

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 844 of 2013**

1. Laxman Thakur son of Kirit Ram Thakur, aged about 38 years.
2. Bhagwati @ Laxmi Thakur, wife of Laxman Thakur, aged about 36 years.
3. Mulchand Thakur, son of Laxman Thakur, aged about 19 years.

All are R/o village Aundhi, P.S. Purani Bhilai, Civil and Revenue District Durg (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through – The Station House Officer, Police Station Purani Bhilai, Civil and Revenue District Durg (C.G.)

---- Respondent

For Appellants	:	Shri B.P. Singh, Advocate.
For Respondent/State	:	Shri Neeraj Kumar Mehta, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt Justice Rajani Dubey

Judgment On Board**By Pritinker Diwaker, J****06/09/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 04.07.2013 passed by III Additional Sessions Judge, Durg, in Sessions Trial No.79/2012 convicting accused/appellants under Sections 323/34 and 302/34 IPC & sentencing each of them to undergo S.I. for one year with fine of Rs.500/- and imprisonment for life with fine of Rs.1000/- plus default stipulation respectively.

02. As per the prosecution case, Chatur Sen (PW/1) was having illicit relation with accused/appellant No.2-Bhagwati @ Laxmi Thakur (A-2), wife of accused/appellant No.1-Laxman Thakur (A-1). Accused/appellant No.3-Mulchand Thakur (A-3) is son of accused/appellant No.1 and 2. It is alleged that on 14.01.2012 at about 6.00 AM when Amerika Bai (PW/3), wife of Chatur Sen (PW/1), was returning after attending nature's call, she was assaulted by accused/appellant No.2-Bhagwati @ Laxmi Thakur by club, thereafter, Chatur Sen (PW/1), Rukhmani Bai (PW/2) - wife of deceased Ramji and Khilesh Sen (PW/5) were also assaulted by the accused persons. When deceased Ramji intervened in the matter, he was also subjected to injury by the accused persons and it is said that accused/appellant No.1 gave injury to him by iron rod, accused/appellant No.2- Bhagwati by sickle on his neck, whereas accused/appellant No.3- Mulchand by a club. At the instance of Chatur Sen (PW/1), FIR (Ex.P/2) was registered on 14.01.2012 at 8.00 AM against the accused persons under Section 294, 506 Part-II and 324/34 IPC. All the injured were medically examined by Dr. S.D. Bhupendra (PW/13) who gave MLC in respect of the injured noticing following injuries:-

MLC (Ex.P/15) of Rukhmini Bai (PW/2)

- (i) Lacerated wound of 2 cm x 1 cm x subcutaneous deep on right frontal region.

MLC (Ex.P/16) of Amerika Bai (PW/3)

- (i) Contusion of 4 cm x 6 cm on right thigh.
- (ii) Contusion of 6 cm x 3 cm on left thigh.

MLC (Ex.P/17) of Chatur Sen (PW/1)

- (i) Lacerated wound of 2 cm x 1 cm x subcutaneous deep on left frontal region.
- (ii) Lacerated wound of 4 cm x 2 cm x subcutaneous deep on left little finger.

MLC (Ex.P/21) of deceased Ramji

- (i) Lacerated wound of 7 cm x 1 cm x subcutaneous deep on right forearm.
- (ii) Contusion of 5 cm x 4 cm on right forearm.
- (iii) Contusion of 4 cm x 5 cm on left parietal region.

All the injuries sustained by the injured were caused by hard and blunt object.

03. During treatment, deceased Ramji succumbed to his injuries. Merg intimation (Ex.P/1) was recorded on 14.01.2012 at 04.00 PM at the instance of Chatur Sen (PW/1). On 15.01.2012, inquest on the body of deceased was conducted vide Ex.P/4 and dead body was sent for postmortem examination to Govt. District Hospital, Durg where Dr. N.C. Roy (PW/15) conducted postmortem examination on the body of deceased and gave his report Ex.P/32 noticing following injuries:-

- (i) Fracture of left side of mastoid bone extending to bone of skull in the size of 5.5 cm.
- (ii) On opening skull there was subdural haematoma in left parietal region extending to left occipital region in the size of 8 x 6 cm. Left parietal and occipital region of brain was highly congested.
- (iii) Abrasion in the size of 2 x 2.5 cm on posterior side of left ear and skin of which was bluish and it was on left mastoid region.
- (iv) One lacerated wound on right forearm in lateral aspect 4 inch below elbow in the size of 2 x 1 cm.
- (v) Lacerated wound on left leg 3 cm above in the size of

5 x 1/2 cm.

- (vi) On dissection of scalp one haematoma in the size of 5 x 4 cm over mastoid region was found. All injuries were antemortem in nature.

The autopsy surgeon opined the cause of death of deceased to be coma due to head injury.

04. On 15.01.2012, memorandum of Mulchand (A-3) was recorded vide Ex.P/11, based on which, one club was seized vide Ex.P/12. From Laxman Thakur (A-1) and Bhagwati @ Laxmi Thakur (A-2), one iron rod and sickle were seized vide Ex.P/9 and P/12 respectively. However, as per FSL report (Ex.P/31), presence of blood on iron rod seized from A-1 was confirmed, whereas no blood has been found on the sickle and club seized from A-2 and A-3.

05. After filing of the charge sheet, the trial Court framed the charges against accused/appellant Laxman Thakur (A-1) under Sections 324, 326, 302, 294 and 506 Part-II IPC, whereas charges were framed against accused/appellant Bhagwati @ Laxmi Thakur (A-2) and Mulchand Thakur (A-3) under Sections 324, 326, 302/34, 294 and 506 Part-II IPC.

06. So as to hold the accused persons guilty, the prosecution examined as many as 16 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

07. The trial Court, after hearing counsel for the respective parties and considering the material available, has convicted and sentenced

the appellants as mentioned in para-1 of this judgment. Hence, this appeal.

08. Learned counsel for the appellants submits as under:

- (i) That out of four eye-witnesses examined by the prosecution, Chatur Sen (PW/1) informant and Amerika Bai (PW/3) have not supported the prosecution case, remaining two eye-witnesses i.e. Rukhmani Bai (PW/2) and Khilesh Sen (PW/5) are not reliable, there are material contradictions in their statements and it appears that the deceased died after sustaining injuries due to fall.
- (ii) That the statements of eye-witnesses are full of contradictions.
- (iii) That as per eye-witnesses, accused No.2 - Bhagwati caused injuries on the neck of the deceased by sickle, whereas no such injury of sickle has been found on the body of the deceased.
- (iv) That there was sudden quarrel between two groups or two families and it appears that during the said quarrel the accused persons have caused some injuries to the deceased's group resulting unfortunate death of the deceased. Learned counsel further submits that even if the entire prosecution case is taken as it is, at best, the accused/appellants are liable to be convicted under Section 304 Part-II or Part-I of IPC. He also submits that the accused/appellants are in jail for about six and half years and after converting their conviction into Section 304 Part-II or Part-I IPC, their sentence may be reduced to the period already undergone by them by awarding suitable compensation to the bereaved family of the deceased.

09. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the

accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same. He submits that even assuming that no sickle injury has been found on the body of the deceased but the fact remains that the deceased died after sustaining number of injuries and offence under Section 302/34 IPC is apparently made out against the accused persons.

10. We have heard learned counsel for the parties and perused the material available on record.

11. Chatur Sen (PW/1) is son of the deceased. He is also the informant and eye-witness to the incident but has not supported the prosecution case and turned hostile. Even in respect of his injuries, he has not blamed anything.

12. Rukhmani Bai (PW/2), wife of the deceased, while supporting the prosecution case has stated that her daughter-in-law Amerika Bai (PW/3) was assaulted by Bhagwati (A-2) by club and when she asked as to why she (A-2) assaulted his daughter-in-law, she (this witness) too was beaten by all the three accused persons. She has further stated that A-2 was carrying sickle in her hand, whereas A-3 and A-1 were carrying club and iron rod with them respectively. She has also stated that when her husband intervened, A-2 gave sickle injury to him on his neck, whereas A-1 assaulted him by iron rod. This witness has denied the fact that A-2 was having illicit relation with Chatur Sen (PW/1) and due to which some quarrel had taken place. She has further stated that while the quarrel was going on she was at home and after hearing the cries of Amerika Bai (PW/3), she came out and saw

the incident. In lengthy cross-examination, but for minor contradictions she remained firm.

13. Amerika Bai (PW/3), daughter-in-law of the deceased and wife of Chatur Sen (PW/1), has turned hostile. Harihar Verma (PW/4) has turned hostile. Khilesh Sen (PW/5), while supporting the prosecution case, has stated that when his mother was going to attend the nature's call, A-2 assaulted her by club, her mother returned to the house crying and informed all the family members about the incident. At that time, accused/appellants were hurling abuses from their house. House of both the parties are adjacent to each other. Thereafter, the deceased also started abusing the accused persons and then A-3, A-1 and A-2 came out from their house carrying club, iron rod and sickle respectively and caused injuries to the deceased. In the incident, her mother Amerika Bai (PW/3) and the deceased suffered injuries. In cross-examination, but for minor contradictions this witnesses remained firmed.

14. Bishat (PW/6) turned hostile. Santosh Kumar Rai (PW/7) and Dhruv Narayan Yadav (PW/8) - constable, assisted in the investigation. Dauwa Sen (PW/9) is the witness to seizure made under Ex.P/9, P10, P/12 and P/13. Prahlad Bajpayee (PW/10) and Virendra Kumar (PW/11) - Head Constable, assisted in the investigation. Jagdish Ram Yadav (PW/12) - Asstt. Sub Inspector, did part of investigation.

15. Dr. S.D. Bhupendra (PW/13) medically examined the injured Chatur (PW/1), Rukhmini Bai (PW/2) and Amerika Bai (PW/3) and gave his MLC vide Ex.P/17, P/15 and P/16. He has also medically

examined the deceased and gave his MLC vide Ex.P/23. This witness has stated that all the injuries sustained by the injured were caused by hard and blunt object.

16. Dr. N.C. Rai (PW/15) conducted postmortem examination on the body of deceased and gave his report Ex.P/32 opining the cause of death of deceased to be coma due to head injury. Dr. P. Akhtar (PW/16) assisted in the postmortem examination.

17. V.D. Nand (PW/14) - Investigating Officer, has duly supported the prosecution case.

18. It is relevant to note here that no sickle injury has been found on the body of the deceased or on any of the injured.

19. Close scrutiny of the evidence makes it clear that there was some quarrel between two groups i.e. one belongs to the accused persons and another to the deceased. On the fateful morning, when Amerika Bai (PW/3), daughter-in-law of the deceased, was going to answer the call of nature, Bhagwati (A-2) assaulted her by club. When the deceased, aged about 80 years, asked the accused persons as to why they assaulted his daughter-in-law, he too was assaulted by the accused persons resulting in his death. Initially, injuries were caused to Amerika Bai (PW/3) and thereafter to other family members who intervened in the matter including that of the deceased. The incident was witnessed by Chatur Sen (PW/1), Amerika Bai (PW/3) (PW/1 and PW/3 not supported the prosecution case), Rukhmani Bai (PW/2) and Khilesh Sen (PW/5) who have duly supported the prosecution case and stated as to how the incident took place. According to MLC

Ex.P/15 of Rukhmini Bai (PW/2), one Lacerated wound of 2 cm x 1 cm x subcutaneous deep on right frontal region was noticed. According to MLC Ex.P/16 of Amerika Bai (PW/3), two contusions on right thigh and left thigh were noticed. According to MLC Ex.P/17 of Chatur Sen (PW/1), two lacerated wounds on left frontal region and left little finger were notice and according to MLC Ex.P/21 of deceased Ramji, one lacerated wound on right forearm and two contusions on right forearm and left parietal region were noticed. Dr. S.D. Bhupendra (PW/13) who gave his MLC in respect of the injured persons opined that the all the injuries sustained by the injured were caused by hard and blunt object. Further, Doctor PW/15 conducting autopsy on the body of deceased opined the cause of death of deceased to be coma due to head injury. That apart, iron rod and sickle were seized by the prosecution from the possession of A-1 and A-2 respectively and as per FSL report Ex.P/31, presence of blood thereon was confirmed. Thus, considering the given facts and circumstances of the case, in particular the evidence of eye-witnesses PW/2 and PW/5, the complicity of accused/appellants in crime in question stand proved beyond reasonable doubt.

20. Now the question which arises for consideration by this Court is as to the act of the accused/appellants would fall within the definition of murder or in the given facts and circumstances of the case, they are liable to be convicted for lesser offence.

21. From the evidence it appears that when PW/3 - daughter-in-law of the deceased was going to answer the call of nature, she was assaulted by A-2 and on being asked by the deceased as to why his daughter-in-law was assaulted, the accused persons all of a sudden

started assaulting the deceased resulting in his death. That apart, as per eye-witnesses, A-2 was having sickle in her hand and she caused several injuries on the neck of the deceased by the said sickle but according to MLC (Ex.P/21) and his postmortem report Ex.P/32, it is nowhere stated that any sickle injury was noticed on the body of the deceased. Thus, considering the facts and circumstances of the case giving rise to the incident leading to death of the deceased, we are of the opinion that the accused/appellants had no intention to commit murder of the deceased but their only intention appears to beat the deceased which was done in the heat of passion upon a sudden quarrel. Being so, the act of the accused/appellants would be covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder.

22. The Apex Court on the decision in the matter of **Satish Narayan Sawant V. State of Goa** reported in **(2009) 17 SCC 724** has held in para 40 and 41 as under:

“40. That being the well-settled legal position, when we test the factual background of the present case on the principles laid down by this Court in the aforesaid decisions, we are unable to agree with the views taken by the High Court. As already noted, it is quite clear from the record that there was an altercation preceding the incident. The place of occurrence is a residence inhabited by both the parties and there is no evidence on record that the deceased was armed with any weapon. Initially the appellant-accused also did not have any weapon with him but during the course of the incident he went inside and got a knife with the help of which he stabbed the deceased. PW 7 in his cross-examination has categorically stated that death due to stab injury was in consequence of injury 1 and all other injuries were superficial

in nature. So, it was only Injury 1 which was fatal in nature. Factually therefore, there was only one main injury caused due to stabbing and that also was given on the back side of the deceased and therefore, it cannot be said that there was any intention to kill or to inflict an injury of a particular degree of seriousness.

“41. Records clearly establish that there was indeed a scuffle between the parties with regard to the availability of electricity in a particular room and during the course of scuffle the appellant also received an injury which was simple in nature and that there was heated exchange of words and scuffle between the parties before the actual incident of stabbing took place. There is, therefore, provocation and the incident happened on the spur of the moment. That being the factual position, we are of the considered view that the present case cannot be said to be a case under Section 302 IPC but it is a case falling under Section 304 Part-II IPC. it is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.”

23. The Apex Court on the decision in the matter of **Chinnathaman V. State represented by Inspector of Police** reported in **(2007) 14 SCC 690** has held in para 13 as under:-

“13. It is not the case of the prosecution that the appellant had acted cruelly, in the sense that he had delivered successive blows to the deceased. There was sufficient time and opportunity to the appellant to give repeated blows. It is not the case of the prosecution that the appellant wanted to deliver other blows and that he was prevented from doing so by any person. So there is reasonable ground to believe that after giving the blow the appellant had stopped and not acted

cruelly. As noticed earlier, the appellant was doing his work and was not waiting for the deceased to come. On the facts and in the circumstances of the case, this Court is of the opinion that Exception 1 to Section 300 IPC would apply to the facts of the case and the offence committed by the appellant would be one punishable under Section 304 IPC. There is nothing on record to indicate that the appellant had committed culpable homicide amounting to murder by causing death of the deceased with the intention of causing death of the deceased or of causing such bodily injury as was likely to cause his death. Therefore, the provisions of Part II of Section 304 IPC would apply to the facts of the case on hand. Thus, the appeal will have to be allowed by converting the conviction of the appellant under Section 302 IPC to one punishable under Section 304 Part II IPC.”

24. Thus, keeping in view the aforesaid principle of law, considering the manner in which the assault was made and the medical evidence, it can safely be inferred that while assaulting the deceased the accused/appellants have no intention to cause his death but definitely had knowledge that infliction of such injuries may result in his death. In this view of the matter, though the accused/appellants cannot be held guilty under Section 302 read with Section 34 IPC but cannot escape their conviction under Section 304 Part-II/34 IPC. That apart, considering the statements of injured eye-witnesses (PW/2 and PW/5) and medical reports (Ex.P/15, P/16, P/17 and P/21) of other injured, we are of the opinion that the trial Court was fully justified in convicting the accused/appellants under Section 323/34 IPC.

25. The other aspect that needs to be examined is whether any compensation is to be awarded in favour of the bereaved family of

deceased under Section 357 of the Code of Criminal Procedure, 1973.

26. The Apex Court in the matter of **Ankush Shivaji Gaikwad Vs. State of Maharashtra**¹ while elaborating the issue has held that while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

27. Keeping in view the aforesaid principles of law in relation to grant of compensation u/s 357 of CrPC, the fact that on account of sudden assault made by the appellants, deceased Ramji died at the age of 70, causing an irreparable loss to his family, and after affording a reasonable opportunity to the counsel for the appellants to address us

¹ (2013) 6 SCC 770

on this point and satisfying ourselves as to the financial status of the appellants, we direct the appellants to pay total compensation of Rs.50,000/- to the bereaved family of the deceased within a period of six months from today, failing which they shall have to suffer additional RI for two years.

28. In the result, the appeal is partly allowed. Conviction of the appellants under Section 302/34 IPC is altered to Section 304 Part-II IPC and they are sentenced to undergo R.I. for seven years. In addition thereto, the accused/appellants are directed to pay total amount of Rs.50,000/- to the bereaved family of the deceased as compensation u/s 357(3) of CrPC, failing which they shall have to undergo additional RI for two years. The accused/appellants are acquitted of the charge under Section 323/34 IPC.

29. The amount so deposited by the appellants shall be paid to the wife of deceased Ramji, if alive, as compensation in view of Section 357 of Cr.P.C., after due verification. If the wife of deceased is not surviving, the amount of compensation be paid to the family members of the deceased.

30. A copy of this judgment be forwarded to the concerned trial Court forthwith for its compliance.

31. Appeal thus allowed in part.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Rajani Dubey)
Judge