head, out of which, one was a cut injury. The other one is said to be a swelling and one injury at the top of the head. There was no fracture found, which shows that the assault was not made with an extreme force. The opinion of the doctor is that the deceased died due to head injury which resulted in coma. The doctor has not given details of the injury or any other details as to what was found after opening of the skull. The post mortem report, however, shows that

there was blood clot in the left side of the brain. Left side of the occipital part of the head of the deceased sustained incised wound. Therefore, in all probability, cause of death was due to clotting of blood which was as a result of an incised wound. In para 9 of his cross examination, the doctor admits that injury no.1 i.e. incised wound on the left part of the head could be caused due to fall on the door frame or by a stone.

The prosecution having failed to explain how the deceased sustained incised wound, when according to the prosecution, assault was given by the appellants with the help of club, the appellants' defence version that in all probability, the incised wound was a result due to fall and not by assault cannot be ruled out.

10. However, the doctor's opinion that the cause of death because of injury on head resulting in coma only establishes that the deceased died due to head injury which includes incised wound as well in addition to the injury which the deceased sustained on other parts.

11. The manner in which the incident happened and as has been narrated by Kishun Tirki (PW1) including exaggerated part, shows that it was a case of sudden quarrel, in a heat of passion because the appellant -Baleshwar was enraged on account of death of his buffalo which was also brought in front of the house of the deceased and quarrel was raised. The other two appellants - Pramod Tirki and Monto Toppo are said to have arrived little later when Baleshwar was indulged in quarrel with Kishun Tirki and all of them started giving *laathi* blows to Lalmait. We also do not find that the appellants have acted in any cruel or unusual manner or have taken undue advantage so as to rule out applicability of Exception 4 of Section 300 IPC.

12. In the totality of the circumstances, the evidence, nature of injury, cause of

death, weapon used and the genesis of dispute reflected from the evidence on record, we are convinced that present is a case where conviction of the appellants could be altered to one under Section 304 Part – II read with Section 34 IPC instead of conviction under Section 302/34 IPC. All the appellants are stated to have already undergone more than seven years of imprisonment. Taking into consideration all mitigating and aggravating circumstances and balancing them, we are of the opinion that sentence of seven years is proportionate to the gravity of offence of culpable homicide not amounting to punishable under Section 304 Part – II read with Section 34 of IPC. Sentence of the appellants is, therefore, altered for the period already undergone by them which is more than seven years.

13. In the result, the appeals are allowed in part. Conviction of the appellants is altered to one under Section 304 Part-II read with Section 34 of IPC instead of Section 302/34 of IPC and sentence for the period already undergone. The appellant- Baleshwar be set at liberty forthwith, if not required in any other case.

As the appellants – Pramod Tirki and Monto Toppo are on bail, their bail bonds stand discharged.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge