

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 112 of 2013**

Dhaneshwar Kewat, S/o Sirbal Kewat, Aged About 45 Years R/o  
 Dhangawan, PS - Gandhinagar, Distt. - Surguja(CG) ---- **Appellant**

**Versus**

State Of Chhattisgarh ,Through The Station House Officer, PS Gandhinagar,  
 Distt. - Surguja Chhattisgarh ....**Respondent**

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|---------------|---|--------------------------------------------|
| For Appellant | : | Mr. Shakti Raj Sinha, Advocate             |
| For State     | : | Mr. Subhash Yadav, Dy. Government Advocate |

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**DB : Hon'ble Shri Justice Manindra Mohan Shrivastava****Hon'ble Smt. Justice Rajani Dubey****Judgment On Board by Manindra Mohan Shrivastava, J.****25.02.2019**

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 18.12.2012 passed by First Additional Sessions Judge Ambikapur, District Surguja (CG) in Sessions Trial No.289/2010, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

| Conviction               | Sentence                                                                                        |
|--------------------------|-------------------------------------------------------------------------------------------------|
| Under Section 302 of IPC | Imprisonment for life and fine of Rs.1000/-, in default of which, additional R.I. for 4 months. |
| Under Section 324 of IPC | R.I. for 3 years.                                                                               |

2. The prosecution case, as unfolded from the records of the case and the impugned judgment, is that the appellant and other accused of the case (who have been acquitted) came to the house of the deceased, armed with weapon and it is said that the appellant gave an assault on the head of the deceased with a sharp object, due to which, deceased fell down and died. FIR was lodged in the Police Station by Krishna (PW8), one of the injured witnesses. Inquest over dead body

was prepared and dead body was also sent for postmortem. Dr. Rajkumar Singh (PW5) conducted postmortem and he found that the deceased sustained two scratch injuries; one on the lid of the left eye and the other in the nose. He also found that there was a wound in the occipital part of the head and there was a fracture. There was oedema and subdural injury in the brain. The opinion of the doctor was that the death was caused due to the head injury and complication arising therefrom. The appellant was tried for commission of offence under Section 302 of IPC along with other accused. Learned trial Court, however, acquitted all other accused except the present appellant. Relying upon the testimony of eyewitnesses of the case, learned Trial Court recorded a finding that the fatal injury caused to the deceased on the head was given by the present appellant, therefore, the appellant was guilty of commission of offence under Section 302 & 324 of IPC.

3. The argument of learned counsel for the appellant is confined mainly to the degree of criminal overt act. Learned counsel for the appellant would argue that present is a case where there was no intention on the part of the appellant to murder the deceased. He would argue that Krishna (PW8), the other injured witness lodged FIR and in the FIR, the story stated by him that due to property dispute existing between the parties, at about 7 p.m. in the evening, the appellant along with others had come with shovel and started assaulting, due to which, he sustained injury on his head and when he called for help, his brother, Parshuram came and then he was also assaulted. According to the FIR, Dhaneshwar, Mistri, Boya and Motu assaulted Parshuram and Parshuram fainted because of injury caused by shovel.

4. In order to prove its case, the prosecution has come out with eyewitness account of Dil Kunwar (PW1), Sukhmaniya (PW7), Krishna (PW8) & Iman Sai (PW9). Dil Kunwar (PW1), who is wife of the deceased states that when she was cooking food in the house, Mistri and Mantri had come to her house. She says that her husband was assaulted by five persons which included Dhaneshwar also. She states that Dhaneshwar was holding shovel. She further states that the accused persons broke open the house, her husband was assaulted and the accused ran away. In the cross-examination, an improvement has been elicited regarding the appellant entering the house by breaking open the door and entering the house. She admits that the house of the appellant and the deceased are adjacent. A suggestion that she and her husband, while sitting on the door of his house were abusing has been denied but the suggestion that she was sitting in front of her

house has been admitted. She then states that assault was given after entering the house. A suggestion has been given that initially, a dispute had arisen between Dhaneshwar and Parshu and others came later on.

5. Mangal Sai (PW2) is the cousin and according to him, when he reached the house, he found that Parshu had sustained some injury. He does not appear to be the eyewitness of the case.

6. Sukhmania (PW7) has deposed that when mother of Parshu called for help saying that Dhaneshwar had assaulted her son, she went to the house of Parshu where she saw that the appellant Dhaneshwar had assaulted Parshu with the help of shovel and Parshu was lying dead. When she tried to snatch shovel away from the hand of Dhaneshwar, she also sustained some injury. She further states that Krishna had also sustained injury caused to him because while she was trying to snatch shovel away from the hand of Dhaneshwar. On a query, in the cross-examination, she again states that Parshu was assaulted by Dhaneshwar. She also gives history of a quarrel between Dhaneshwar and Parshu on the date of incident.

7. Krishna (PW8) has deposed that on the date of incident, the appellant Dhaneshwar assaulted Parshu with the help of shovel. This witness was found having sustained injury which is proved from the MLC report in respect of his injury prepared by Dr. K.R. Tekam (PW11), wherein, he found two cut injuries on the head of Krishna and prepared report in Ex.P/22 that it was caused by sharp weapon.

8. Iman Sai (PW9) has also deposed that while he was entering the house of Parshu, at about 7 p.m. in the evening, Dhaneshwar came abusing and then quarrel marpeet started, he tried to stop the quarrel but quarrel did not come to an end. Parshu was assaulted. According to him, first assault was given by Dhaneshwar by the help of shovel on the head of Parshu. He admits that the house of appellant is adjacent to the house of the deceased. It has been admitted that abuses were being hurled between Dhaneshwar and Parshu, whereafter, male and female members of the family has also gathered and attempt was made to separate Dhaneshwar and Parshu who were quarreling. He has also stated that Dhaneshwar and others had come with the object of assault.

9. From the prosecution evidence, it is proved from overwhelming evidence

that the appellant had come to the house of the deceased, armed with shovel and he had given assault on the head of the deceased which led to fracture and death due to brain injury. It is also proved from the evidence that two sharp edged injuries on the head of Krishna, were also given by the appellant. The prosecution evidence shows that the appellant was holding a shovel in his hand which is a sharp edged object.

10. Learned Trial Court has acquitted all other accused except the present appellant, taking into consideration that the allegation of assault given to Parshuram is by the present appellant.

11. However, there is one argument raised vehemently by learned counsel for the appellant, relying upon the recent judicial pronouncement of the Hon'ble Supreme Court in the case of **Deepak Vs. State of Uttar Pradesh (now Uttarakhand)**, [2018(8) SCC 228] that the manner in which the present case, incident happened, a case of murder would not be made out but at the most, a case of culpable homicide not amounting to murder alone could be said to have been made out. Emphasis is upon the prosecution evidence that the appellant and deceased are cousins, residing adjacent each other and on the date of incident, the deceased was drunk and was hurling abuses, because of which, the appellant had come to his house and a quarrel had happened and they were separated by their respective family members, the deceased continued to hurl abuses and the appellant then came with the shovel and gave a single injury on the head resulting in death.

12. The evidence of Dil Kunwar (PW1), Mangal Sai (PW2), Sukhmaniya (PW7), Krishna (PW8) & Iman Sai (PW9) if read together, what comes out as a common thread to the entire circumstances leading to assault is that the appellant and the deceased are cousins and resided adjacent to each other. It has also come in the evidence that the deceased was drunk. Dil Kunwar (PW1) has admitted in her cross-examination that Sundar Sai had advised her that they should control their respective husbands as there was no use of quarreling. Mangal Sai (PW2) has admitted in his cross-examination that when he came to see Parshuram, he was in senses and there was smell of liquor coming out. He further deposes that on the date of incident, he did not come out thinking that Parshu, as always, would be hurling abuses in a drunken state. He has also admitted that before reaching the spot, about half hour before, Parshu was heard hurling abuses. He then also admits that the quarrel had come to an end and the wives of Parshu and

Dhaneshwar had taken their respective husbands to their houses. He then also admits that Dhaneshwar had gone to his house though Parshu had climbed up on the terrace and again hurling abuses.

13. It is found that the deceased was drunk and he was hurling abuses, due to which, the appellant came to his house. There was quarrel between them and then they were separated by their respective wives and thereafter, the appellant brought a shovel in his hand and gave one assault on the head of the deceased which proved to be fatal.

14. The factual background in the case of *Deepak (supra)* are almost identical, as far as genesis of dispute is concerned. In that case, the appellant and the accused were residing in front of each other and the appellant accused in that case, aggrieved by high voice of loudspeaker came to the house of the deceased, there was a quarrel and then he went to his house, picked up a sword, again came to the house of the deceased and gave him assault on his chest cage leading to fatal injury. In this background, the case of the appellant *Deepak (supra)* was considered as below :

“6. It is manifest from the evidence of the prosecution witnesses that the Appellant and the deceased lived opposite each other across the road. Their houses were separated by a distance of approximately 20-25 ft. by the road in between. The genesis of the occurrence was the loud playing of a tape recorder in the house of the deceased, objected to by the Appellant. A verbal argument ensued. The Appellant rushed across to his house, came back with a sword and delivered a single blow to the deceased in the rib-cage area and then ran away threatening to see him later. The entire altercation is stated to have lasted for 1½ to 2 minutes.

7. On consideration of the entirety of the evidence, it can safely be concluded that the occurrence took place in the heat of the moment and the assault was made without premeditation on the spur of time. The fact that the Appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the Appellant, coupled with the duration of the entire episode for 1½ to 2 minutes. Had there been any intention to do away with the life of the deceased, nothing prevented the Appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib-cage area, knowledge that death was likely to

ensue will have to be attributed to the Appellant.”

15. The facts of the present case are quite identical except that in the present case, the weapon used was a shovel and part of the body chosen for assault was the head. In our opinion, considering that in the present case, shovel, an agriculture equipment was used and present was also a case of single assault on the head and no other major injury is said to have been inflicted either on the head or any other part of the body of the deceased, the conviction of the appellant deserves to be altered to that under Section 304 Part-II of IPC. Considering the period of custody undergone after conviction, we also alter the sentence for the period of custody already undergone taking into consideration that the appellant has by now completed almost 8 years and 9 months of sentence.

16. The appeal is accordingly allowed in part.

17. The conviction of the appellant is altered to that under Section 304-II of IPC and the sentence is imposed for the period already undergone as stated above. The appellant be set at liberty.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
**Judge**

**Sd/-**  
**(Rajani Dubey)**  
**Judge**