

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 211 of 2013**

1. Gautam S/o Gandhi @ Ganeshu @ Keshav Satnami, aged about 25 years
2. Gandhi @ Ganeshu @ Keshav s/o late Jagat Satnami, aged about 48 years

---- Appellants**Versus**

1. State of Chhattisgarh through District Magistrate, Raipur, District Raipur, CG

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent/State:		Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Gautam Chourdiya****Judgment On Board by Pritinker Diwaker, J****21/06/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 24.01.2013 passed by Additional Sessions Judge, Raipur, in Sessions Trial No. 82/2012 convicting the accused/appellants under Sections 302, 325 and 323 IPC and sentencing each of them to undergo imprisonment for life and pay fine of Rs. 500/- u/s 302; RI for three years with fine of Rs 500/- u/s 325 and imprisonment for one year u/s 323 IPC, plus default stipulations. All the sentences have been made to run concurrently.

2. Facts of the case in brief are that few days prior to the date of incident i.e. 15.12.2011 Lavkush (PW-9) brother of

complainant Ramjag Ratre (PW-1) was allegedly beaten by accused/appellant Gautam. Thereafter on 15.12.2011, PW-1 taking PW-9 with him went to the house of Ferin Bai to find out as to why accused Gautam had beaten Lavkush and that when they were getting out of her house accused Gautam reached there and threatening PW-1 of being killed, he picked up a wooden peg from the nearby parked bullock cart and caused injury on his head. Accused/appellants are also said to have caused injury to Jagtu, Manisha (PW-2), Romnath (PW-8) and Lavkush (PW-9). Unfortunately, the solitary blow falling on the head of Jagtu resulted in his on-the-spot death. In the incident the accused/appellants also suffered injuries and a counter case was registered against Jagtu (deceased), Romnath (PW-8) and Lavkush (PW-9) under sections 294, 506 (Part-II) and 323/34 IPC. *Dehati Nailisi* (Ex.P-1) was recorded at the instance of Ramjag Ratre (PW-1) on 15.12.2011 at 10.15 PM followed by even dated *Dehati merg* Ex. P-2 at 10.30 PM. After recording *merg* Ex. P-17, FIR (Ex. P-18) was registered on the basis of *Dehati Nalisi* for the offences punishable under Sections 302, 307, 323, 294, 34 IPC against both the accused/appellants. On inquest Ex. P-4 being drawn, the dead-body was sent for postmortem examination which was conducted on 16.12.2011 by Dr. Vijay Laxmi Anant (PW-5) who gave her report Ex. P-12. Injured Ramjag Ratre (PW-1) was medically examined by Dr. Shesh Narayan Chandrakar (PW-17) vide report Ex. P-32 whereas Manisha (PW-2), Lavkush (PW-9) and Romnath (PW-8) were medically examined by Dr.

Neeta Karnawat (PW-14) vide reports Ex. P-28, P-27 and P-29 respectively. X-ray report of Manisha (PW-2) is Ex. P-30 and CT scan of Romnath (PW-8) was done by Dr. Mamta Patel (PW-16) which is clear from Ex. P-31-C. On the memorandums of the accused/appellants (Ex.P-5 and P-6) wooden pegs of bullock cart were seized under Ex. P-7 and P-8, and as per the query report Ex.P-14 the injuries noticed on the body of the deceased could have been caused by the peg produced before him. After completion of investigation, police filed the *challan* against the accused/appellants u/s 302, 307, 325, 323, 294, 34 IPC followed by framing of charge by the Court below u/s 302/34, 307/34, 325/34 and 323/34 IPC.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 17 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. Defence has also examined three witnesses in support of its case.

4. After hearing the parties, the Court below acquitted the accused/appellants of the charge u/s 307/34 IPC but has convicted and sentenced them as mentioned above.

5. Counsel for the accused/appellants submits as under:

(i) That even if the entire case of the prosecution is taken as it is, the accused/appellants cannot be convicted under Sections 302/34 IPC.

(ii) That on the basis of material collected by the prosecution, at best the act of accused/appellants would fall under Section 304-I or 304-II IPC as it was a case of sudden fight without there being any premeditation on the part of the accused/appellants to commit the murder of the deceased, which according to the counsel for the accused/appellants is evident from the fact that they did not carry any weapon with them to execute the offence and just by picking up the wooden peg from the nearby stationary bullock cart caused injuries to the deceased which unfortunately proved fatal to his life.

(ii) That the accused/appellants have already remained in jail for about six years and therefore, it would be in the interest of justice if they are sentenced to the period already undergone after being convicted under section 304-I or 304-II IPC.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Sections 302, 325 and 323 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Ramjag Ratre (PW-1) – the son of the deceased and informant in the case has stated that on the date of incident his aunt Ferin Bai had informed him about his brother Lavkush

being beaten by accused Gautam 15 days prior thereto. Though Lavkush denied any such happening yet this witness took him to her house to know the truth and while returning therefrom, accused Gautam met on the way and hurling abuses picked up a wooden peg from the bullock cart parked close-by and inflicted injuries with it on his head and foot. Lavkush (PW-9) is also stated to have been assaulted by accused Gautam. Thereafter, according to this witness, accused/appellant Gandhi also reached there and after picking up the wooden peg from the bullock cart caused injuries to his mother Sundariya Bai (PW-4), wife Ganeshi Bai (PW-7), brother Romnath (PW-8), sister-in-law Chitrelekha (PW-6) and father Jagtu (the deceased herein). Since Jagtu had not returned home for quite some time, PW-1 went to make a search for him but found him lying dead near the house of one Hemen with bleeding injuries on his head whereas his brother Romnath (PW-8) was lying under the bullock cart. In the incident, PW-2 is also stated to have suffered injuries. From paragraph No. 12 of his cross-examination it appears that there was free fight between the members of two groups and the report was lodged by the accused/appellants also against the complainant party which came to the notice of this witness when he himself went to police station to lodge the report. Manisha (PW-2) - the daughter of PW-1 has stated that about six months prior to recording of her statement in the Court she had heard about some quarrelsome activities. On coming to know this, she went to the spot and saw her aunt

Chitralekha (PW-6) being assaulted by accused Gandhi and one Maina. According to her, accused Gandhi was assaulting PW-6 with club whereas Maina was dragging her by hair. When this witness tried to intervene in the matter, accused/appellants inflicted club injuries to her also on head and finger. Accused/appellants are stated to have assaulted her grand-father Jagtu (deceased herein), father (PW-1), uncles (PW-8) and Lavkush (PW-9). She has stated that at the time of incident about 20-25 people were present but in the incident they all were not involved. She has stated that some were quarreling and the some were the onlookers. Smt. Sundariya Bai Ratre (PW-4) – wife of the deceased has stated that on coming to know about the quarrel going on near the house of Heman Bai she went there and saw the accused/appellants herein assaulting her husband with the wooden peg of bullock cart and they continued the assault even after he fell down on the ground till he died. She too has stated that about 10-15 people were present on the spot but she did not see all of them actively involved in the incident. Chitralekha (PW-6) – another eyewitness to the incident supporting the case of prosecution has stated that on coming to know about the quarrel ensuing near the house of Hemen Bai she rushed to the spot and saw the accused/appellants causing injuries to her husband. According to her, other persons including Ghana, Raja, Maina were also present at the place of occurrence. This witness has stated that when she tried to intervene in the matter, someone pulled her by hair

and bit her breast by teeth. She went on stating that the accused/appellants assaulted her father-in-law also with the wooden peg of the bullock cart and continued doing so till he died. Accused/appellants are stated to have assaulted Manisha (PW-2) and Ramjag Ratre (PW-1) also. Smt. Ganeshi Bai (PW-7) has partially supported the case of the prosecution stating that accused Gautam had assaulted her husband with the help of wooden peg of bullock cart on his head. As regards accused Gandhi, she has been declared hostile. Romnath (PW-8) has stated that on the date of incident when he went to the house of Ferin Bai to call his brother (PW-1), accused/appellants inflicted club injuries on his head as a result of which he became unconscious. Lavkush Ratre (PW-9) has stated that on coming to know through Ferin Bai about the fact that accused Gautam had assaulted him (this witness), his brother (PW-1) took him to her house followed by Romnath (PW-8). He has stated that while they were getting out, the accused/appellants also reached there and picking up the wooden peg from the bullock cart caused injuries with it to all three. In a bid to ward off the blow, this witness suffered injury on his hand. Sometime thereafter, he came to know through his aunt Sundariya Bai (PW-4) about Jagtu being killed by the accused/appellants. Ghasia (PW-3) is the village Kotwar who has stated that on being informed by the husband of Sarpanch about a quarrelous episode he went to the spot and saw Jagtu lying dead and Romnath injured, and that in his presence inquest proceedings were drawn and the spot map was

prepared. Dr. Vijay Laxmi anant (PW-5) is the witness who conducted postmortem examination on the body of the deceased and gave report Ex. P-12 stating that she noticed one lacerated and contused wound on middle of the scalp and fracture of both the parietal bones. According to her, the injuries were antemortem and grievous in nature and that the cause of death was head injury, haemorrhage and shock. Death is opined to be homicidal in nature. Lalchand Mohle (PW-12) is the witness who did part of the investigation. Varun Devta (PW-13) is the investigating officer who has duly supported the case of the prosecution. In paragraph No. 6 of his deposition, this witness has stated that on the report lodged by the accused/appellants Crime No. 323/2011 was registered under sections 294, 506 (Part-II) and 323/34 IPC but against whom it was done, he did not state. He however has stated at the stage of evidence of the defence, true copy of final report of crime no. 323/2011, FIR, arrest memo of Romnath and Lavkush were produced in the Court. Dr. Nita Karnawat (PW-14) is the witness who medically examined Lavkush (PW-9) vide report Ex. P-27 mentioning swelling on upper lip and abrasion on thigh; Manisha Ratre (PW-2) vide report Ex. P-28 mentioning lacerated wounds on her parieto occipital region and little finger and Romnath (PW-8) vide report Ex. P-29 mentioning lacerated wounds on mid-frontal region. Dr. Rajesh Kumar (PW-15) is the radiologist who took x-ray of Manisha (PW-2) vide report Ex. P-30 stating that there was fracture on her phalanx which could not have come by

fall. Dr. Mamta Patel (PW-16) is another radiologist who did CT scan of Romnath (PW-8) and noticed subdural haemorrhage on parieto-occipital and right frontal region. Dr. Shesh Narayan Chandrakar (PW-17) is the witness who medically examined Ramjag Ratre (PW-1) vide report Ex. P-32 mentioning lacerated wounds on frontal region of forehead and on middle of the left leg, which were simple in nature. From the evidence of defence witnesses also it appears that there was some quarrel between the parties where the deceased and injured in this case had also assaulted the accused/appellants.

9. Having heard counsel appearing for the respective parties at considerable length and scrutinised the material available on record collected by the prosecution including the evidence of Ramjag Ratre (PW-1), Manisha (PW-2), Sundariya Bai (PW-4), Chitrelekha (PW-6), Ganeshi Bai (PW-7), Romnath (PW-8) and Lavkush (PW-9) who have unequivocally stated that on 15.12.2011 the accused/appellants caused injuries to Jagtu by picking up a wooden peg from the nearby parked bullock cart on head which eventually resulted in his instantaneous death, their involvement in commission of the crime cannot be negated. Though some of the witnesses went on to state that the accused/appellants made unrelented whipping to Jagtu till last breath, looking to the postmortem report Ex. P-12 it does not convince the conscience of this Court as the doctor conducting autopsy does not speak of injury beyond the one on head. Nonetheless, the sameness maintained by the eyewitnesses in regard to the assault

opened by the accused/appellants on the deceased further establishes the authorship of criminality alleged against them. Seizure of wooden pegs at the instance of the accused/appellants is yet another additive strongly connecting them with the killing of the deceased. In other words, the evidence on record clearly suggests that it is the accused/appellants who did away with the deceased by causing wooden peg injury on his body.

10. Now what remains to be seen is whether the act of the accused/appellants would indeed entail their conviction under Section 302 or their act would attract some other section of the Indian Penal Code.

11. Record unfolds that PW-1 taking PW-9 along had gone to the house of Ferin Bai to remonstrate as to for what accused Gautam had beaten PW-9 few days prior to the incident. What is important to note here is that PW-9 made it clear to PW-1 that no such thing had ever taken place. As the record indicates, perhaps this false allegation against accused Gautam of beating PW-9 made him furious uncontrollably culminating into the group clash, verbal feud, physical entwinement and grappling between members of both the sides. Unappeased heat of passion made the accused/appellants pick up the wooden peg from the nearby parked bullock cart and cause an injury with it on head leading to his unfortunate end. Complainant party, as is evident from the record, also flexed muscles against the

accused/appellants for which Crime No. 323/2011 was registered under sections 294, 506 (Part-II) and 323/34 IPC. It is not a case where the accused/appellants had come fully prepared armed with any weapon to eliminate the deceased or cause injury to any of the injured witnesses, rather everything seems to have happened on the spur of moment amid sudden fight when PW-1 made a remonstrance of PW-9 being beaten by accused Gautam. No premeditation or unusual act on the part of the accused/appellants is visible from the record. This being the position, the act allegedly committed by the accused/appellants falls within exception 4 to Section 300 IPC which says 'culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner'.

12. Under what circumstances the conviction would entail under Section 302 or 304 (Part-I) or 304 (Part-II) IPC has been crystalised by the Apex Court in the matter of **Bivash Chandra Debnath alias Bivash and others v. State of West Bengal** reported in **(2015) 11 SCC 283** in the following terms:

'20. On appreciation of evidence on record of the present case, we agree with the contention of the learned senior counsel for the appellants that since it is a case of sudden fight and there was no premeditation on the part of the appellants and the offenders have not acted in "unusual manner", their acts are covered under

Exception 4 to Section 300 IPC. In the similar case in Pulicherla Nagaraju alias Nagaraja Reddy v. State of AP (2011) 5 SCC 423, in paragraph 29, this Court has discussed the issue as to when the conviction can be converted from an offence punishable under Section 302 IPC to Section 304 Part I or 304 Part II IPC and the same is reproduced hereunder: -

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused

or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

21. In view of the above principle of law laid down by this Court, and considering the facts and circumstances of the case at hand, particularly, the fact that in the present case it is clear that there was a sudden fight between the appellants and the deceased who was accompanied by PW-1 Satya Charan Debnath, PW-2 Kartik Nath, PW-3 Panchanan Debnath and PW-4 Dulal Nath, and further considering that there was no premeditation on the part of the appellants to commit the murder, we are of the view that it is a fit case to hold that the offence committed by the appellants is not punishable under Section 302 IPC, but under 304 Part I IPC.'

13. Similar view has been taken by the Apex Court in the matter of **Ramanlal and another v. State of Haryana and Bhagat Singh and another v. State of Haryana** reported in **(2015) 11 SCC 1** holding that if the injuries are inflicted in the heat of passion and without appellant-accused taking any undue advantage or acting in a cruel or unusual manner, his act is covered by Exception 4 to Section 300 and he deserves to be convicted under Section 304 (Part-I) IPC as the manner in which the incident took place shows that while inflicting injuries the accused/appellants had the intention to cause such bodily injuries sufficient to cause death in the ordinary course of nature but had no knowledge about their act culminating in to the tragic death of the deceased.

14. Having thus undertaken the minutest possible survey of the factual and legal background of the case in hand this Court is of the considered opinion that the conviction of the accused/appellants under Section 302 IPC is not based on strict appreciation of the evidence on record and being so it is hereby set aside. Instead, the accused/appellants are convicted under Section 304 (Part-I) IPC and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs. 1000/- each, in default to undergo RI for six months.

15. Since there is ample evidence to show that the accused/appellants caused injuries to PW-1, PW-2, PW-8 and PW-9 which gets support from the statements of the doctors (PW-14 to PW-17) containing the injuries including fracture of

phalanx of PW-2, their conviction under Sections 325 and 323 does not appear to be faulted with and accordingly it is hereby maintained.

16. Appeal is thus allowed in part with the observations as made in the preceding paragraphs. Accused/appellants are reported to be on bail and therefore, they are directed to be sent to jail to serve out the remaining part of sentence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge