

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1001 of 2001**

1. Vishnudatt alias Vishnu S/o Ramgagan, aged about 36 years R/o Village Raghunathpur, P.S. Prem Nagar, District Surguja (C.G.).

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. Prem Nagar, District Surguja (C.G.)

---- Respondent

For Appellant : Shri Vikram Dixit and Shri Pallav Mishra,
Advocates.
For Respondent/State : Shri Vikas Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya**18/09/2019****Judgment On Board**

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 26/09/2001 passed by 6th Additional Sessions Judge (FTC), Surajpur District Surguja (C.G.) in Session Trial No. 140/1995; whereby the appellant Vishnudatt alias Vishnu stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 304 Part-I of Indian Penal Code, 1860 (in short "IPC")	R.I. for 5 years and fine of Rs. 7,500/- in default of fine additional imprisonment of 6 months.

- 2) No one appeared on behalf of the appellant even in second round, when the matter is called. In these circumstances, this Court is left with no other option but to appoint the counsel through the High Court Legal Services Committee.
- 3) Shri Vikram Dixit, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked

by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri Vikram Dixit, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.

- 4) After hearing the parties while the judgment was being dictated, Shri Pallav Mishra, Advocate appeared on behalf of appellant. On being asked, he also advanced the same arguments as has been submitted by Shri Vikram Dixit the counsel appointed by this Court for the appellant through High Court Legal Services Committee.
- 5) Case of the prosecution in brief is that on the date of incident i.e. on 08/12/1994 around 08:00 AM, Kashiram was demanding money from his mother Mataraniya Bai and brother Vishnu and on being refused Kashiram started collecting cloths from the house of Vishnu, made a bundle of cloths and was taking away the same from the house of Vishnu. On being objected by Mataraniya Bai, Kashiram assaulted her with a wooden stick and the accused appellant being enraged, picked up a wooden log (Geda) and assaulted with it on the back of his head. However, after 3 days Kashiram died during treatment. The said incident was witnessed by PW-02 Ramnath, PW-03 Moti, PW-04 Ram Bhajan and PW-06 Shivnath. Extra judicial confession was also made by the appellant before PW-05 Kaushilya Bai. On the basis of memorandum of appellant/accused Ex. P-20 one club was seized vide Ex. P-21. As per Postmortem report Ex. P-18 which was conducted by PW-09 Dr. Narendra Prasad Sharma, the deceased suffered abrasion/contusion over nose and forehead. Doctor also noticed swelling on right temporal region and right shoulder. On internal examination fracture between left temporal and frontal bone was noticed. In his opinion the cause of death was fracture of the above bone and swelling in the bone due to clotting of blood. He opined that the above injury was sufficient in the ordinary course of nature to cause death. During

investigation statements of the witnesses were recorded and after completion of investigation charge sheet was filed against the accused/appellant as well as his mother Mataraniya Bai under section 302/34 of IPC. However, the Trial Court having found no evidence against accused Mataraniya Bai in commission of the offence vide order dated 13/02/1997 discharged her of the said charge and as such the trial was conducted against accused/ appellant only under section 302 of IPC. The appellant denied the said charge and prayed for trial.

- 6) In order to prove its case, the prosecution examined as many as 10 witnesses namely PW-01 Suraj Pratap, PW-02 Ramnath, PW-03 Moti, PW-04 Ram Bhajan, PW-05 Kaushilya Bai, PW-06 Shivnath, PW-07 Amrit Lal Soni, PW-08 Rampratap, PW-09 Dr. Narendra Prasad Sharma and PW-10 Nayan Sukh Lakda. Statement of the accused was recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence he stated that Kashiram was assaulting his mother, when he was trying to separate them, on being pushed Kashiram fell on the ground and he has not assaulted him with wooden log. However, no witness was examined by the accused in his defence.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above.
- 8) Learned counsel for the appellant submits that in fact there was some money disputed between the appellant and the deceased but the real brother has the deceased had taken Rs. 2,000/- from PW-06 Shivnath for purchasing land jointly in the name of his brother and himself and PW-06 Shivnath was demanding his money back from the deceased. When the deceased went to the house of his mother Mataraniya Bai for getting money, on being refused by Mataraniya Bai the deceased assaulted her with a wooden stick and therefore, the appellant being annoyed picked

up a wooden log lying nearby and assaulted the deceased which unfortunately resulted in his death. Therefore, considering the overall facts and circumstances of the case, the manner in which the incident occurred, the act of the appellant, the fact that he did not assault the deceased in a preplanned manner or in a cruel manner, the Trial Court was not justified in holding the appellant guilty under section 304 Part-I of IPC. He submits that at the most the appellant can be held guilty under section 325 of IPC and considering the fact that the incident occurred way back in the year 1994, the age of the appellant at the relevant time i.e. 36 years and his age at present 61 years, he may be sentenced to the period already undergone by him.

- 9) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) So far as involvement of accused/appellant in the crime in question is concerned, from the unrebutted evidence of eye witnesses PW-04 Ram Bhajan and PW-06 Shivnath it stands proved that on the date of incident on 08/12/1994 when the deceased came to the house of the appellant and was demanding money from his mother Mataraniya Bai which was refused by his mother, the deceased assaulted his mother with wooden stick and being enraged the appellant picked up a wooden log lying nearby and assaulted with in on the head of the deceased. This apart, PW-01 Suraj Pratap, PW-02 Ramnath and PW-05 Kaushilya Bai have categorically stated that after hearing the hue and cry when they reached the spot, deceased Kashiram informed them about being assaulted by the appellant. The evidence of these witnesses remained firm in cross-examination. As per MLC Ex. P-2, the deceased suffered bruise

with swelling over right temporal region, abrasion over left lateral aspect of center of head and bruise over right tip of shoulder. The deceased Kashiram was complaining of vomiting and according to Doctor injuries were caused by hard and blunt object and he advised for X-Ray of skull. Thus, from the evidence of the eye witnesses PW-02 Ramnath, PW-03 Moti, PW-04 Ram Bhajan and PW-06 Shivnath and the evidence of the witnesses of PW-01 Suraj Pratap, PW-02 Ramnath and PW-05 Kaushilya Bai coupled with the medical evidence, involvement of the appellant in the crime in question stands proved beyond all reasonable doubt. Now this Court has to see whether the act committed by the appellant makes him is liable is conviction under section 304 Part-I of IPC or in lesser offence.

- 12) As per evidence of PW-07 Dr. Amrit Lal Soni, he medically examined Kashiram (deceased) on the date of incident i.e. 08/12/1994 vide Ex. P-2 MLC and noticed only 3 injuries i.e. bruise with swelling over right temporal region, abrasion over left lateral aspect of center of head and bruise over right tip of shoulder. However, Kashiram died on 12/12/1994. On 13/12/1994 Postmortem of deceased was conducted by PW-09 Dr. Narendra Prasad Sharma vide Ex. P-18 wherein he noticed abrasion on bridge on nose, abrasion on center of forehead, swelling on right temporal region and right shoulder, fracture between left temporal and frontal bone. According to the Autopsy Surgeon the cause of death was head injury due to fracture of left temporal parietal bone. Thus, if MLC Ex. P-2 and Postmortem Ex. P-18 are seen together there is discrepancy regarding the number of injuries found on the body of the deceased. MLC was conducted by PW-07 Dr. Amrit Lal Soni on the date of incident it is whereas the Postmortem was conducted on by PW-09 Dr. Narendra Prasad Sharma on 13/12/1994. Therefore, this Court is of the opinion that the criminal act of the appellant is to be considered on the basis of MLC Ex. P-2 which was prepared on the date of incident itself and duly proved by PW-07 Dr. Amrit Lal Soni.

- 13) Even if entire prosecution case is taken as it is, from the evidence of the eye witnesses PW-02 Ramnath, PW-03 Moti, PW-04 Ram Bhajan and PW-06 Shivnath, it is apparent that it is the deceased who came to the house of the appellant where the appellant was residing with his mother and father and stated demanding money. When the mother of the appellant Mataraniya Bai expressed her inability to give such amount, the deceased started collecting cloths from the house. When the mother of the appellant objected to it, the deceased assaulted her with wooden stick. The appellant tried to separate them and in this process in the heat of passion upon sudden quarrel he picked up wooden log lying nearby and assaulted with it on the head of the deceased as a result of which he fell down and thereafter taken for treatment to Hospital where he died on 12/12/1994. Thus considering the overall facts and circumstances, the factual back ground coming rise to the incident, the discrepancy in the MLC and Postmortem Report of the deceased, and the eye witness account this Court is of the opinion that while making assault on the deceased, the appellant was not having any intention to cause such bodily injuries to the deceased as would result in his death. From the evidence it is also clear that the appellant did not make repeated assault or acted in a cruel manner. There was no premeditation on the part of appellant to assault the deceased. Being so the Trial Court was not justified in convicting the appellant under section 304 Part-I of IPC. However, in the given facts and circumstances of the case and the material available on record, the appellant can safely be held guilty under section of IPC for voluntarily causing grievous hurt.
- 14) In an identical matter the Hon'ble Supreme Court in the case of ***Parusuraman alias Velladurai and others vs State of Tamil Nadu, AIR 1993 SC 141*** held in paras 2 & 3:-
- “2. We have heard learned counsel for the parties. We agree with the High Court that the participation of the appellants in the occurrence which result in the death of Jawahar has been proved beyond doubt. We are, however, of the view that keeping in view the nature of injuries on the person of the deceased and

the facts and circumstances of this case the offence committed by the appellants comes within the mischief of S. 325 read with S. 34, IPC. Thirteen external injuries were found on the dead body of Jawahar. Out of those 11 were on lower legs and arms.....”

3 Agreeing with the above observations of the High Court we are of the opinion that the intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of S.325, IPC. We, therefore, set aside the conviction and sentence of the appellants under S.304, Part I, IPC read with S.34, IPC and instead convict them under S.325, IPC read with S. 34, IPC. We impose the sentence of imprisonment already undergone by the appellants.....”

- 15) However, the Hon'ble Supreme Court in the matter of ***Khuman Singh and others vs State of M.P., (2005) 9 SCC 714*** held in para 10:-

“10.It is, no doubt, true that they assaulted the deceased in such a manner that the deceased suffered several fractures, but the injury which caused the death of the deceased was the one suffered by him on account of the rib bone puncturing the liver. We are convinced that this injury was not intended by the appellants, and the injury suffered by the deceased on his liver was at best accidental.....”

- 16) So far as sentence part is concerned, considering the facts and circumstances of the case, fact that the incident occurred about 25 years ago, the age of the appellant at the time of incident is 36 years and at present i.e. 61 years this Court is of the opinion that ends of the justice would be served if the appellant is sentenced to the period already undergone by him which comes to 140 days (approx.), while maintaining the fine amount as imposed by the Trial Court. From the record of Trial Court it is seen that as per order dated 28/09/2001 fine amount has already been deposited by the appellant through receipt No. 1676/14.
- 17) In the result, the appeal is allowed in part. While acquitting of the appellant of the charge under section 304 Part-I of IPC, he is held guilty under section 325 of IPC and is sentenced to the period already undergone by him with fine amount as imposed by the Trial Court, which has already been deposited by the

appellant. Since the appellant is reported to be on bail, his bail bonds shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant