

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.26 of 2013**

1. Nakul, S/o Kholbahara Yadav, aged about 55 Years
2. Manohar, S/o Kholbahara Yadav, Aged About 32 Years

Both R/o Village Medhapara, Police Chowki, Chilfi, P. S. Lormi,
Dist. Bilaspur, Now Mungeli, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh, through S.H.O. - Lormi, Dist. Bilaspur, now Mungeli, Chhattisgarh

---- Respondent

For Appellants
For Respondent

Shri R. R. Soni, Advocate
Shri Avinash Choubey, PL

Hon'ble Justice Shri Prashant Kumar Mishra

Hon'ble Justice Shri Gautam Chourdiya

Order On Board by Shri Prashant Kumar Mishra J.

04/02/2020

1. Both the appellants have been convicted by the learned Additional Session Judge, Mungeli, District Bilaspur vide the impugned judgment dated 19.11.2012 passed in ST No.56/2011 for sharing common intention to commit murder of deceased Manharan at about 10 pm on 12.09.2011. As per the prosecution case, the deceased Manharan had passed on indecent comment for the daughter of appellant No.1 Nakul during *Ganesh* festival. For this reason, Nakul was unhappy with the deceased, therefore, both the

appellants reached the house of the deceased at about 10 pm on 12.09.2011 and assaulted him by means of club.

2. The FIR (Ex-P-16) was registered at Outpost Chilfi at about 7:05 am on 13.09.2011 on the information of Sushila Bai, widow of deceased Manharan. She narrated the incident and attributed the assault made by both the appellants over the person of her husband Manharan. The memorandum statements of both the accused were recorded vide Ex-P-2 & Ex-P-3, respectively, consequent to which the club was seized vide Ex-P-6 & P-7. Blood stains were found on the wooden stick recovered from the appellant Manohar but not from appellant Nakul, as shown in the FSL report (Ex-P-23). Based on the eye witness account rendered to the Police by PW-7 Munni Bai and PW-9 Sushila coupled with recovery of wooden stick from both the appellants, they were sent for trial and at the end of trial, the Trial Court has convicted both of them.
3. We have heard learned counsel for the parties at length and perused the record.
4. The FIR was lodged by PW-9 Sushila on the very next morning after the date of incident. She has clearly named both the appellants as the persons who have assaulted the deceased by means of wooden stick. The said wooden stick has been recovered from both the appellants on the basis of their disclosure statement. One of the wooden stick was found blood stained.
5. The eye witnesses PW-7 Munni Bai and PW-9 Sushila have clearly deposed before the Court that the incident occurred at 10 pm on

12.09.2011 when the appellants reached their house and started abusing Manharan and when he came out of the house, he was assaulted by bamboo stick. After detailed cross examination, nothing important could be elicited from these eye witnesses so as to dent or dilute their statement. PW-8 Dr. D. Laj has found two contusions over top of vertex, left side of skull and right side of skull. The death was caused because of the shock due to intra cerebral hemorrhage due to the head injury. Thus, the prosecution has proved that the deceased died homicidal death on account of injuries caused by both the appellants.

6. When we considered as to for what offence the accused should be held guilty, it appears that the appellants were enraged, because the deceased had used indecent language against Nakul's daughter. Otherwise, the families were not on enmical terms, as there is no evidence to this effect. Both the eye witnesses have attributed two wooden stick assaults made by each of the appellants over the person of the deceased, but during postmortem examination, the deceased has been found to have sustained only two contusions and no other injury over any other part of the body. The contusion over the skull is not accompanied with fracture of skull. The death has taken place on account of intra cerebral hemorrhage, probably due to collection of bleeding inside the skull. Had the appellants wanted to commit murder, nothing prevented them to cause repeated assault and injuries over the person of the deceased. They stopped after giving one blow each to the deceased and did not act in a cruel or unreasonable manner. The

appellants had no intention to commit murder, therefore, their act would constitute an offence under Section 304 Part-II of IPC and not under Section 302 of IPC. We accordingly held them guilty of committing offence under Section 304 Part-II of IPC.

7. Both the appellants are in jail since 13.09.2011 i.e. for more than 8 years and 4 months. Considering the entire facts situation of the case, we are of the considered view that the jail sentence already suffered by the appellants would be adequate enough for the offence committed by them, therefore, they are sentenced to the period already undergone.
8. Accordingly, the appeal is allowed in part. Appellants' conviction under Section 302 of IPC is set aside and instead they are convicted under Section 304 Part II of IPC and sentenced to the period already undergone. The sentence of fine shall remain intact. The appellants be released forthwith, if they are not required for any other offence, on each of them 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