

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 780 of 2012

1. Phool Bai And Ors W/o Kishan Chawhan Aged About 58 Years R/o Village Kondamedi, Thana Palandur , Distt. Bhandara Maharastra , Maharashtra
2. Dhaurle Chawhan S/o Kishan Chawhan Aged About 28 Years R/o Village Kondamedi, Thana Palandur , Distt. Bhandara Maharastra , District : Bhandara, Maharashtra
3. Mahuna Bai S/o W/o Hiralal Nath Jogi Aged About 25 Years R/o Village Kondamedi, Thana Palandur , Distt. Bhandara Maharastra , District : Bhandara, Maharashtra
4. Mana Bai W/o Ashok Nath Jogi Aged About 20 Years R/o Village Kondamedi, Thana Palandur , Distt. Bhandara Maharastra , District : Bhandara, Maharashtra

---- Appellants

Versus

- State Of C.G., Through - P.S. Devri , Distt. Balod C.G. , Chhattisgarh

---- Respondent

For Appellants	:	Shri Mateen Siddique & Shri Arvind Dubey, Advocates
For Respondent	:	Shri V.A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement

P. Diwaker, J

05/03/2018

1. Present appeal is directed against the judgment dated 29.8.2012 passed by the Additional Sessions Judge, Balod in Sessions Trial No.10/2012 convicting the accused/appellants for the offence punishable under Section 302/34 of the Indian Penal Code (for short 'IPC') and sentencing each of them to undergo RI for life and fine of Rs.50/-, in default to

undergo additional RI for 3 months.

2. As per prosecution case, deceased Manharan, his wife Mankarma (PW-3) and the appellants were 'nomads', that is to say, they have no permanent abode and they used to travel from place to place to earn their livelihood by begging and fortune-telling. It is stated that on 27.12.2011 the accused/appellants, deceased and other persons were staying behind Santosh Hotel, Maaridevri, Tahsil Dondilohara, District Durg. On the same day at about 8.30 p.m., accused/appellant Fulbai was cooking food on oven and deceased Manharan was warming up himself from the fire of oven. On account of foot of the deceased coming into contact with burning log, the vegetable being cooked spilled over the ground as a result an altercation ensued between the accused persons and the deceased and in the course of altercation, they beat the deceased by hands, fists and kicks due to which the deceased became unconscious. Deceased was taken to the hospital where his MLC was done by Dr. Rajesh Sadani (PW-8) vide Ex.P-16 and he advised for x-ray examination. However, on x-ray examination, no bony injury was noticed. Dehati Nalishi (Ex.P-3) was recorded on 12.12.2011 at the instance of Mankarma (PW-1) and based on which un-exhibited FIR was recorded against the appellants under Section 307/34 of IPC. During the course of treatment in the hospital, the deceased succumbed to the injuries on 15.12.2011. On the basis of information received by a Ward Boy of the hospital, un-numbered merg (Ex.P-6) was recorded on 15.12.2011. Post-mortem examination over the body of deceased was conducted by Dr. S.K. Bagh (PW-7) vide Ex.P-7 and he noticed dark & red coloured ecchymosis over right occipital parietal region of 6x4cm & 6x5cm respectively. Skull bone intact but massive sub-dural haemorrhage was present on right temporal parietal region. Contusion of 1.5 cm was present over right temporal lobe. Multiple

small clotted blood was present. As per opinion of autopsy surgeon, cause of death was due to cardio respiratory failure as a result of head injury and its complication and the duration of death was within 24 hours prior to the post-mortem examination. Numbered Merg (Ex.P-6) was registered on 31.12.2012.

3. After completion of investigation, charge sheet under Section 302/34 IPC was filed against the accused/appellants and accordingly the charge was framed by the trial Court against them. So as to hold the accused/appellants guilty, the prosecution has examined 08 witnesses in support of its case. Statements of accused/appellants were also recorded under Section 313 Cr.P.C. in which they denied the charge levelled against them and pleaded their false implication in the case.
4. 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.
5. We have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
6. Counsel for the appellants submits that the incident in question occurred in a spur of moment and that too on a very trivial issue which had occurred in the fateful night when the foot of the deceased came into contact with burning log and the vegetable being cooked spilled over the ground; as per medical evidence, no bony injury was noticed on the body of the deceased; the deceased died after about eight days of the incident and the autopsy surgeon has opined that had the proper treatment been provided to the deceased, he would not have died. He further submits that Mankarma (PW-1), wife of deceased, had stated that she was also assaulted by accused persons with a vessel, but this was not stated by her in his statement recorded under Section 161 CrPC. This

improvement in the statement made by her before the Court casts a serious doubt on her testimony. Lastly he submits that even if the entire prosecution is accepted in its entirety then also the offence under Section 302/34 IPC is not made out against the appellants and at the most the offence would fall within the ambit of Section 335/34 of IPC. He further submits that appellants No.1 & 3 have already remained in jail for more about a year and appellants No.2 & 4 are in jail for the last about six years and therefore while converting their conviction under section 335/34 IPC, they may be sentenced to the period already undergone by them.

7. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that though it was a case of sudden incident without pre-meditation yet this fact cannot be lost sight that in this case one person lost his life on account of assaults made by the accused/appellants. He further submits that the manner in which the deceased was assaulted, the intention on the part of appellants to cause his death is writ large. Even the doctor conducting post-mortem examination over the body of deceased has opined that the injuries caused to the deceased were sufficient to cause his death in the ordinary course of nature. In these circumstances, the conviction of the appellants under Section 302/34 IPC and the resultant sentence is just and proper and no interference therewith is warranted.
8. Mankarma (PW-1), wife of deceased, has deposed that her husband (deceased) used to beg by playing a musical instrument (sarangi). She has stated that on the date of incident accused Fulabai was cooking vegetable on the oven and her husband (deceased) was warming up himself from the fire of oven. On account of foot of the deceased coming into contact with burning log, the vegetable being cooked spilled over the ground as a result the accused persons got enraged and one of the

accused sat over the chest of her husband and started pressing his neck with his hands, whereas another assaulted on his head by wooden log. At the same time, accused Manabai assaulted on the head of her husband by a vessel. She tried to intervene but the accused persons had thrown her away. Her husband received injuries on his neck bone and head. She has further stated that her husband was firstly taken to the government hospital at Rajnandgaon and thereafter he was given treatment in a hospital at Raipur where he died during the course of treatment. She has further stated that after the incident, the accused persons present in the Court have fled towards the river. In the cross-examination this witness has admitted that she and her husband never had any quarrel with anyone and before that incident her husband and accused/appellant Thorle Chouhan had consumed liquor together. In Para-19 she has admitted that if the vegetable was not spilled over the ground, there would not have been any quarrel between them.

9. Hemlal (PW-2) is the Revenue Inspector who prepared the spot map Ex.P-5. Dilip Kumar Uikey (PW-4) is the Constable who recorded the numbered merg intimation vide Ex.P-6. Sukhram Dhruw (PW-4) is the Ward Boy at whose instance un-numbered merg was recorded. Top Singh Diwan (PW-5) is the police person who assisted in the investigation. R.S. Sahu (PW-6) is the investigating officer who has duly supported the prosecution case.
10. Dr. S.K. Bagh (PW-7) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as described above. The doctor has opined that cause of the death of the deceased was cardio respiratory failure due to head injury and its complication. He has further opined that injuries caused to the deceased were sufficient to cause his death in the ordinary course of nature.

11. Close scrutiny of the evidence on record makes it clear that on account of foot of the deceased coming into contact with burning log, the vegetable being cooked spilled over the ground and resultantly, the accused/appellants got angry and assaulted the deceased by hands, kicks & fists causing injuries to him which resulted in his death during the course of treatment. Incident was witnessed by Mankarma Bai (PW-1), who has categorically deposed that it is accused/appellants who assaulted the deceased by hands & fists. Her version gets support from the medical evidence, according to which, the cause of deceased was cardio respiratory failure as a result of head injury and its complication. It is true that Mankarma Bai (PW-1) has made improvement in her evidence before the Court and deposed certain things which are missing in her statement recorded under Section 161 CrPC, but having regard to the facts and circumstances of this case, we are of the view that such improvements do not demolish her evidence. The consistent evidence of this witness is that the accused/appellants had assaulted the deceased by hands & fists and this evidence, in our opinion, is a credible one. There is no evidence of any previous enmity between the accused persons and the deceased. There is also no reason as to why PW-1 would falsely implicate the accused persons in the offence like murder. Thus, from the ocular and medical evidence available on record, the complicity of accused/appellants in the crime in question stands established beyond doubt.
12. Next question that comes up for our consideration is what is the nature of the offence that appellants have committed?
13. From the evidence on record it is clear that that the accused/appellants before the occurrence had no intention to cause hurt much less grievous hurt to the deceased and only after the vegetable being spilled over the ground, they lost their patience and assaulted the deceased with hands,

fists & kicks. There is nothing on record to show that the appellants were having a motive to do away with the deceased nor they had any ill-will against him. No doubt, the beating by the appellants had caused injuries to the deceased which resulted in his death during the course of treatment. The doctor who conducted post-mortem examination had also opined that the injuries noticed on the body of deceased were sufficient to cause death of deceased in ordinary course of nature. But, the fact remains that the appellants did not use any kind of weapon while assaulting the deceased, which would normally be used in such a situation where there is an intention to cause death of a person. In such a situation, by no stretch of imagination, it can be inferred that the accused persons had any intention of causing death of deceased or had any intention of causing such bodily injury which was likely to cause his death or had any knowledge that the injuries caused by them would result in death. Hence the act attributed to accused/appellants could not be brought either under Section 302 or under any of the categories adumbrated under Section 304 of IPC. Admittedly, the injuries noticed on the body of the deceased were reported to be sufficient to cause his death in the ordinary course of nature and being so, it attracts 'eighthly clause of Section 320 of IPC which says that any hurt which endangers life comes within the definition of 'grievous hurt'. In such a situation, it can be safely inferred that the accused persons had caused grievous injuries to the deceased on sudden provocation without any intention to cause any grievous hurt or without any knowledge that it would likely to cause grievous hurt to the deceased. This being the position, the case of the appellants clearly falls within the scope of Section 335 of IPC which envisages that the accused who voluntarily causes grievous hurt on grave and sudden provocation having no intention or having no knowledge of

causing any grievous hurt to any person other than the person who gave the provocation can be held guilty under this section.

14. 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 as observed above, appellants No.1 & 3 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. As regards the sentence in respect of appellants No.2 & 4, since they are in jail for the last more than six years and thereby have already served more than the maximum sentence that can be awarded to them under Section 335 of the IPC, they are to be released forthwith.

15. Accordingly, the appeal is 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 335/34 of IPC. Since accused/appellants No.2 & 4 have already undergone more than the maximum sentence prescribed, they are directed to be released forthwith if not required to be detained in connection with any other offence. In the given facts and circumstances, the period of detention already served by accused/appellants No.1 & 3 is ordered to be treated as sufficient. Appellants No.1 & 3 are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge

roshan/-