

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 692 of 2012**

Krishna Dhiwar S/o. Sri Balaram Dhiwar, aged about 25 years,
Resident of village Banari, Police Station Janjgir, District Janjgir-
Champa, CG. **---- Appellant**

Versus

State of Chhattisgarh through Police Station Schedule Caste &
Schedule Tribe Kalyan Janjgir, District Janjgir-Champa, CG.

---- Respondent

For Appellant : Shri Rajesh Jain, Advocate
For State/respondent : Shri Ankur Kashyap, PL

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****13/12/2019**

This appeal is directed against the impugned judgment of conviction and order of sentenced dated 01.08.2012 passed by Special Sessions Judge Janjgir-Champa in Special Session trial No. 202/2011 whereby and whereunder the appellant has been convicted and sentenced as hereunder:-

Conviction	Sentence
Under Section 302 of Indian Penal Code.	Life Imprisonment and fine of Rs. 2000/- in default of payment of fine amount further RI for three months.

2. The prosecution story, as is unfolded from the impugned judgment and the record of the case is that on 10.08.2011, at about 3 PM, when the deceased Rajkumar Suryavanshi was sitting in the

village square, the appellant arrived at the spot and making allegations against him as to why he was entitling filth and venom against him at large, insulted on the ground that he belongs to reserved category and then gave assault with the help of iron club due to which Rajkumar sustained injuries. Rajkumar was taken into hospital immediately after his incident but he succumbed to injuries and died at 4.30 PM. Information with regard to death was given to the police station on the basis of which, Merg was recorded. The police arrived at the scene of occurrence, inquest was conducted and the dead body was sent for postmortem. Postmortem was conducted by PW-6 and he found number of injuries on the head of the deceased. His opinion was that death was homicidal in nature. The appellant was arrested, charge-sheet was filed. The learned trial Court on the basis of material contained in the charge-sheet, framed charges against the accused/appellant on the allegation that by assaulting the deceased with the help of iron club appellant killed Rajkumar and committed offence under Section 302 IPC. The appellant was also charged of having committed offence under Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act). Appellant having abjured guilt, was put to trial.

3. The prosecution, in order to prove its case, examined number of witnesses, including two eye witnesses namely PW-1 and PW-4. The accused did not examine any defence witness. He was examined under Section 313 Cr.P.C. to explain incriminating evidences and circumstances appearing against him in the evidence led by the prosecution. The appellant denied having committed offence and

stated that as deceased Rajkumar had picked up iron club to assault him, he assaulted him too in exercise of right of his private defence.

4. Upon scrutiny of the prosecution evidence and the defence of the appellant/accused, learned trial Court arrived at the conclusion that the prosecution succeeded in proving its case beyond reasonable doubt and the accused defence was not accepted. Such conclusion resulted in conviction of the appellant, giving rise to instant appeal.

5. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that from the evidence of prosecution witness PW-4 itself, it is proved that the appellant was not the aggressor. The witness has clearly stated that it is the deceased Rajkumar who had picked up an iron club and when he went to assault the appellant, the appellant, only in exercise of right of private defence, by snatching that iron club from the hands of the deceased and then in order to save him, assaulted the deceased. Next submission of learned counsel for the appellant is that even if the evidence of the prosecution witnesses are believed, at the most it can be said to be a case exceeding exercise of right of private defence which should be covered under exception 2 to section 300 and thus, would amount to culpable homicide not amounting to murder. As the appellant has undergone 8 years and 4 months of jail sentence, the conviction of the appellant may be altered to that under Section 304-II and sentence for the period already undergone by him.

6. On the other hand, learned State counsel, supporting the judgment of conviction and order of sentence argued that the story of

exercise of right of private defence is an afterthought story. He would argue that PW-1, - the first eye witness and the FIR informant, has clearly disposed that when Rajkumar was sitting in village square, the appellant, all of sudden, arrived at the spot, holding an iron club in his hand and repeatedly assaulted the deceased due to which, he fell down. In his submission, the evidence of the other witness PW-4 that the deceased first attempted to assault the appellant and then the appellant assaulted the deceased, is at variance with what has been stated by PW-1 and also the narration of the incident as proved in the FIR (Ex. P-1) proved by PW-1. Next submission of state counsel is that it is not a case where the appellant acted in exercise of right of private defence. As per the evidence of PW-4 also, the appellant had snatched iron club from the hand of the deceased. Thereafter, it was no longer necessary for the appellant to have inflicted any injury as all overt acts, subsequent to snatching of iron club, cannot be said to be an act of exercise of right of private defence. The appellant having failed to prove that the criminal overt act was in exercise of his right of private defence, the appeal is liable to dismissed.

7. We have heard learned counsel for the parties, perused impugned judgment and record of the case.

8. The first information report Ex. P-1 proved by PW-1 narrates the incident in the manner that when Rajkumar was sitting in the village square at about 3 PM on 10.08.2001, the appellant arrived at the spot, holding an iron club and gave an assault from behind due to which, Rajkumar fell down. PW-1 – the FIR informant, in his Court statement, has stated that when he was sitting in the village square along with

the Rajkumar, the appellant arrived at the spot and assaulted with an iron club.

9. However, the other eye witness of the prosecution PW-4 has given a different version. According to this witness, at the spot, altercation of abuses was taking place between the appellant and the deceased. When he came near Rajkumar and asked as to why he was pushed away and thereafter, Rajkumar picked up an iron club and attempted to assault the appellant and then, the appellant snatched that club from the hand of deceased Rajkumar and assaulted him. In cross-examination he stated that as long as Rajkumar was hurling abuses, the accused did not commit any overt act.

10. The defence taken by the accused in his examination under Section 313 Cr.P.C. is that he assaulted Rajkumar in exercise of right of his private defence when Rajkumar attempted to assault him.

11. The evidence of prosecution witness PW-4 renders plausible and possible the appellant's defence that the appellant was not aggressor. When an altercation was doing on between the appellant and the deceased and when PW-4 intervened, was pushed away by the deceased and thereafter, deceased is said to have picked up an iron club and attempted to assault the appellant. According to PW-4, it was at this stage that the appellant snatched the iron club from the hands of the deceased and then assaulted him.

12. That much of evidence led by the prosecution clearly constitutes an act of assault by the appellant in exercise of right of his private defence. The evidence of PW-4 is that Rajkumar had first

pushed away PW-4 and then he picked up an iron club and attempted to assault the appellant. The criminal overt act of the appellant was only reaction to this act of the deceased. Therefore, the appellant's criminal overt act seems to be in exercise of right of his private defence.

13. However, from the evidence of Dr. R.D. Gupta (PW-6), we find that the deceased have sustained number of injuries on his head meaning thereby that the appellant after having snatched iron club from the hands of the deceased, had repeatedly assaulted him as a result of which, the deceased finally succumbed to death. The exercise of right of private defence did not entitle the appellant to do more than what was necessary in exercise of right of private defence. Having snatched iron club from the hands of the deceased, causing multiple injuries and not limiting injury only to the extent of disabling the deceased, certainly amounts to an act of exceeding in exercise of right of private defence.

14. That, certainly would be a case covered by Exception 2 to Section 300 IPC which leads thus:-

“Exception 2 :- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and caused the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.”

15. The criminal overt act of the appellant therefore, was in excess of right of his private defence and therefore, though it amounts to culpable homicide, it cannot be said to be a case of murder.

16. In the circumstance and upon scrutiny of oral and documentary evidence of records, we are of the view that the criminal overt act of the appellant does not travel beyond the scope of Section 304 Part-II.

17. The appellant has already undergone more than 8 years and 4 months of sentence. In the circumstance and taking into consideration all others relevant aspect, we are inclined to impose the sentence of the appellant for the period already undergone by him.

18. In the result, this appeal is partly allowed in the manner and to be extent that the appellant's conviction under Section 302 IPC is altered to that under Section 304-II and sentence imposed for the period already undergone.

19. Resultantly, the appellant is required to be released, if not required in any other case.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**

Sd/-

**(Vimla Singh Kapoor)
Judge**