

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 624 of 2015**

Lekhraj @ Pintu Sahu S/o Bodhiram Sahu Aged About 21 Years R/o Village - Pachpedhi, Police Station And Post Office-Bhakhara, District Dhamtari Chhattisgarh , Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh S/o Through The District Magistrate, Dhamtari, District Dhamtari Chhattisgarh , Chhattisgarh.

---- Respondent

For Appellant	:	Shri Shivendu Pandya, Advocate.
For Respondent/ State	:	Shri Ashok Swarnakar, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****19/09/2018**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 15.5.2015 passed by Learned Additional/ Upper Sessions Judge, Dhamtari, District Dhamtari, Chhattisgarh in Sessions Trial No. 43 of 2014 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for the offences under Sections 304 part-II and 323 of the IPC, sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.100/- on each count, in default of payment of fine, to further undergo additional rigorous imprisonment for one month.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on the date of incident i.e. 18.10.2014 at about 7:40 pm, the appellant came in front of the house of deceased – Dhananjai Sahu and after using abusive words, he assaulted and thrashed him with a wooden club (a part of bullock-cart), uttering that he will kill him. When Shankar Lal (PW-8) came to intervene, he was also assaulted by the applicant. The deceased was admitted in the hospital. He died during the course of treatment on 19.10.2014 at 5:30 pm. Merg intimation Ex.P/32 was recorded in Police Station Bhakhara and FIR Ex.P/6 was lodged on 20.10.2014 on the basis of the findings in the merg inquiry.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court.

(5) During trial, the Court below framed the charges under Sections 294, 506 part II, 323 and 302 of the IPC. Prosecution examined 26 witnesses to prove the guilt of the appellant. Statement of the appellant was recorded under Section 313 of the Code, wherein the appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question. He also pleaded that the deceased has suffered injuries due to fall and also that it was the deceased who was assaulting the appellant, in which the appellant had defended himself. No witness was examined in defence.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that the appellant has been erroneously convicted for the offence under Section 304 part II of the IPC. The injuries that were caused to the deceased could make out an offence only under Section 323 of the IPC. The deceased has died because of natural causes as it is established from the evidence of Dr. Ulhas Gonnade (PW-22), who has not given any opinion regarding the death, that it was homicidal in nature and in cross-examination, he has also stated that the injuries caused were not found on the vital parts of the body of the deceased. Similarly, the doctor who conducted the MLC (PW-26) has opined that the injuries caused to the deceased were of simple in nature. Hence, his conviction under Section 304 part II is bad in law. Hence, it is prayed that the appeal of the appellant may be allowed.

(9) On the other hand, learned counsel for the respondent/ State opposed the submissions made on behalf of the appellant and submitted that the prosecution has proved its case beyond reasonable doubt. The facts and circumstances directly indicate that because of thrashing given by the appellant, the deceased suffered fatal injury which has resulted in his death. Hence, no case is made out for acquittal of the appellant.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) The question raised in this appeal is, whether the offence under Section 304 part II of the IPC is made out or not on the basis of the evidence adduced by the prosecution before the trial Court.

(12) Firstly, it has to be considered that whether the death of the deceased was homicidal or not. Dr. Prafull Kumar (PW-26) had examined Dhananjai on 18.10.2014 at about 8:00 pm and found one abrasion of size 5 x 1 cm on left side of the chest which was simple in nature and as the condition of the injured was serious, he was referred for proper treatment to Raipur, vide his report Ex. P/28. In cross-examination, he again admitted that all the injuries caused to the injured were of simple in nature. Dr. Neeta (PW-25) has stated before the Court that the deceased was admitted in Dr. Bhimrao Ambedkar Hospital, Raipur on 19.10.2014 at 4.20 am and he died at about 5:20 pm on the same day. She has not treated the deceased and her statement has remained unchallenged. Dr. Ulhas Gonnade (PW-22) has conducted the autopsy. He has stated that on external examination of the deceased, he has found one contusion 15 x 2.5 cm on left side of the upper back region, another contusion of size 25 x 2.5 cm was found in the middle of the back, one contusion was found on the back side of left lower thigh and one injury of size 1 x 5 cm which was stitched, was found between left knee and ankle.

(13) It is stated by Dr. Ulhas Gonnade (PW-22) that on internal examination he found hematoma present below the skin of the right side of the skull of the deceased and that the heart of the deceased has ruptured in three parts which had resulted in excessive internal bleeding, vide his report Ex. P/13. He has not given any opinion regarding the cause of death of the deceased. But later on, he has opined in Ex. P/14 that the cause of death was shock due to rupture of heart and bleeding there from. In cross-examination, he has admitted that the injuries that were found on the body of the deceased were not on vital parts of the body and he has not given any opinion about the death that it was homicidal, because there is no reason present to support it.

(14) The prosecution has connected the injuries caused to the deceased with his death whereas, it does not appear medically possible that the injuries that have been found on the body of the deceased could have been the reason of Myocardial Rupture that has occurred in this case with the deceased. There is no clear opinion given by the doctors' concerned about the death being homicidal. It has been clearly stated by Dr. Prafull Kumar that the injuries caused were simple in nature. Hence, as the case is, that no direct nexus could be established between the injuries caused and the cause of death and it cannot be said that the death of the deceased was homicidal in nature and, on the other hand, it may be a death due to natural causes.

(15) The only eyewitness in this case is Rukhmani (PW-7) who has stated that the appellant has assaulted the deceased in her presence

with a wooden club like substance and then her husband/ deceased went unconscious. On the information given by her, FIR Ex. P/6 was recorded and the investigation was done in this case. She has stated about the death of her husband during the course of treatment. Similar statement has been given by Shankar Lal (PW-8), the injured father-in-law of Rukhmani (PW-1) that when the appellant thrashed the deceased, then he came to intervene and was also injured in this incident. If the statements of the witnesses taken as it is as unrebutted and uncontradicted statements and without there being the finding that the injuries caused by the appellant was the reason for cause of death of the deceased, the only the offences committed by the appellant could be under Section 323 of the IPC.

(16) In the case of **Dunga Ram vs. State of Rajasthan** reported in **1996 Cri.L.J. 3672**, the Division Bench of Rajasthan High Court has considered a similar case of single *lathi* blow given to the deceased and held that the conviction under Section 323 of the IPC was sufficient. In the case of **Mithumal vs. State of Madhya Pradesh (now Chhattisgarh)** reported in **2013 (4) CGLJ 85**, the Division Bench of this Court has examined the similar case and held that though the death had occurred in the incident but a case of commission of offence of culpable homicidal not amounting to murder was not made out and the accused was convicted for the offence under Section 323 of the IPC only. On a close scrutiny of the evidence in this case, the finding which is given herein-above is similar and in accordance with law.

(17) Hence, after due consideration, the appeal is allowed. The conviction and sentence of the appellant under Section 304 part II of the IPC is set aside and instead of that the appellant is convicted for the offence under Section 323 of the IPC regarding which the sentence of period of detention already undergone by the appellant is sufficient in jail. The remaining order of conviction and sentence passed by the trial Court is maintained as it is.

(18) Accordingly, the appeal is allowed in part.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE