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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 317 of 2014**

- Set Kumar Sidar son of Kayatram Sidar, aged about 38 years, resident of Chitwahi, Police Station – Tamnar, Civil and Revenue District - Raigarh (C.G.)

---- Appellant**Versus**

- The State of Chhattisgarh, Through : Station House Officer, Police Station – Tamnar, Civil and Revenue District Raigarh (C.G.)

---- Respondent

For Appellant : Shri Ashish Gupta, Advocate
 For Respondent/State : Shri Suryakant Mishra, P.L.

**D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava &
 Hon'ble Smt Justice Rajani Dubey**

Judgment On Board**07.05.2019****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 10.03.2014 passed by 1st Additional Sessions Judge, Raigarh (C.G.), in S.T. No.22/2011 whereby and whereunder, the appellant has been held guilty of commission of offence under Sections 302 and 323 IPC and sentenced him as described below:-

Conviction	Sentence
Under Section 302/34 IPC	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine, 1 month additional R.I.

Under Section 323 IPC	R.I. for one year and fine of Rs.200/-, in default of payment of fine, 10 days imprisonment.
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02. According to the prosecution, on 07.11.2010, at about 5.00 in the evening, it is alleged that at the spot, abuses were hurled and the appellant entered into quarrel with Reet Rai Sidar, the father of the deceased. It is said that during this quarrel when the deceased intervened, the appellant picked up a club and gave a lathi blow due to which deceased sustained injuries, he was admitted in the hospital where he remained admitted for about one week until he succumbed to death on 14.11.2010. Initially, when FIR was lodged by the deceased himself on 07.11.2011, on which, police registered case under Sections 323, 294 and 506 IPC. Later on, after death, charge sheet was filed alleging commission of murder.

03. Learned trial Court, relying upon the eye-witnesses and the nature and extent of injuries and homicidal death, held the appellant guilty of commission of offence.

04. We have heard learned counsel for the parties and perused the records including the impugned judgment.

05. Learned counsel for the appellant has confined his submission only to one aspect regarding alteration of commission of offence. It is submitted that in view of evidence of number of prosecution witnesses, particularly Smt. Jamili Bai @ Jaimuni Bai (PW/3) and Reet Rai Sidar (PW/8), though, the learned trial Court may be correct in holding that it is the appellant who had given assault on the head of the deceased, resulting in his death, in these circumstances of the case, the criminal

overt act of the appellant would not travel beyond the scope of Section 304 Part-II IPC.

06. On the other hand, learned counsel for the State, supporting the impugned judgment of conviction and order of sentence, submits that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same.

07. Though, the prosecution has come out with as many as four eye-witnesses namely Daras Ram Porte (PW/1), Smt. Jamili Bai @ Jaimuni Bai (PW/3), Ku. Sahodra Sidar (PW/4) and Reet Rai Sidar (PW/8), we find that in the cross-examination, Daras Ram Porte (PW/1) and Ku. Sahodra Sidar (PW/4) have come out with the statement which renders it highly doubtful that they were eye-witnesses.

However, the evidence of Smt. Jamili Bai @ Jaimuni Bai (PW/3) and Reet Rai Sidar (PW/8), the injured witness, is emphatic that it is the appellant who gave assault to the deceased on his head.

08. What is relevant to mention is that the evidence of Smt. Jamili Bai @ Jaimuni Bai (PW/3) is that the appellant had come and started abusing Surat Ram Sidar stating that he got the papers of the land separated and also hurled abuses to her grand father. She further states that the appellant assaulted her grand father and when her uncle Surat Ram came to intervene, he was also assaulted by the appellants with the help of a club.

The evidence of Reet Rai Sidar (PW/8), the father of the deceased and grand father of Smt. Jamili Bai (PW/3), is that the appellant had come in the evening and started hurling abuses. When

he asked him to stop, he gave a blow. He states that when his son Surat came in, he also gave a blow to Surat on his head. In his cross-examination, he admits that when Set Kumar had come and started hurling abuses, he was not holding any club in his hand and said Set Kumar kept on abusing him. He further states that when Set Kumar, the appellant, was abusing and scuffling with him, the deceased was not present and had gone towards the kitchen-garden to pluck tomato. According to him, after the appellant had given him a lathi blow, his son, later on, appeared at the spot. In para 14 of his cross-examination, he admits that there was no enmity and the incident happened all of a sudden. He has also admitted that the appellant had not come with an intention of killing his son.

09. If we take into consideration the evidence of Smt. Jamili Bai @ Jaimuni Bai (PW/3) and Reet Rai Sidar (PW/8), Reet Rai Sidar (PW/8) being an injured eye-witness also, the incident appears to have happened when the appellant came to meet Reet Rai Sidar (PW/8) raising certain complaints and started hurling abuses. The appellant gave a lathi blow to this witness and, at this stage, when the deceased came in to intervene, he was also given a lathi blow. The evidence also shows that the appellant had not come armed with any weapon, and according to Reet Rai Sidar (PW/8) he was not holding any club when he had come.

10. In the background of the aforesaid evidence, if we look into the medical evidence, we find that according to Dr. Awadhesh Kumar Singh (PW/7), there was one head injury, probably caused due to singular lathi blow. It appears that the deceased was first treated and

the wounds were stitched. The injured remained admitted in the hospital but ultimately succumbed to death on 14.11.2010. According to Dr. S.K. Bagh (PW/11), the deceased had suffered internal injuries causing hematoma and severe damage to different parts of the brain in both subdural and extradural parts, up to the base. These injuries proved to be fatal. According to Dr. S.K. Bagh (PW/11), the injury, in ordinary course of nature, was sufficient to cause death. On this aspect, nothing could be elicited in his cross-examination, to impeach its credibility.

11. Therefore, in view of entire evidence on record, it is proved that when the appellant had come to meet Reet Rai Sidar (PW/8) and they were scuffling, the appellant, who initially was not present at the spot, arrived and sought to intervene and then the appellant gave a single lathi blow on his head, which was with so much of force that it damaged the brain part, which ultimately lead to death.

12. In the totality of the aforesaid circumstances of the case, we are of the view that the incident happened all of a sudden without premeditation and in the heat of passion. There is one single lathi blow. Therefore, taking into consideration the aforesaid material, in our view, the criminal overt act of the appellant would not travel beyond the scope of Section 304 Part-II IPC.

13. In the result, the conviction of the appellant is altered to that under Section 304 Part-II IPC. As the appellant has undergone more than eight years of jail sentence, in our opinion, the period already undergone by him is commensurate to the gravity of criminal act of the

appellant. The sentence part thereof is reduced to the period already undergone by him.

14. The appeal is, accordingly, partly allowed in the manner and to the extent indicated herein above.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge

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