

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1066 of 2019**

1. Ramesh Kumar Sarthi, S/o Budharam Sarthi, Aged About 55 Years, R/o Village Kaya Gandabahari, PS- Gharghoda, District- Raigarh, Chhattisgarh
2. Ramchandra @ Bodu Sarthi, S/o Ramesh Kumar Sarthi, Aged About 30 Years, R/o Village Kaya Gandabahari, PS- Gharghoda, District- Raigarh, Chhattisgarh
3. Panasmati @ Bodharin, W/o Ramesh Kumar Sarthi, Aged About 47 Years, R/o Village Kaya Gandabahari, PS- Gharghoda, District- Raigarh, Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through PS - Gharghoda, District- Raigarh, Chhattisgarh

---- Respondent

For Appellants
For Respondent

Shri Kalyan Kalamkar, Advocate
Ms. Madhunisha Singh, PL

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Prashant Kumar Mishra J.****04/09/2019**

1. The appeal is posted for hearing on IA No.1/2019, application for suspension of sentence and grant of bail. However, with the consent of learned counsel for the parties, we have heard them finally.
2. Appellants stand convicted for committing offence under Sections 302/34 and 323/34 of IPC. They have been sentenced to undergo

life imprisonment with default stipulations.

3. On a dispute concerning fetching of cow dung, the appellants have allegedly caused injuries by brick, club, hand and fist to deceased Mahesh Gupta at about 5 am on 16.05.2018. The merger intimation (Ex-P-6) was lodged by PW-6 Sajai Gupta at about 9:35 am on 16.05.2018, before that the FIR was registered at 9:30 am on the report of PW-6 Sajai Gupta. The informant reported the Police that when she was fetching cow dung in front of the house of appellant Ramesh, his wife appellant No.3 Panasmati objected to it and started quarreling. The appellant No.1 Ramesh reached at the place of occurrence and started abusing the informant, on which her husband deceased Mahesh Gupta came out of his house and tried to intervene, but Ramesh and his son Bodu Sarthi inflicted injuries over the person of the deceased by means of bricks and stones. When deceased's son PW-7 Mahadev Gupta reached the spot, he too was assaulted by the accused persons.
4. The Investigating Officer recorded the memorandum statement of the accused Ramesh Sarthi vide Ex-P-2 and recovered bricks and club from his possession vide Ex-P-3 & P-5. Plain soil and blood stained soil was recovered from the place of occurrence vide Ex-P-4. After recording diary statement of the witnesses, the charge sheet was filed and at the end of trial, the appellants have been convicted and sentenced as stated above.
5. The prosecution case revolves around statements of PW-1 Sukh Singh, PW-6 Sajai Gupta and PW-7 Mahadev Gupta, therefore, we

shall concentrate on the statement of these three witnesses. PW-1 Sukh Singh is an independent witness. According to him, appellants Ramchandra and Panasmati had caught hold of the deceased and appellant Ramesh inflicted injuries over his head by means of brick. When PW-7 Mahadev Gupta reached the place of occurrence, he too was assaulted by appellant Ramchandra by means of club. In his diary statement, this witness would inform the Police that Ramesh inflicted injuries by means of brick and Ramchandra by means of club. He did not inform that when Ramesh was causing blows by bricks, the other witnesses were catching hold of the deceased. PW-6 Sajai Bai is the witness with whom initial quarrel started. According to her statement, Ramesh assaulted her husband by means of bricks and when her son Mahadev tried to intervene, he too was assaulted by the accused persons. PW-7 Mahadev Gupta states that Ramesh assaulted his father by bricks and Ramchandra assaulted by hand and Panasmati was standing at the place of occurrence. Since PW-7 Mahadev Gupta is an injured eye witness, his statement appears to be most real and precise to describe the actual happening at the time of incident. He admits that before the present incident, there has been no dispute with the accused persons. There is omission in his diary statement (Ex-D-2), inasmuch as in his diary statement, he had not informed the Police that Bodu has assaulted the deceased by hand.

6. The postmortem report (Ex-P-18) has been proved by PW-9 Dr. Vikas Kumar Sharma. He has found that the blood was oozing from nose and mouth. Eyes were closed. Rigor mortis was present. Left

eye was closed. Peri-orbital contusion was present. Swelling and contusion in left side of face opposite left temporal mandibular joint. He did not find any fracture over the skull bone. He finds the cause of death to be due to hypo-volumic shock due to internal and external hemorrhage. Homicidal in nature. Thus, the deceased had not sustained any serious external injuries.

7. On the basis of evidence on record, it is proved that the appellants Ramesh and Bodu have caused injuries by means of bricks, stones or hand. Appellant Panasmati was only standing at the place of occurrence. Therefore, her conviction under Sections 302/34 and 323/34 of IPC is not sustainable. There being cogent and reliable evidence against the appellant Nos.1 & 2 of causing injuries to the deceased as well as to PW-7 Mahadev Gupta, they have rightly been found guilty of causing injuries to the deceased and PW-7 Mahadev Gupta.
8. The question, which is required to be considered, is whether the injuries were caused with knowledge and intention to commit murder or the intention was only to cause grievous hurt.
9. PW-7 Mahadev Gupta would clearly state that there has been no prior dispute with the family of the deceased. The incident happened at about 5 am in the early morning on a trivial issue regarding fetching of cow dung. Initially, the dispute started between two ladies namely PW-6 Sajai Bai, wife of the deceased, and the appellant Panasmati. The male members joined the quarrel subsequently and appellant Ramesh used only bricks for causing

injuries to the deceased, whereas appellant Bodu has caused injuries by hand, as stated by PW-7 Mahadev Gupta. There does not appear to be any intention to commit murder nor the appellants had knowledge that assaulting deceased by means and bricks or hand would cause his death. If we refer to the medical evidence also, it is to be noticed that the deceased did not sustain any fatal external injuries. The deceased had not sustained any fracture over the skull bone where the bricks caused injuries. The deceased was only bleeding from his nose and mouth. He was also having swelling and contusion over left side of face opposite left temporal mandibular joint. Thus, the external injuries would only amount to grievous injuries, as there is no opinion of the medical expert that the injuries were sufficient to cause death in the ordinary course of nature.

10. Here it would be profitable to refer as to what the Hon'ble Supreme Court has observed in similar circumstances. The Supreme Court in the matter of **Parusuraman alias Velladurai and others vs State of Tamil Nadu**¹ has held thus 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

¹ AIR 1993 SC 141

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.....”

11. Yet again, the Supreme Court in the matter of **Khuman Singh and others vs State of M.P.**² has held thus 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.....”

12. Keeping in view the observation by the Hon'ble Supreme Court, in our considered view, the act committed by the appellants was with an intention to cause grievous injuries and not with an intent or knowledge to commit murder of the deceased. Therefore, conviction of appellant Nos.1 & 2 under Section 302 of IPC deserves to be set aside, instead they are convicted for causing grievous hurt to the deceased punishable under Section 325 of IPC and for causing simple hurt to PW-7 Mahadev Gupta.
13. In the result, the appeal preferred by appellant No.3 Panasmati @ Bodharin is allowed in its entirety. Her conviction under Sections 302/34 and 323/34 of IPC is set aside. Appellant No.1 Ramesh Kumar Sarthi and appellant No.2 Ramchandra @ Bodu Sarthi are convicted for committing offence under Sections 325/34 and 323/34

² (2005) 9 SCC 714

of IPC. They were arrested on 17.05.2018 and thus they have already suffered jail sentence of more than 1 year and 3 months, which according to us is adequate for an offence under Sections 325/34 and 323/34 of IPC, therefore, they are sentenced to the period already undergone. All the appellants are presently in jail. They be released forthwith, if they are not required for any other offence, on their furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Trial Court. The bail bond shall remain in operation for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the Higher Court as and when required.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge