

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 205 of 2014****Reserved on 27.02.2018**
Pronounced on 28.03.2018

[Arising out of judgment/order dated 01.01.2014 in Sessions Trial No.20/2013 of the Addl. Sessions Judge (F.T.C.), Raigarh (C.G.)]

1. Ghasiya Rathiya, S/o Jailal Rathiya, aged about 36 years, R/o village Pusalda (Baigapara), Police Station Chhal, District Raigarh, Civil & Revenue District Raigarh (C.G.)
2. Mahitram @ Raangi, S/o Jailal, aged about 26 years,

Both are R/o village Pusalda (Karmipara), Police Station Chhal, District Raigarh, Civil & Revenue District Raigarh (C.G.)

---- Appellants**Versus**

- State Of C.G. Through – Station House Officer, Police Station – Chhal, District Raigarh (C.G.)

---- Respondent

For Appellants	:Smt. Savita Tiwari, Advocate
For Respondent/State	:Shri Ravindra Agrawal, Government Advocate

**Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ****C.A. V. Judgment****Per Sanjay Agrawal, J.**

1. This criminal appeal has been preferred by the appellants under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C. in short) against the judgment dated 01.01.2014 passed by the Additional Sessions Judge (F.T.C.), Raigarh, in Sessions Trial No. 20/2013 whereby the appellants have been convicted and sentenced as under:-

<u>CONVICTION</u>	<u>SENTENCE</u>
449 of Indian Penal Code (for short, the IPC)	Rigorous imprisonment for six years with fine of Rs.3000/- each. In default to pay fine amount, additional RI for three months each.
302/34 IPC	Life imprisonment with fine of Rs.5000/- each. In default to pay fine amount, additional RI for five months.

2. Case of the prosecution, in short, is that on 06.10.2012 at about 8.00 PM on account of land dispute between the deceased Injore Singh and the appellants, appellant No.1 Ghasiya Ram armed with a club (wooden stick) had come to the veranda of the house of the deceased along with co-accused Mohit Ram, abused filthy words and when it was forbidden by the deceased Injore Singh, he was assaulted by appellant No.1 Ghasiya Ram with a club (wooden stick), while the other co-accused Mohit Ram, with his hands and fists. As a result of which, the deceased Injore Singh fell down on the ground and became unconscious and has died at about 09.00 PM on the spot.
3. Based upon the aforesaid incident, merg intimation (Ex.P.3) was lodged by the deceased's son Sampatlal on 07.10.2012 at 7.30 AM. Thereafter, F.I.R. (Ex.P.16) was registered at his instance on the same day at 8.00 AM by the Station House Officer, Chhal, District Raigarh, against the appellants, namely Ghasiya Ram and Mohit Ram under Sections 302/34 IPC. Inquest was conducted on 07.10.2012 vide Ex.P.1. After inquest, the dead body was sent for autopsy to the Civil Hospital, Dharamjaigarh, where Dr. B.L. Bhagat (P.W.10) conducted the post-mortem examination and submitted its report vide Ex.P. 13 by opining that the cause of death was due to

coma as a result of head injury and, was homicidal in nature. Disclosure statement (Ex.P.6) of appellant No.1 Ghasiya Ram led to the recovery of cloths, which were seized by the Investigating Officer.

4. After usual investigation of the matter as such, the offence punishable under Section 302, 449, 34 IPC was registered against the appellants by the Station House Officer, Chhal, District Raigarh, who submitted its final report on 25.12.2012 before the Judicial Magistrate First Class, Dharamjaigarh and, the matter was thereafter committed to the District and Sessions Judge, Raigarh for its trial.
5. After considering the prima facie materials available on record, charges under Section 449, 302/34 of IPC have been framed against the appellants on 07.02.2013. The appellants pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to be tried. In order to bring home the guilt of the appellant, the prosecution examined as many as 13 witnesses, while none was examined by the appellants in their defence.
6. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellants and sentenced them as aforesaid.
7. Being aggrieved, the appellants have preferred this appeal. Smt. Savita Tiwari, learned counsel for the appellants submits that the judgment under appeal as passed by the trial Court is apparently contrary to law as the same has been passed without considering the evidence in its proper perspective. She submits further that in

absence of any intention of the appellants, as visualised from the evidence of prosecution witnesses, the trial Court ought not to have convicted the appellants as such. According to her, even if the entire prosecution story is taken as it is, at the most, the appellants would be liable to be convicted under Section 304 Part-II IPC.

8. On the other hand, Shri Ravindra Agrawal, learned Government Advocate for the State supported the impugned judgment by submitting, inter alia, that it has been passed upon due and proper appreciation of the evidence of the prosecution witnesses, and therefore, does not require to be interfered.
9. We have heard learned counsel for the parties and perused the entire record carefully.
10. Rasila (P.W.1) is the wife of the deceased Injore Singh and has stated in her evidence that there was a land dispute between her husband and the appellants and on fateful day at 8.00 PM when they were having dinner, the appellants Ghasiya Ram and Mohit Ram came to the house and started assaulting on her husband. She has stated that the appellant Ghasiya Ram assaulted her husband with a club on his head and other parts of his body, while appellant Mohit Ram with his hands and fists, as a result of which, the deceased received injuries on his head, face and ear and then she called the villagers immediately. She has stated further in her evidence that her son Sampatlal was also present when her husband was being assaulted by the accused persons. In her cross-examination, although it was stated by her that she has not seen the alleged assault but had seen the accused persons running away from the spot. This witness was thus firm in her

evidence and supported the prosecution case.

11. Tel Singh (P.W.2) is the brother of the deceased and came to know about the murder of Injore Singh from his nephew Sampatlal and inquest of the dead body was conducted in his presence. Sampatlal (P.W.3) is the son of deceased Injore Singh, however, he has turned hostile without supporting the prosecution case. Likewise, Ramjilal Rathiya (P.W.4) has also turned hostile without supporting the prosecution case.
12. Kapur Das (P.W.5) is the witness of disclosure statement (Ex.P.6) made by appellant No.1, by which, the alleged used weapon of offence "club" was recovered from him vide Ex.P.7 but this witness has also turned hostile. Nanki Ram (P.W.6) is a formal witness as he came to know about the alleged incident from deceased's son Sampatlal. Gajanand (P.W.7) is also a formal witness. Parmanand Kanwar (P.W.8) is a Patwari, who has prepared the spot map (Najri Naksha) vide Ex.P.11.
13. Dr. D.K.Verma (P.W.9) is also a formal witness. Dr. B.L.Bhagat (P.W.10), who has conducted post-mortem examination on the dead body of Injore Singh, has submitted its report vide Ex.P.13 noticing the following injuries:-

1. Lacerated wound of 4 x 1 cm in upper part of right side of face. Blood clots in and around the wound.
2. Lacerated wound of 5 x 2 cm over chin with blood clots in and around the wound and fracture of bone.
3. Contusion of 10 x 2 over left chest.

After examining the dead body of deceased, it was opined by him

that the cause of death was due to coma occurred as a result of head injury and, was homicidal in nature.

14. Uday Singh Sidar (P.W.11) is a formal witness while Suraj Singh (P.W.12) is an Investigating Officer and has assisted the prosecution story.
15. A close scrutiny of the aforesaid evidence would show that on the fateful date, i.e., 06.10.2012 at 8.00 PM when the deceased was having dinner along with his family members, the appellants came to his house and entered into the veranda illegally and owing to their land dispute, assaulted the deceased. As a result of which, he became unconscious and died after sometime on the spot. The evidence of prosecution would reveal further that the deceased was assaulted by appellant No.1 Ghasiya Ram with a club on his head and also on several parts of his body, while appellant No.2 Mohit Ram, with his hands and fists.
16. Further examination the evidence would, however show that they immediately ran away from the spot after assaulting the deceased as such. In such circumstances, we do not find any evidence on record that the appellants assaulted the deceased with an intention to cause his death, else they would not have run away from the spot. Under such circumstances, the question which now arises for our determination is as to whether the act on their part would constitute the offence punishable under Section 302 IPC or any part of Section 304 IPC, i.e., whether their act would fall within the category of 'murder' or 'culpable homicide not amounting to murder'.

17. In order to ascertain the answer of the said question, it is necessary to examine the scheme framed under the Penal Code.

Section 299 defines "culpable homicide" which reads as under:-

"299. Culpable homicide.---- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

and Section 300 defines "murder" which reads as under:

"300. Murder.--- Except in the case hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly---- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly---- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly----- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

Exceptions:

Exception 1.--- When culpable homicide is not murder.--- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :--

First.--- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.--- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.--- That the provocation is not given by anything done in the lawful exercise of the right of private defense.

Explanation- Whether the provocation was grave and sudden

enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.--- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.--- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.--- 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 having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.--- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

18. A bare perusal of the aforesaid provisions, particularly as provided in opening sentence of Section 300 IPC, i.e., "Except in the case hereinafter excepted" would show that all "murders" are "culpable homicides" but all the "culpable homicides" cannot be held to be "murders", if falls any of the exceptions enumerated in the above mentioned exceptions of Section 300 IPC. Meaning thereby the "culpable homicide" cannot be held to be "murder" if any of the exceptions provided in Section 300 IPC is attracted.
19. The Scheme of the Penal Code relating to "culpable homicide" has been explained by the Supreme Court in the matter of ***State of Andhra Pradesh v. Rayavarapu Punnayya and another,***

reported in **(1976) 4 SCC 382** at para 12 of its judgment as under:-

“12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' *sans* 'special characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The *first* is, what may be called, 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The *second* may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.”

20. In the said matter, i.e., **State of Andhra Pradesh v. Rayavarapu Punnayya and another** (supra), the Hon'ble Supreme Court has further observed at para 21 as under:-

“21. whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the *first* or *second* part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304, Penal Code.”

21. Reverting back to the present case while keeping the aforesaid principles in mind, we found that there is no evidence available on record so as to attribute the appellants that they have committed the alleged crime with an intention. In absence of such an intention none of the four clauses of the definition of “murder” contained in Section 300 IPC would apply in the case in hand. Consequently, based upon the principles laid down in the above case law would lead to an irresistible conclusion that the act of the appellant would, therefore, certainly fall within the ambit of “culpable homicide not amounting to murder”. As a consequence of it, the appellants cannot be held to be liable to be punished under Section 302/34 IPC, as held by the trial Court. The appellants, under such an eventuality, could be held to be liable to be punished either under Part I or Part II of Section 304 IPC.
22. In the matter of ***Kusha Laxman Waghmare v. State of Maharashtra, (2014) 10 SCC 298***, wherein the weapon used by the appellant was a wooden stick, the conviction was converted by the Supreme Court to one under Section 304 Part II IPC instead of Section 302 IPC by observing at para – 9 as under :-
- “9. After giving our anxious consideration in the matter and after analysing the entire evidence, we are of the view that it is not a fit case where conviction could be sustained under Section 302 IPC. The weapon used by the appellant is a wooden stick and as per the prosecution case, the deceased was severely beaten by the said stick. As a result thereof, she died. There is no cogent evidence to show that the appellant had beaten the deceased with an intention to cause her death. In such circumstances, the conviction of the appellant under Section 304 Part II IPC will be just and proper.”
23. Based upon the aforesaid principles vis-a-vis the explanation given by the Hon'ble Supreme Court in relation the scheme framed in

Penal Code and, in absence of any cogent and reliable evidence showing the intention of the appellants in order to kill the deceased, we modify the judgment of the trial Court by converting the conviction of appellant No.1 Ghasiya Ram to Section 304 Part II IPC from Section 302/34 IPC apart from Section 449 IPC and, sentencing him to rigorous imprisonment for seven years under Section 304 Part II IPC, while three years rigorous imprisonment under Section 449 IPC making both the sentences run concurrently, without imposing any fine amount on him. Similarly, we also convert the conviction of appellant No.2 Mohit Ram to Section 304 Part II IPC from Section 302/34 IPC apart from Section 449 IPC sentencing him to the period already undergone by him on each count with a fine amount as imposed by the trial Court.

24. Although we are not imposing any fine amount upon appellant No.1 Ghasiya Ram Rathiya while converting his conviction, as indicated herein above, but we have found that the wife [Rasila (P.W.1)] of the deceased has suffered a lot on account of alleged act done by him. Therefore, he (Ghasiya Ram Rathiya) may be directed to compensate adequately to her, as per the provisions prescribed under sub-section (3) of Section 357 Cr.P.C., which reads as under :-

“357. Order to pay compensation.----- (1) xxxx xxxx xxxxx

(2) xxxx xxxx xxxx xxxx xxxx

- (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the

accused person has been so sentenced.

- (4) xxxx xxxx xxxx xxxx xxxx
- (5) xxxx xxxx xxxx xxxx xxxx”

25. The aforesaid provision empowers specifically the Court that it “may” award compensation even in such cases where sentence imposed does not include a fine amount.
26. The Supreme Court in the matter of **Manohar Singh v. State of Rajasthan and others, (2015) 3 SCC 449**, while considering the catena of decisions dealing with Section 357 Cr.P.C., has compensated the victim by taking recourse to the aforesaid provision at para – 16 as under:-

“16. In the present case, in the absence of any evidence about the medical expenses, loss of earning, etc. and the financial capacity of the accused, we are of the view that the appellant needs to be paid a sum of Rs.50,000 as compensation under Section 357(3) within two months by the surviving respondents. In default, the surviving respondents will undergo rigorous imprisonment for three months. Since compensation is being directed to be paid, we set aside the sentence of fine of Rs.5000.”

27. By applying the aforesaid principles, we are of the considered view that Rasila (P.W1), the wife of deceased Injore Singh needs to be paid a sum of Rs.15,000/- (Rupees fifteen thousand only) by appellant No.1 Ghasiya Ram Rathiya as an amount of compensation under Section 357 Cr.P.C. within a period of 6 months from today. In default, the appellant No.1 Ghasiya Ram Rathore shall undergo rigorous imprisonment for six months.
28. Consequently, the appeal is allowed in part and we modify the judgment of the trial Court as under: -

- i. By converting the conviction of appellant No.1 Ghasiya Ram Rathiya to Section 304 Part II IPC from Section 302/34 IPC apart from Section 449 IPC and, sentencing him to seven years rigorous imprisonment under Section 304 Part II IPC, while three years rigorous imprisonment under Section 449 IPC making both the sentences run concurrently with the amount of compensation to the tune of Rs.15,000/- (Rupees fifteen thousand only) payable to Rasila (P.W.1) within a period of 6 months from today, failing which, he shall undergo RI for six months.
- ii. By converting the conviction of appellant No.2 Mohit Ram to Section 304 Part II IPC from Section 302/34 IPC apart from Section 449 IPC and sentencing him to the period already undergone by him on each count with a fine amount as imposed by the trial Court.

29. It is stated that appellant No. 2 Mohit Ram Rathiya is on bail. His bail bonds shall remain effective for a period of 6 months, in view of the provisions prescribed under Section 437-A of the Code of Criminal Procedure, 1973.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE