

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 54 of 2009**

1. Ishwar Das, S/o Bhola Das Manikpuri, aged about 63 years,
 2. Santosh Das, S/o Ishwar Das Manikpuri, aged about 33 years,
 3. Ashok, S/o Ishwar Das Manikpuri, aged about 30 years,
 4. Keshar Bai, W/o Santosh Das Manikpuri, aged about 30 years,
 5. Uttara Bai, W/o Ashok Das Manikpuri, aged about 38 years,
 6. Nema Bai, W/o Santram Manikpuri, aged about 34 years,
- All R/o Village Sidhari, Chowki-Lavan, P.S. Kasdol, District Raipur
(CG) **---Appellants**

Versus

State of Chattisgarh, through Police Station Kasdol, District Raipur
(CG) **---Respondent**

For Appellants	:	Mr. Aman Kesharwani, Advocate
For Respondent	:	Mr. Raghvendra Pradhan, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

15/05/2019

The genesis of the incident involving riot after formation of unlawful assembly with a common object of assaulting deceased Samaru and his son Kanhaiya (PW-1) relates to a sudden dispute erupted between them over the appointment of Kanhaiya as Village Kotwar which according to the accused/appellants was to come in their favour. It is alleged that after the PW-1 was appointed on the said post, the accused/appellants got infuriated, went to the house of PW-1 and started abusing and causing injuries to him with the help of hands and fists. Thereafter, when the Father of PW-1 came to the spot and asked accused/appellants as to why they were assaulting PW-1, they started abusing him also and caused injuries to him with the help of hands and fists. The injuries caused to the father of the PW-1 ultimately resulted in his death while being taken to the hospital. On the basis of information given by the doctor regarding the death of father of PW-1 (hereinafter

referred to as the “deceased”) leading to registration of merg and FIR under Sections 341,294,323,147,148 and 302 IPC. After completion of investigation including postmortem examination on the body of the deceased and medical examination of PW-1 the charge sheet was filed against the accused/appellants under Sections 341,294,323,147,148 and 302 IPC followed by framing of charge by the Court below.

2. Having examined the material on record the Court below acquitted the accused/appellants of the charge under Section 302 IPC but convicted each of them under Sections 147, 323/149 and 304 (Part-II) IPC and sentenced to undergo RI for 6 months with fine Rs.100/- under Section 147; RI for 1 year with fine of Rs.200/- under Section 323/149 and RI for 5 years with fine of Rs.300/- under Section 304 (Part-II) IPC. Hence, this appeal.

3. Counsel for the accused/appellants submits that there is no evidence to show that the accused/appellants had committed the offence alleged and further that as they have been acquitted under Section 302 IPC on the same set of evidence, they deserve to be acquitted of all the charges levelled against them as no other evidence has been collected by the prosecution for the same. He submits that even the medical evidence does not support the case of the prosecution.

4. State counsel however, supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same.

5. From the evidence of PW-1 the son of the deceased, it is apparent that on the date of incident the dispute leading to assault had arisen on account of the fact that he was appointed as Kotwar for which

the accused/appellants also lay their claim. He has further stated that on the date of incident when he reached home, accused - Santosh who was already present outside his house and was indulged in hurling filthy abuses, picked up a stone and before he tried to assault him with the same, he snatched it from him but in the meantime his companions started beating him with hands and fists. He has also stated that when his father tried to intervene in the matter, the accused/appellants manhandled with him also and thrashed him with hands and fists who while being taken to hospital breathed his last. PW-2 to PW-11, most of them the eye witnesses, have also supported the case of the prosecution narrating the entire incident as to in what manner the accused/appellants first abused and assaulted PW-1, and thereafter to his father, with hands and fists who succumb to injuries on the way to hospital. Even the doctor (PW-12) who conducted the postmortem examination on the body of the deceased and also medically examined PW-1 has supported the case of the prosecution by describing number of injuries on chest of the deceased, and the injuries may be simple in nature to PW-1. According to PW-12 the death was opined to be on account syncope and it was homicidal in nature.

6. Thus in view of the aforesaid discussion, this Court is of opinion that the Court below has been fully justified in convicting the accused/appellants as described above and the prosecution has proved its case beyond all reasonable doubts. Conviction of the accused/appellants is accordingly maintained.

7. As regards sentence, the record shows that the accused/appellants - Ishwar Das, Santosh Das and Ashok Das have completed the sentence imposed on them after getting the benefit of remission and have been set free from jail. In these circumstances no order in this regard is necessary in respect of these three accused/

appellants. However, as far as remaining three accused/appellants are concerned, looking to the fact that the incident had taken place 12 years back and that they have already spent about one year and 8 months in jail, and also considering the fact that they all are ladies in their middle age, interest of justice would be served if the sentence imposed on them is reduced to the period already undergone. Order accordingly.

8. Appeal thus allowed in part.

**Sd/-
(Vimla Singh Kapoor)**

Judge

Jyotishi/Ajay