

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1121 of 2013**

1. Deo Narayan, aged about 35 years, S/o Tijram Kurmi, R/o village - Dhurwakari, P.S.- Masturi, Civil & Revenue District Bilaspur (C.G.)
2. Motilal @ Gunde, aged about 34 years, S/o Arjun Ram Kewat, R/o village-Malhar, P.S.-Masturi, Civil & Revenue District Bilaspur (C.G.)
3. Sagun Kewat, aged about 48 years, S/o Ghuruk Ram Kewat, R/o village - Dekha, P.S.-Torva, Civil & Revenue District Bilaspur (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : Police Station Masturi, District Bilaspur (C.G.)

---- Respondent

For Appellants	:	Shri R.K. Jain and Shri Anand Kumar Gupta, Advocates
For Respondent.	:	Shri Santosh Bharat, P.L.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt Justice Rajani Dubey

Judgment on Board**Per Rajani Dubey, J****02/04/2019**

1. This appeal arises out of the judgment of conviction and order of sentence dated 14.08.2013 passed by the 3rd Additional Sessions Judge, Bilaspur (C.G.), in S.T. No.122/2012 whereby and whereunder, the appellants have been held guilty of commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 302/34 IPC	Imprisonment for life and fine of Rs.500/- each, in default of payment of fine amount to undergo additional R.I. for one month.
Under Section 323/34 IPC	S.I. for one month

2. Brief facts of the case are that, deceased Tularam, along with his wife Jugaribai, was residing near the bank of river Lilagar. On 07.05.2012, appellants went to the house of deceased and demanded liquor from him to which he denied saying that he has no liquor. The refusal on the part of the deceased made the appellants angry and it led to the incident in which appellant Devnarayan (A-1) is said to have assaulted the deceased on his head by crowbar and appellant Sagun (A-2) and Motilal (A-2) by club on his legs and hands, resulting in death of deceased Tularam. When Jugari Bai, wife of the deceased, intervened in the matter, she too was assaulted by the appellants, as a result of which, she sustained injuries on her legs and hands. The incident was reported to police by Jugari Bai and a merged intimation in Ex.P/7 was recorded at her instance followed by registration of FIR in Ex.P/30. Inquest on the body of deceased was conducted, vide Ex.P/11 and dead body was sent for postmortem examination to Community Health Center, Masturi, where Dr. P.K. Ghosh (PW/1) conducted postmortem on the body of the deceased who gave his report in Ex.P/1 noticing (i) lacerated wound over right side of forehead in the size of 5 cm x 2 cm x skin deep, (ii) abrasion over posterior side of scalp in the size of 4 cm x 4 cm (iii) multiple abrasions on all over back of chest, big abrasion of 10 cm x 10 cm over lumbar region, (iv) contusion with abrasion on right upper arm, (v) contusion of 8 cm x 5 cm over right side of chest, (vi) contusion of 7 cm x 6 cm over left side of chest, (vii) lacerated wound of 2 1/2 cm x 1 cm x 1/2 cm with fracture of right index finger, (viii) lacerated wound of 3 cm x 2 cm x 1 cm over right leg with fracture of right tibia. The Doctor opined that the injuries

were antemortem in nature, caused by hard and blunt object. The Doctor has also opined the cause of death to be cardio respiratory failure due to asphyxia.

3. Injured Jugari Bai (PW/3) was also medically examined by Dr. Smt. Madhu Saxena (PW/4), vide Ex.P/9, and noticed swelling on right palm, lacerated wound over palm between ring finger and little finger and swelling on exterior part of right hand. The Doctor has opined that all the injuries were simple in nature, caused by hard and blunt object.

4. On 08.05.2012, memorandum of the accused/appellant Deo Narayan (A-1), Motilal (A-2) and Sagun Kewan (A-3) were recorded vide Ex.P/14, P/15 and P/16, based on which, one crowbar and two clubs were seized vide Ex.P/17, P/18 and P/19 respectively. The seized articles were subjected to chemical examination and, as per FSL report (un-exhibited), presence of blood thereon, was confirmed. In the FSL report, it has also been mentioned that the group and origin of blood found on the articles could not be ascertained being disintegrated. After filing of the charge sheet, the trial Court framed charges against the accused/appellants under Sections 302/34 and 323/34 IPC.

5. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record convicted and

sentenced the accused/appellant as mentioned in para 1 of this judgment. Hence, this appeal.

7. Learned counsel for the appellants submits :

(i) That in a heat of passion and in sudden quarrel accused/appellant Dev Narayan (A-1) gave single blow to the deceased by crowbar, and accused/appellant Motilal (A-2) and Sagun (A-3) by club resulting in unfortunate death of the deceased.

(ii) That even if the entire prosecution case is taken as it is, at best the accused/appellants are liable to be convicted under Section 304 Part-II IPC.

(iii) That the accused/appellants are in jail and considering their detention period, their sentence may be reduced to the period already undergone by them. Learned counsel for the appellants also placed reliance on the decision of the Supreme Court in the matter of **Surinder Kumar V. Union Territory, Chandigarh** reported in **(1989) 2 SCC 217.**

8. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

9. We have heard learned counsel for the parties and perused the material available on record.

10. Dr. P.K. Ghosh (PW/1) conducted postmortem examination on the body of deceased and gave his report (Ex.P/1) opining the cause of death to be cardio respiratory failure due to asphyxia and injuries in chest and lungs. This witness has stated that the weapon of offence axe

and club were produced before him for examination and he gave his query report in Ex.P/2 and opinion was given that the injuries sustained by the deceased could have been caused by the said weapon.

11. Santosh Kumar Verma (PW/2) is the Patwari who prepared spot map vide Ex.P/5.

12. Jugari Bai (PW/3) is the injured eye-witness to the incident. She is also wife of the deceased. She has stated in her evidence before the Court that on the date of incident at about 4.00 PM, appellants came to her husband and demanded liquor, to which he (deceased) replied that he has no liquor. Thereafter, appellant Devnarayan assaulted the deceased by crowbar and appellant Motilal @ Gunde and Sagun Kewat assaulted him by club, resulting in his death. She has further deposed that when she intervened in the matter, she too was assaulted by the appellants due to which, she sustained injuries on her hands and leg. In her cross-examination, a suggestion that in a quarrel appellant Motilal (A-2) sustained injuries and his teeth were broken, has been denied. Further suggestion that deceased, holding club in his hand, had gone to purchase liquor to the house of appellant Motilal, has also been denied. Further, suggestion that they (deceased and this witness) assaulted appellant Motilal by crowbar and club when he demanded money, has also been denied.

13. Dr. (Smt.) Madhu Saxena (PW/4) medically examined injured Jugari Bai (PW/2), vide Ex.P/9. She has noticed lacerated wound and multiple abrasions on her body. This witness has stated that the injuries sustained by Jugari Bai (PW/2) were simple in nature.

14. Ashok Kumar (PW/5) is the son the deceased and hearsay

witness. He has stated that his mother Jugari Bai (PW/2) informed him that the appellants assaulted his father when his father (deceased) said that he has no liquor. In cross-examination, in para 4, he has stated that in the incident, appellant Motilal had not sustained any injury and his teeth were not broken.

15. Raj Kumar (PW/6) and Purushottam (PW/7) are the witnesses to memorandum of the appellants made under Ex.P/14, P/15, P/16 and seizure of crowbar and club made under Ex.P/17, P/18 and P/19. They have admitted their signature on memorandum and seizure memo.

16. B.P. Tiwari (PW/9) - Investigating Officer has duly supported the prosecution case.

17. Close scrutiny of the evidence, in particular the evidence of Jugari Bai (PW/2), makes it clear that on 07.05.2012, the appellants went to the house of deceased and demanded liquor and a quarrel took place between them when deceased said that he has no liquor, in which, appellant Deo Narayan (A-1) assaulted the deceased by crowbar which was lying there, and appellant Motilal (A-2) and Sagun (A-3) by club, resulting in death of the deceased. When Jugari Bai (PW/3) intervened in the matter, she too was assaulted by the appellants as a result of which, she sustained injuries in her hands and legs, which according to the Doctor (PW/4), were simple in nature. The incident took place in the house of the deceased where presence of Jugari Bai (PW/3), wife of deceased, was natural, who witnessed the incident and has specifically deposed against the appellants. The evidence of Jugari Bai (PW/3) also finds corroboration by the evidence of Dr. P.K. Ghosh (PW/1) who conducted postmortem on the body of deceased and noticed lacerated

wound, contusion and abrasion. The evidence of Jugari Bai (PW/3) also finds corroboration by the evidence of Dr. (Smt.) Madhu Saxena (PW/4) who medically examined her and found lacerated wound between ring finger and little finger including swelling on palm. Thus, from the evidence of Jugari Bai (PW/3) and medical evidence, the complicity of appellants in the crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve her statement.

18. The alternative argument of learned counsel for the appellants is that the incident took place all of a sudden, without premeditation, when deceased said that he has no liquor, in which appellant Dev Narayan (A-1) gave single blow to the deceased by crowbar, and accused/appellant Motilal (A-2) and Sagun (A-3) by club, resulting in unfortunate death of the deceased, therefore, the act of the appellants would fall under Exception 4 to Section 300 i.e. culpable homicide not amounting to murder.

From the evidence, it appears that on a spur of moment, without premeditation, a quarrel took place between the deceased and the appellants in which the accused/appellant Deo Narayan (A-1) gave single blow by crowbar, and appellant Motilal (A-2) and Sagun (A-3) by club resulting in death of the deceased. Thus, considering the facts and circumstances of the case, nature of injury, we are of the opinion that though, the appellants had no intention of causing death of the deceased but taking into account the nature and extent of injuries inflicted by them on the deceased, which led to his death, it can safely be inferred that the appellants had knowledge that the injury being inflicted by them on the deceased may result in his death. That being so, their criminal act would

be covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder, making them liable for conviction under Section 304 Part-II IPC. So far as conviction of the appellants under Section 323/34 IPC is concerned, as we have discussed above and proved the complicity of the appellants, their conviction under Section 323/34 is maintained.

19. In the result, the appeal is partly allowed. While maintaining the conviction of the appellants under Section 323/34 IPC, their conviction under Section 302/34 IPC is altered to that Section 304 Part-II IPC and they are sentenced for the period already undergone by them. The appellants are in jail and have undergone more than six and half years of jail sentence. They be set at liberty forthwith, if not required in any other case.

20. Appeal thus allowed in part.

Sd/-

(Manindra Mohan Shrivastava)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE