

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 264 of 2013**

1. Ashok Saura S/o Bhojraj Aged About 45 Years
2. Shobhram S/o Bhojraj Aged About 60 Years

Both R/o Matidarha, PS Sankara, Distt. Mahasamund, C.G.

---- **Petitioner**

Versus

- State Of Chhattisgarh Through Police Station Sankara, Distt. Mahasamund, C.G.

---- **Respondent**

For Appellants

Shri Kunal Das, Advocate

For Respondent-State

Shri Anil Pillai, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board By

Prashant Kumar Mishra J.

19/07/2018

1. The appellants have been convicted for committing offence under Sections 302/34 and 323/34 of IPC for committing murder of deceased Ramesh and causing simple hurt to PW-6 Gautarhin. For both the offences, they have been sentenced to undergo life imprisonment with fine of Rs.1,000/- each and RI for 6 months with fine of Rs.500/-, respectively. PW-6 Gautarhin lodged FIR at 17:30 hours on 08.01.2012 vide Ex-P-7 stating that at about 15:30 hours,

the accused persons reached their house and started assaulting her son, the deceased Ramesh, by hand, fist and club, at the same time uttering obscene language. On an alarm being raised by Ramesh, she intervened but she was assaulted by both the accused. Her son has sustained injuries over his head, occipital region and she too has sustained injuries over head, shoulder and both palms. The incident has been witnessed by her husband Panchram, Sankirtan and other villagers. The deceased was admitted to hospital where MLC of both the injured was conducted by PW-7 Dr. H. S. Kanwar vide Ex-P-8 & P-9. While Gautarhin was found to have sustained simple injuries, Ramesh was found to have suffered grievous injuries dangerous to life. The deceased was later on shifted to Medical College Hospital, Raipur where he succumbed to injuries on 12.01.2012. The autopsy of the dead body was conducted by PW-12 Dr. S. K. Bagh at Medical College Hospital, Raipur, who found the following injuries over the person of the deceased:-

- 1) Surgically stitched wound present on right frontal parietal temporal region 22 cm long curved shape with 26 metallic clips. On opening scalp, there is craniotomy done at right fronto temporal parietal bone, 11 x 10 cm bone piece missing and remaining surrounding bone show 6 burr hole underneath meninges intact.
- 2) skull shows bluish, reddish coloured ecchymosis present on right fronto parietal temporal region all over diffusely. On removing brain, there is sub arachnoid hemorrhage present on right lobe of cerebellum all over and

contusion of brain present on right side occipital lobe 3.5 x 2.5 cm x 1.5 cm deep and on this site brain matter soft with necrosed brain tissue. Extra dural hemorrhage present on right anterior cranial fossa all over and skull bone shows hairline fracture seen on right, middle cranial fossa extending up to temporal bone.

2. In his report (Ex-P-23), Dr. Bagh opined that the death was due to cardiac respiratory failure, as a result of head injury and its complication. Although, admission slip or bed head ticket including the history of treatment administered to deceased Ramesh at the Medical College Hospital, Raipur is not forming part of the record, yet from the nature of injuries described by Dr. S. K. Bagh, it appears that the deceased was surgically intervened and the skull bone was stitched with the help of metallic clips. Thus, during treatment from 08.01.2012 to 12.01.2012, there might have been complication, as has been suggested by Dr. Bagh, that the death has occurred on account of head injuries and its complication.
3. After recording the case diary statement of the witnesses and making recovery of the club from the appellant Ashok Saura, charge sheet was filed for the offence under Sections 294, 323 and 302, all read with Section 34 of IPC.
4. The trial Court has convicted the appellants on the strength of the eye witness account rendered by PW-5 Panchram and PW-6 Gautarhin together with the medical evidence of PW-7 Dr. H. S. Kanwar and PW-12 Dr. S. K. Bagh.

5. Shri Kunal Das, learned counsel for the appellant, would submit that the evidence available on record would suggest that the deceased party were aggressor and the appellants have exercised right of self defence, therefore, the appellants deserve to be acquitted. He would also submit that Panchram is not an eye witness and from the statement of Gautarhin, it is not clear as to which of the appellant caused the injuries to Ramesh, which resulted in his death, therefore, both the appellants deserve benefit of doubt.
6. Per contra, Shri Anil Pillai, learned Dy. Advocate General, would submit that both the eye witnesses have stood firm in their deposition and have fully supported the prosecution, therefore, since prompt FIR was lodged and the deceased was found to have suffered serious head injury which was the cause of death, the accused persons have rightly been convicted under Section 302/34 of IPC for causing death of Ramesh and under Section 323/34 of IPC for causing simple injuries to Gautarhin.
7. We have heard learned counsel for the parties at length and perused the record.
8. PW-5 Panchram is named in the FIR as a witness who was present on the spot. Panchram happens to be the father of the deceased, therefore, his availability in his house is very natural and he cannot be branded as chance witness. Panchram has deposed that he had gone for grazing cattle and returned after 12 noon to witness quarrel between Gautarhin and Ramesh on one side and the accused

persons on the other side. He and his wife PW-6 Gautarhin rushed to Village Basti to inform the elderly villagers who too reached the spot and in their presence, the appellants encircled the deceased Ramesh and assaulted him by hand, fist and lathi. Learned counsel for the appellant has drawn our attention to para 3 of the statement of this witness to put forth that he has not seen the incident, but on close reading of paragraph 3 of his deposition, it appears that Panchram was asked questions about some other incidents in which the appellant Ashok Saura had sustained injuries and to this question, the witness's reply is that he was not present in any such incident where Ashok was assaulted by Ramesh. Thus, from para 3 of his statement, it cannot be deduced that Panchram is not an eye witness. PW-6 Gautarhin Bai has also fully supported the prosecution and has narrated more or less same sequence of event as has been stated by PW-5 Panchram. This witness has also lodged the FIR but despite incisive cross examination, the defence has not been able to dilute her credibility.

9. We have reproduced the injuries suffered by the deceased Ramesh in the preceding paragraph of our judgment, from which it is apparent that the deceased had suffered serious head injury, which corresponds to the description of event and the manner of causing assault over the person of Ramesh. Thus, we have no hesitation in sustaining the finding recorded by the trial Court that the appellants are guilty of causing injuries to deceased Ramesh which resulted in his death.

10. Shri Kunal Das, learned counsel for the appellant, would submit, at this stage, that even if the appellants have caused injuries to the deceased, their act would amount to culpable homicide not amounting to murder and they cannot be held guilty for committing culpable homicide amounting to murder. He has taken us all through his statements including the suggestions made to the witnesses that in the same incident, the appellant Ashok Saura had also suffered injuries. He would also place before us the certified copy of the judgment rendered by the JMFC, Pithora on 07.02.2013 in Criminal Case No.91/2012, wherein PW-5 Panchram and PW-6 Guatarhin have been acquitted of the charges under Sections 294, 323/34 and 506 of IPC. According to Mr. Das, the said criminal case was instituted against PW-5 Panchram and PW-6 Gautarhin on a report lodged by appellant No.1 Ashok Saura.
11. Countering the above submission of Mr. Das, learned Dy. Advocate General would submit that the appellants have not produced any legally admissible evidence to prove that Ashok had sustained injuries in the same incident, therefore, neither defence of right of self defence is available to the appellants nor the offence could be converted from one under Section 302/34 of IPC to Section 304 Part I or Part II of IPC.
12. To appreciate the rival submissions, we have again referred to the evidence, particularly the deposition of PW-5 Panchram and PW-6 Gautarhin. Both the witnesses would admit that in relation to the same incident, a criminal case against them is pending in the Court at Pithora. Although, they have denied the suggestion that the

deceased Ramesh had inflicted injuries to appellant Ashok by a knife, PW-5 Panchram would admit in para 3 of his statement that his son Ramesh had pushed the appellant Ashok's mother and that after this incident they had convened a meeting in the village. Both the witnesses would also admit that there is groupism in the village and both the parties belong to opposite faction. PW-6 Gautarhin has also admitted that the case pending against them in Pithora Court has been instituted on the report lodged by Ashok. PW-6 would also admit that another case is pending against her son Ramesh for assaulting Jamuna Bai, mother of the appellant Ashok. She also admits that the third accused Loharam (since deceased), as stated in para 2 of the impugned judgment, was a handicapped person. The appellant No.2 Shobharam is elderly person, aged about 60 years. It is also to be noticed that the deceased did not die an instant death but succumbed to the injuries in course of treatment at Medical College Hospital, Raipur. The postmortem report (Ex-P-23) would suggest that the injuries suffered by the deceased were surgically treated and the cause of death was head injuries and their complications. Therefore, the possibility that the head injury was not the sole cause but the complications of the injuries also contributed to the cause of death is not ruled out. Considering all these features of the case, we are of the considered view that although the appellants caused injury with knowledge that the injury may result in death but there was no premeditation as the FIR itself suggests that the incident on the given day happened when the children were playing on the premises of the complainant party. The deceased suffered only one serious injury over head because the nature of

injury No.2 appears to be a complication of injury No.1. Thus, it is a case of causing single blow without premeditation of mind on account of a dispute when children were playing in the premises of the complainant party. The case would therefore fall under the fourth exception to Section 300 IPC and the appellants would be held guilty of committing culpable homicide not amounting to murder punishable under Section 304 Part -II of IPC.

13. The appellant No.1 Ashok Saura is in jail since 09.01.2012, whereas the appellant No.2 is in jail since 09.03.2012, therefore, as on day, the appellant No.1 Ashok Saura has suffered the substantive jail sentence of more than 6 and half years, whereas the appellant No.2 Shobharam has suffered substantive jail sentence of more than 6 years and 4 months. Considering the entire facts and circumstances of the case, we hold that the jail sentence already suffered by the appellants would be adequate sentence for committing offence under Section 304 Part II IPC, therefore, both of them are awarded the jail sentence of the period already undergone. The appellants are in jail. They be released forthwith unless they are required to be detained in any other case.

14. In the result, the appeal is partly allowed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor