

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 111 of 2014**

1. Vijay Kumar, s/o Biharuram, age 26 years, caste Uranw, R/o Village Alori, Chowcky Sonquary, Thana Sanna, Civil & Revenue Distt. Jashpur, Distt. Jashpur (CG)
2. Suresh Kumar, S/o Tusuram, age 19 years, R/o Village Alori, Chowcky Sonquary, Thana Sanna, Civil & Revenue Distt. Jashpur, Distt. Jashpur (CG)
3. Chandrashekharram, S/o Biharuram, age 22 years, R/o Village Alori, Chowcky Sonquary, Thana Sanna, Civil & Revenue Distt. Jashpur, Distt. Jashpur (CG)
4. Biharuram, S/o Laghuram, age 55 years, R/o Village Alori, Chowcky Sonquary, Thana Sanna, Civil & Revenue Distt. Jashpur, Distt. Jashpur (CG)

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station Sanna, Distt. Jashpur (CG)

---- Respondent

For Appellants	:	Shri Sanjay Agrawal, Advocate.
For Respondent/State	:	Smt. Fouzia Mirza, Addl. A.G.

Hon'ble Shri Prashant Kumar Mishra &**Hon'ble Shri Gautam Chourdiya, JJ****Judgment On Board By Justice Gautam Chourdiya****04.08.2020**

The appeal is heard through video conferencing.

02. This appeal arises out of the judgment of conviction and order of sentence dated 28.11.2013 passed by Additional Sessions Judge (FTC), Jashpur, Distt. Jashpur (CG) in ST No.81/2012 convicting each

of the accused/appellants under Section 302/34 of IPC and sentencing them to undergo life imprisonment and pay a fine of Rs.1000/-, in default thereof to undergo RI for one month.

03. Case of the prosecution, in brief, is that on 2nd April, 2012 merger intimation Ex.P/30 was lodged by PW-21 Heeramuni Bai and on the same date, FIR (Ex.P/29) was lodged by Heeramuni Bai against seven persons stating therein that on 1st April, 2012 when Heeramuni Bai along with her sisters Ranjana, Junali and Anamika were returning after distributing sweets (*Prasad*), accused Vijay Kumar, Suresh Ram and Ravishankar chased them, on which they entered the house of their maternal uncle Sastaru Bhagat to protect them from the accused persons. Accused Vijay Kumar forcibly took Anamika to the home of Dasibai and assaulted upon Anamika. When she again returned to the home of her maternal uncle Sastaru and Sastaru was pacifying the dispute and protecting Anamika, again accused Suresh assaulted upon Heeramuni. Sastaru was trying to protect them, accused Vijay assaulted upon the head of Sastaruram with sword. At that time, Dashrath and Shivdev separated them. Accused Vijay and Biharuram also chased Shivdev for beating him. Jaiprakash Gupta reached at about 8 pm at the home of Sastaruram and enquired about the dispute with the accused persons. At that time, accused Vijay Kumar, Chandrashekar, Suresh Ram, Biharuram, Tusuram and two juvenile J & R also reached the place of occurrence and assaulted upon Jaiprakash Gupta saying that he was guiding and teaching Sastaruram and his family. All the accused persons assaulted upon Jaiprakash Gupta on his abdomen, face, chest and nose by hands and fists as a result of which he died on the spot. The incident was witnessed by

Jhalobai, Junalibai, Basanti, Chimo, Kavatabai and others.

04. During investigation, as per Ex.P/2 inquest over the dead body of Jaiprakash Gupta was prepared in presence of witnesses. From the place of occurrence, plain and bloodstained soil were seized vide Ex.P/3. From the possession of Ram Prasad Gupta, documents of the motorcycle were seized vide Ex.P/4. The dead body was handed over on Supurdnama vide Ex.P/5 to Ram Prasad Gupta. Clothes of the deceased were seized vide Ex.P/6. Postmortem on the dead body was conducted on 2.4.2012 by PW-7 Dr. C.D. Bhakhla vide Ex.P/7 who noticed following injuries on the person of the deceased:

1. lacerated wound, $3\frac{1}{2} \times 2\frac{1}{2} \times 3$ cm with blood clot just outer lateral part of left orbital region with fracture.
2. Lacerated wound, $2\frac{1}{2} \times 2\frac{1}{2} \times 2\frac{1}{2}$ cm with blood clot just in front of left middle part of ear with fracture.
3. Lacerated wound, $2\frac{1}{2} \times 1\frac{1}{2} \times 1\frac{1}{2}$ cm with blood clot on right side eye brow. These are due to hard and blunt object.
4. Incised wound, $2\frac{1}{2} \times \frac{1}{2} \times 1$ cm with blood clot on right mastoid region, due to sharp object.
5. Bruise, $3\frac{1}{2} \times 2\frac{1}{2}$ cm with blackish color on left upper part of deltoid.
6. Bruise with blackish color almost all over the chest with lower part of ant. neck with including both H.C. region. Sternum was fractured.
7. Bruise, $3\frac{1}{2} \times 2\frac{1}{2}$ cm with blood color on left upper hip region from left to right.
8. Bruise, $5\frac{1}{2} \times 3\frac{1}{2}$ cm with blood color on left to right just outer

part of left mid axillary line lateral to H.C. region.

Injuries No. 5 to 8 repeated attacks of hard blunt object.

In his opinion, the cause of death was hemorrhagic shock due to injuries and the nature of death was homicidal. The time of death was 24 hours prior to the postmortem.

05. Injured Sastaruram (PW-13) was also medically examined by PW-7 Dr. CD Bhakhla vide Ex.P/7 and he noticed incised wound of size $3\frac{1}{2} \times \frac{1}{2} \times 1$ cm on left mid parietal region which was caused by hard sharp object and could be healed within 10 days if complication does not occur.

06. PW-20 Dr. Sukhram Xalxo medically examined injured Heeramuni Bai (PW-21) vide Ex.P/11 and found one contusion mark, 5 cm x 4 cm on right side of cheek which was simple in nature and caused by hand (fist).

07. Spot map Ex.P/9 was prepared by Patwari PW-11 Ravinarayan Rathiya. Another spot map Ex.P/12 was also prepared by the investigating officer PW-28 Devendra Thakur. One bloodstained Sari of Heeramuni Bai was seized from Heeramuni Bai vide Ex.P/13. Vide Ex.P/14 memorandum of accused Bihar Ram was recorded which led to recovery of one spade vide Ex.P/17. On the memorandum of accused Suresh (Ex.P/15), one axe was seized as per Ex.P/18. Likewise, memorandum (Ex.P/16) of accused Vijay Kumar led to seizure of one sword vide Ex.P/19. One broken Nokia mobile stained with blood and one Hero Honda Passion Pro motorcycle were seized from the place of occurrence vide Ex.P/20. On being produced by Sastaruram, a piece of wood was seized vide Ex.P/22. On being

produced by Dashrath Ram, one knife was seized vide Ex.P/23. As per FSL report Ex.P/34, blood was found on Articles A, B, C, D, E, G and H i.e. soil seized from the spot, Sari of Heeramuni Bai, sword seized from accused Vijay Kumar and clothes of the deceased.

08. After completion of investigation charge sheet was filed against the accused persons under Sections 307, 302, 147, 148, 149, 334, 506B, 460 of IPC and Sections 25 & 27 of the Arms Act. Accused R & J being juvenile, charge sheet in respect of them was filed before the Juvenile Justice Board and they were tried separately by the concerned Juvenile Justice Board.

09. The trial Court framed charges under Sections 147, 148, 323/149, 307/149, 302/149, 460 of IPC and Sections 25 & 27 of the Arms Act against accused Vijay Kumar. However, other accused persons namely Suresh Kumar, Chandrashekharram, Tusuram and Biharuram were charged under Sections 147, 148, 323/149, 307/149, 302/149 and 460 of IPC. The accused persons denied the charges, pleaded innocence and prayed for trial.

10. So as to hold the accused persons guilty, the prosecution examined 28 witnesses in all. 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. However, no witness was examined by them in defence.

11. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment convicted and sentenced the appellants as mentioned above.

12. Learned counsel for the appellants submits that all the important witness of the prosecution including the injured eyewitnesses have turned hostile and not supported the prosecution case. The trial Court has wrongly appreciated the evidence of PW-10 Atish Toppo and PW-17 Rajender Sarthi @ Raghu as their evidence are contrary to each other and they being friend of the deceased are interested witnesses. The nothing incriminating has been seized in consequence of memorandum statements of the appellants connecting them with the crime in question. In fact, there is no direct or indirect evidence on record proving the complicity of the appellants in the murder of the deceased. Therefore, the appellants deserve to be acquitted of the charge leveled against them.

13. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.

14. So far as homicidal death of deceased Jai Prakash Gupta is concerned, PW-1 Gopal Gupta has proved the inquest Ex.P/2, seizure of bloodstained and plain soil from the spot Ex.P/3, seizure of motorcycle Ex.P/4 and supurdnama of the dead body Ex.P/5. The above facts are unchallenged in the cross-examination. Inquest report is also proved by other witnesses. Postmortem report Ex.P/7 is duly proved by autopsy surgeon PW-7 Dr. CD Bhakhla, who found number of injuries on the person of the deceased as mentioned above, and

opined that the cause of death was hemorrhagic shock due to injuries and the death was homicidal in nature.

Learned counsel for the parties have also not disputed this fact that Jai Prakash Gupta died due to injuries found on his body and his death was homicidal in nature. Therefore, on the basis of oral and documentary evidence, the prosecution has successfully proved the homicidal death of the deceased.

15. In this case, PW-5 Junali, PW-8 Jhalo Bai, PW-9 Kavita Bai, PW-13 Sastaru Bhagat, PW-14 Anamika, PW-16 Ranjana Bhagat, PW-18 Basanti Bai, PW-19 Lilawati Bai & PW-21 Heeramuni Bai (also named somewhere as Heeramani Bai) have turned hostile and not supported prosecution case. As per Ex.P/7, Sastaruram (PW-13) was medically examined by PW-7 Dr. CD Bhakhla who noticed incised wound of size 3 ½ x ½ x 1 cm on left mid parietal region which was caused by hard sharp object. Likewise, vide Ex.P/11 injured Heeramuni Bai (PW-21) was medically examined by PW-20 Dr. Sukhram Xalxo who found one contusion mark, 5 cm x 4 cm on right side of cheek which was simple in nature and caused by hand (fist). Both these injured witnesses have also not supported the prosecution case.

16. PW-6 Shivdev has supported the prosecution case in examination-in-chief but in cross-examination he denied to be an eyewitness of the incident. PW-21 Heeramuni Bai only stated that while they were returning after distributing sweets, the accused persons were chasing them. She was not confronted with the FIR (Ex.P/29) and the merg intimation (Ex.P/30) lodged by her. Though PW-22 Dashrath Ram and PW-23 Virendra Kumar Bhagat have

admitted their signatures on the memorandum statements and seizure documents Ex.P/14 to 22 but did not prove the same.

17. The prosecution case is based mainly on the evidence of PW-10 Atish Toppo and PW-17 Rajender Sarthi @ Raghu as well as the seizure and FSL report.

18. PW-10 Atish Toppo has stated in his deposition that when he reached the place of occurrence, he saw the accused persons assaulting upon the deceased and dancing on his body and they also threw motorcycle on the deceased. He states that next day he heard that Jai Prakash has died due to injuries sustained by him.

19. PW-17 Rajender Sarthi @ Raghu has identified the accused/appellants in the Court and stated in para-4 that the accused persons were beating the deceased. PW-10 has also stated the same fact that all the accused persons assaulted upon the deceased. The place of occurrence is proved by the spot maps. In the FIR, it has only been stated by PW-21 Heeramuni Bai that all the accused persons assaulted upon the deceased by hands, fists and kicks and the deceased sustained injuries on his abdomen, face, nose and died on the spot. Though PW-21 Heeramuni has turned hostile but the investigating officer PW-28 Devendra Thakur has proved this fact that the FIR and merg intimation were lodged by PW-21 Heeramuni Bai.

20. As per postmortem report and inquest report, injuries found on the body of the deceased are lacerated wounds, bruises and only one incised wound was found but it is not clear as to whether that incised wound was caused by any knife or sword. It has not been specifically

proved by any of the witnesses. From the evidence on record, it may be possible that the said incised wound could have been caused on account of throwing of the motorcycle by the accused persons on the deceased. Accused Vijay Kumar was also charged with Sections 25 & 27 of the Arms Act and since the prosecution failed to prove the said charge, he was acquitted of the above charge by the trial Court. No appeal against acquittal of the accused/appellants of the charges under Sections 147, 148, 323/149, 307/149, 460 of IPC and Sections 25 & 27 of the Arms Act has been filed by the State or the complainant and as such, the findings of acquittal by the trial Court has attained finality.

21. Thus, considering the facts and circumstances of the case, the evidence of PW-10 Atish Toppo and PW-17 Rajender Sarthi @ Raghu which finds corroboration from medical evidence and the inquest report as also the promptly lodged FIR and merg intimation duly proved by the investigating officer PW-28 Devendra Thakur, complicity of the accused/appellants in the crime in question stands proved beyond all reasonable doubt.

22. Now this Court has to see whether the act of the accused/appellants makes them liable for conviction under Section 302/34 of IPC or it amounts to culpable homicide not amounting to murder making them liable for conviction under Section 304 Part-I or II of IPC.

23. In the matter of ***Lavghanbhai Devjibhai Vasava Vs. State of Gujarat, (2018) 4 SCC 329***, the Hon'ble Supreme Court has referred to

its earlier decision in the matter of *Dhirendra Kumar Vs. State of Uttarakhand*, 2015 SC OnLine SC 163, to delineate the parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 or under Section 304 of IPC. The said parameters are reproduced hereunder :-

- “(a) The circumstances in which the incident took place;
- (b) The nature of weapon used;
- (c) Whether the weapon was carried or was taken from the spot;
- (d) Whether the assault was aimed on vital part of body;
- (e) The amount of the force used;
- (f) Whether the deceased participated in the sudden fight;
- (g) Whether there was any previous enmity;
- (h) Whether there was any sudden provocation;
- (i) Whether the attack was in the heat of passion; and
- (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.”

24. In the matter of ***Rampal Singh Vs. State of UP, AIR 2012 SCW 3765 : 2012 (6) Scale 574***, where the parties were related, had no animosity, the incident took place over the demolition of constructions made by the accused in his land to prevent throwing of garbage in his land, there was exchange of hot words, the incident took place without any pre-meditation, the accused fired gun on lower part of the deceased, the accused knew that his act might result in death, the accused was held guilty of offence under Section 304 Part-I of IPC.

25. In the case of ***Nanak Ram Vs. State of Rajasthan, (2014) 12 SCC 297***, out of nine injuries, only injury no.1, viz, an incised wound of 6 ½” x ½” and deep up to brain on the head was held to be grievous in nature which was sufficient in the ordinary course of nature to cause

death of the deceased. The assaults were made at random. Even the previous altercations were verbal and not physical. In the heat of passion upon a sudden quarrel the accused persons had caused injuries on the deceased. That being so Exception 4 to section 300 of IPC was applicable. Hence the accused were convicted under Section 304 Part-I of IPC and sentence of seven years' RI on each of the appellants was held sufficient to meet the ends of justice.

26. In the present case, the evidence goes to show that initially there was fight between Heeramuni, Ranjana, Junali, Anamika, Sastaru on the one side and the accused persons on the other side. Deceased Jaiprakash Gupta reached at about 8 pm at the home of Sastaruram and enquired about the dispute with the accused persons and then the accused persons assaulted upon him by hands, fists and kicks saying that he was guiding and teaching Sastaruram and his family which unfortunately led to his death on the spot. Thus, it appears that there was no premeditation on the part of the appellants to cause death of the deceased. It so happened on the spur of moment, upon a sudden in quarrel and in the heat of passion when the deceased intervened in the quarrel between the complainant party and the accused persons. The accused persons were not armed with any weapon. In these circumstances, the appellants cannot be held responsible for committing murder of the deceased and their act falls in the category of culpable homicide not amounting to murder.

27. Further, keeping in view the principles of law laid down in the afore-cited judgments, considering the fact that all the accused persons assaulted upon the deceased with hands, fists and kicks to

such an extent that it led to his instantaneous death as is evident from the postmortem report, it can safely be inferred that though the appellants may not be having knowledge that the injuries being so inflicted by them would result in death of the deceased but it is quite clear that they had intention of causing such bodily injuries to the deceased which could result in his death. Being so, their act makes them liable for conviction under Section 304 Part-I of IPC. In the given facts and circumstances of the case and the manner in which the offence was committed, this Court is of the opinion that ends of justice would be served if the appellants are sentenced to RI for 10 years while keeping the fine amount of Rs.1000/- with default sentence as imposed by the trial Court intact.

28. In the result, the appeal is allowed in part. While acquitting the appellants of the charge under Section 302/34 of IPC, they are held guilty under Section 304 Part-I read with 34 of IPC and are sentenced to undergo RI for 10 years. However, the fine amount of Rs.1000/- with default sentence imposed on each of them by the trial Court shall remain intact.

Sd/

(Prashant Kumar Mishra)
Judge

Sd/

(Gautam Chourdiya)
Judge