

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 445 of 2014

- Santosh Yadu S/o Falgo Prasad Yadu, Aged About 25 Years R/o Village Baloudi, PS Ranitarai, Distt. Durg C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through SHO, PS Ranitarai, Distt. Durg C.G. , Chhattisgarh

---- Respondent

CRA No. 504 of 2017

- Ravi Mandare S/o S/o Rajkumar Mandare, Aged About 21 Years R/o Balodi, Police Station Ranitarai, District Durg, Chhattisgarh., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Ranitarai, District Durg, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellants	:	Shri B . P.Singh and Shri Anurag Jha, Advocates for the appellants.
For Respondent /State	:	Shri Adil Minhaj, P.L.

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

Judgement on Board by Pritinker Diwaker,J.

24/04/2018

As these two appeals arise out of judgment and order dated 01.04.2014 passed by the Sessions Judge, Durg District Durg in Sessions Trial No. 251/2013 convicting the accused/appellants in both

the Criminal Appeals under Sections 302/34 IPC and sentencing them to undergo imprisonment for life and fine of Rs. 5,000/- with default stipulation, they are being disposed of by this common judgment.

2. As per prosecution case, on 16.07.13, at about 8-8.30 p.m. Kamal Narayan Sahu (PW-5) deceased Komal Nishad and Yuvraj Verma were sitting together near the Ganesh Chowk of village Balodi at that moment three persons came on a motorcycle which got slipped and they fell down. On hearing the sound all the four persons went over there to see the injured. It is alleged that at that time accused appellants also reached there in a drunken condition, deceased Komal Nishad called them drunkards. At this, quarrel took place between the appellants and the deceased and the appellants caused injuries with hands, fists and kicks as a result of which deceased fell down and thereafter the appellant Ravi Mandare also caused injuries to him with sandal. The deceased was taken to hospital where he was declared dead. Unnumbered FIR Ex.P-3 was lodged on 17.07.14 itself at 9.30 a.m. by Kamal Narayan Sahu (PW-5) under Section 302/34 IPC against both the appellants. Unnumbered merged intimation Ex.P-4 was recorded at 9.35 a.m. At police station patan. Inquest Ex.P-7 was prepared and body was sent for postmortem examination which was conducted by Dr. Thakur Ajay Singh (PW-10) vide Ex.P-20 and according to him, cause of death was shock and hemorrhage due to multiple injuries on head, chest and abdomen and death was homicidal in nature. Numbered FIR Ex. P-12 was lodged at police station Ranitarai against both the accused persons and numbered merged was recorded vide Ex.P-13. On 18.07.13 memorandum of accused Ravi Mandare was recorded vide Ex.P-8 and seizure of one pair of sandal vide Ex.P-9 was made, from the possession of accused Santrosh

seizure of his motorcycle was made vide Ex.P-10. After filing of the charge sheet, trial judge has framed charge against the accused/appellant under Section 302/34 IPC.

3. So as to hold the accused persons guilty, prosecution has examined 11 witnesses in support of its case. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case. This apart one defence witness has also been examined

4. After hearing the parties the trial Court has convicted and sentenced the accused/appellants for the offence as mentioned above. Hence, the present appeal.

5. Contention of counsel for the appellant is that

- i) the accused/appellants have been falsely implicated.
- ii) there is no allegation against appellant Santosh for causing any injury with sandal to the deceased.
- iii) even if the entire prosecution case is taken as it is, at best offence under Section 325 IPC is made out against the appellants.
- iv) It has been argued that the appellants are in jail since last about 5 years and therefore after converting their conviction into Section 325 IPC they be set free forthwith.

6. On the other hand, opposing the submission and while referring

to the injuries sustained by the deceased it has been argued by the State counsel that the deceased was brutally beaten by the appellants and this shows their intention. He submits that considering the statement of eyewitnesses and the injuries sustained by the deceased conviction of the appellants is in accordance with law and there is no infirmity in the same.

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

8. Mahesh Kumar Thakur (PW-1) Amita Nishad (PW-2), Kamal Narayan Sahu (PW-5), Dhaniram Nishad (PW-6), Maniram Nishad (PW-7) and Harilal Nishad (PW-8) are the eyewitnesses to the incident and all of them have categorically stated that the accused/appellants have beaten the deceased with hands, fists and kicks and when the deceased fell down, accused Ravi Mandare beat him with his sandal. In their lengthy cross-examination all these witnesses remained firm and have reiterated as to the manner in which the deceased was beaten by the accused persons. Though there is some variation in the statement of these witnesses in their cross-examination but if their overall evidence is considered, picture emerges that they saw the appellants beating the deceased. Dr. Ajay Singh (PW-10) conducted postmortem examination on the body of the deceased and according to him, cause of death was shock and hemorrhage due to multiple injuries on head, chest and abdomen and death was homicidal in nature. R.S.Tripathi (PW-9) is the Investigating Officer who has duly supported the prosecution case.

Shankar Baghel (DW-1) has not stated anything which may help the accused persons.

9. Close scrutiny of the evidence makes it clear that on 16.07.2013 when Kamal Narayan Sahu (PW-5) deceased Komal Nishad and Yuvraj Verma were sitting near Ganesh Chowk, at that moment three persons came on a motorcycle which got slipped and they fell down. On hearing the sound all the four persons went over there to see the injured. It is alleged that at that time accused appellants also reached there in a drunken condition, deceased Komal Nishad called them drunkards as a result of which quarrel started and the accused/appellants beat the deceased with hands, kicks and fists and he was also subjected to sustain injury with sandal. Postmortem report of the deceased reveals that there were number of injuries including two fractures on skull and 4th, 5th ribs of both side, makes it clear that the accused/appellants have brutally beaten the deceased.

10. Considering the fact that the offence has been committed without pre-meditation in a sudden fight in heat of passion, upon a sudden quarrel and further considering the fact that the offender have not taken undue advantage or acted in a cruel manner or unusual manner, we are of the view that the case of the appellants would fall under Exception 4 of Section 300.

11. The next question which arises for consideration is whether the accused/appellants are liable to be convicted under Section 304 (Part-I) or 304 (Part-II) IPC.

12. Admittedly the appellants had no intention to commit the death of the deceased and it appears that their intention was to cause some injury to the deceased and to teach him lesson. From the evidence it can be said that the appellants had knowledge that the injuries caused

by them may cause death of the deceased. Under the facts and circumstances of the case, according to us the appellants are liable to be convicted under Section 304 Part-II/34 IPC instead of Section 302/34 IPC. Accordingly, conviction and sentence awarded to the accused/appellants is altered/modified.

13. As far as the sentence part is concerned, ends of justice would be served if they are sentenced to the period of seven years. Order accordingly. It is stated that the appellants are in jail and therefore no further order is required.

14. In the result, the appeals are partly allowed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge