

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 455 of 2015**

1. Deepak @ Bendra S/o Chait Ram Rohidas Aged About 22 Years R/o Village- Salihabhatha, Bango, District- Korba, Chhattisgarh, Chhattisgarh
2. Nehru S/o Bholanath Rohidas Aged About 18 Years R/o Village- Salihabhatha, Bango, District- Korba, Chhattisgarh, District : Korba, Chhattisgarh
3. Jaikaran @ Thothur S/o Kirbodhan Rohidas Aged About 18 Years R/o Village- Salihabhatha, Bango, District- Korba, Chhattisgarh, District : Korba, Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station- Bango, District- Korba, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellants	:	Shri Rajnish Shrivastava, Advocate
For State	:	Shri Anand Verma, Dy.G.A.

D.B.- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**21/02/2019****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment of conviction and order of sentence dated 20/12/2013 passed by the learned Additional Sessions Judge, Katghora, Korba (CG) in Sessions Trial No.47/2013 by which, the appellants have been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302/34 of IPC	R.I. for life and fine of Rs.1000 (each)

		(In default of payment of fine, additional R.I. for 6-6 months)
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2. The prosecution case, as unfolded from the records of the case is that the appellants arrived in the house of the deceased (Sukhlal) in the night. He was dragged out and then it is said that while two of the appellants - Nehru and Jaikaran caught hold of the deceased, the third appellant - Deepak gave assault with the help of club due to which, Sukhlal fell down and died. Upon FIR lodged, inquest was prepared and the dead body was sent for postmortem which was conducted by Dr. G.S.Jatra (PW6). He found that there were contusions in the chest, 9th and 10th ribs were found fractured and spleen was found ruptured in many parts. The opinion of the doctor was that the cause of death was hemorrhagic, shock on account of rupture of spleen and according to the doctor, it was homicidal death.

3. Charge sheet was filed. The appellants were charged of commission of offence of sharing common intention to murder Sukhlal. The appellants having abjured guilt, were put to trial. The prosecution led atleast three witnesses – Smt. Teejbai (PW1), Doojkumari (PW3) and Smt. Bhuribai (PW5) as eyewitnesses of the incident. The learned Trial Court relied upon the prosecution evidence of appellants coming to the house of the deceased and assaulting, causing his death. The appellants were accordingly convicted as described above.

4. Learned counsel for the appellants would argue that the evidence of the so called eyewitnesses is not reliable. He would submit that in the cross-examination of the prosecution witnesses, it has been elicited that there existed an old enmity between the family of the deceased and the appellants and therefore, their false implication could not be ruled out. He would next submit that as far as Doojkumari (PW3) and Smt. Bhuribai (PW5) are concerned, they are not eyewitnesses because even according to them, their arrival at the spot is subsequent to the incident. He

would further argue that as far as Teejbai (PW1), wife of the deceased is concerned, her evidence shows that the incident happened in the night and because of contradictions and omissions in the statement, she being an interested witness, conviction of the appellants on the evidence of Teejbai (PW1) is not sustainable in law.

5. In the alternative, it is submitted that even if it is assumed that the assault was given by one of the accused while other two accused caught hold of the deceased, the medical evidence shows that the death was on account of rupture of spleen because no other injury was found, meaning thereby that possibly due to *laathi* blow, spleen was ruptured resulting in death. Therefore, conviction of the appellants would not travel beyond Section 304 IPC.

6. On the other hand, learned State counsel would argue that the evidence of Teejbai (PW1), wife of deceased of she having witnessed the incident of assault of her husband by the appellants after their arrival with weapons in their hands, is not only coherent but fully corroborated from the testimony of Doojkumari (PW3) and Smt. Bhuribai (PW5) regarding involvement of the appellants. According to him, it is not a case where the assault or fight took place all of a sudden, resulting in single injury but it is a case where the appellants, with clear intention to cause death, came to the house of the deceased, dragged him out and gave assault. He would argue that at the time of giving assault with the help of club on vital parts of the body, the appellants would be attributed with intention of causing death.

7. We have heard learned counsel for the parties and perused the records.

8. According to the medical evidence brought by the prosecution and the evidence of Dr. G.L.Jatra (PW6), who conducted postmortem, there is one contusion of 6 x 1 inch on the left side of the chest. Upon dissection, 9th and 10th ribs were

found fractured and spleen was found ruptured and spitted. The evidence of the doctor is that the cause of death was hemorrhagic shock on account of rupture of spleen. Thus, from the evidence of the prosecution, what can be inferred is that because of *laathi* blow, spleen was ruptured which led to death of the deceased.

9. The evidence of Teejbai- wife of the deceased is that she, along with her husband – Sukhlal had gone to attend a marriage and when they came out, they were informed by Doojkumari that they were afraid because door was knocked at about 2 O'clock in the night and they were harassed. It is deposed that thereafter, her husband, Sukhlal went to the house of the three appellants, who were staying in the house of Nehru and enquired as to why they had come to the house in the night. Thereafter, he came back. He told his wife that he had asked Deepak that he had borrowed Rs.500/-, out of which Rs.400/- was returned and remaining Rs.100/- was demanded on which, Deepak asked him that he may go and he will come to pay his money. She, then, states that the three accused, in a state of intoxication, came to their house with club in their hands, called her husband out and then while Jaikaran and Nehru were holding her husband, Deepak was assaulting. She stated that she attempted to rescue her husband but at that time, mother, father and wife of Deepak came and obstructed on the door and did not allow her and other members of the family to rescue Sukhlal, and Deepak kept on assaulting him. In her cross-examination, she admits that the appellants are her near relatives and though, there existed an old enmity between the families but then, she adds that their relations got improved. She has further stated that her husband was caught hold of Nehru and Jaikaran and Bendra (Deepak) was assaulting her husband. She has further stated that Bendra had given one single blow by *laathi*, due to which, her husband fell down.

10. Raju Rohidas (PW2) though narrated the incident, in the cross-examination, he says that he was informed about the incident by his mother and when he reached

the spot, it was all over.

11. Doojkumari (PW3) has stated in her evidence that her brother-in-law- Sukhlal had gone to the house of the appellants as to how these persons had come to his house in his absence and also asked his money back, upon which, the appellants stated that he may go home and they will come with money. Later on, the appellants came to her house, gave a call, whereafter, Sukhlal came out and immediately thereafter, he was caught hold of and assaulted by the appellants. According to her, Jaikaran and Nehru caught hold of him and Deepak gave blow with club, due to which, her brother-in-law fell down. She further deposed that when she and Teejbai were trying to rescue Sukhlal, mother, father and wife of Deepak caught hold of them so that they may not rescue him. She has been subjected to cross-examination, in which, she reiterated that it is Bendra (Deepak) who had assaulted her brother-in-law with club and others caught hold of him.

12. Bhuribai (PW5) has deposed that when Teejbai gave a call from her house that assault has been given, she came out and saw that the three appellants – Bendra (Deepak), Nehru and Jaikaran were present at the spot, her son Sukhlal was lying on the ground and the appellants were holding club in their hands. She had seen injury on the body of her son. In the cross-examination, she stated that she herself had not seen the incident of assault.

13. From the evidence of the aforesaid three prosecution witnesses, as far as Teejbai (PW1) and Doojkumari (PW3) are concerned, we find that they are the eye witnesses of the incident. Their evidence does not suffer from material contradictions and omissions and the evidence of Teejbai (PW1) is fully corroborated from the evidence of Doojkumari (PW3). Bhuribai (PW5), mother of the deceased reached the spot immediately after the incident, upon call given by Teejbai and she saw her son Sukhlal lying on the ground and the three appellants staying over there with club

in their hands. Moreover, from the prosecution evidence, what is proved is that when the three appellants came to the house of the deceased, he was dragged out. Then out of three appellants, two of them namely Jaikaran and Nehru caught hold of the deceased and the third accused Bendra (Deepak) gave assault on him. According to the prosecution witnesses, which we have noticed herein above, Bendra gave one single assault on the chest of Sukhlal.

14. Present is not a case where in a sudden fight and quarrel, without pre-meditation, assault was given which led to death of Sukhlal. We also do not find that present is a case of sudden and grave provocation.

However, we find that the cause of death was a single blow which led to rupture of spleen of Sukhlal and that is stated to be cause of death of the deceased. The appellants had come to the house of the deceased armed with weapons and after dragging him out, assault was given to him which led to rupture of spleen. In our opinion, therefore, the case of the appellants would be covered under Part-I of Section 304 IPC because the intention to cause injury which was likely to cause death was very much present in the case. Accordingly, the conviction of the appellants is altered to that under Section 304-I IPC and they are sentenced to undergo R.I. for 10 years. The appeal is accordingly partly allowed in the said manner.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge