

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1190 of 2014

1. Purushottam, S/o Shobhit Dhruv, Aged About 45 Years, R/o Vill. Bhawa, P.S. And Tah. Patewa, Dist. Mahasamund (C.G.), Civil And Rev. Dist. Mahasamund, Chhattisgarh.
2. Panchuram, S/o Purushottam Dhruv, Aged About 22 Years, R/o Vill. Bhawa, P.S. And Tah. Patewa, Dist. Mahasamund C.G., Civil And Rev. Dist. Mahasamund, Chhattisgarh.
3. Panchram, S/o Purushottam Dhruv, Aged About 23 Years, R/o Vill. Bhawa, P.S. And Tah. Patewa, Dist. Mahasamund (C.G.) Civil And Rev. Dist. Mahasamund, Chhattisgarh.

---- Appellants

Versus

- State of Chhattisgarh, Through P.S. Patewa, Tah. Patewa, Dist. Mahasamund, (C.G.), Civil And Rev. Dist. Mahasamund, Chhattisgarh.

---- Respondent

For Appellants	:	Shri Ratnesh Kumar Agrawal, Advocate.
For State/Respondent	:	Shri Soumya Rai, Panel Lawyer.

DIVISION BENCH

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

Per, Rajendra Chandra Singh Samant, J.

16/12/2021

1. This appeal is preferred against the judgment dated 05/09/2014 passed by the Additional Sessions Judge, (FTC) District – Mahasamund, (C.G.) in Sessions Trial No.20/2014 wherein appellants are convicted and sentenced as under :-

<u>Conviction</u>	<u>Sentence</u>
U/s 323 of the I.P.C.	R.I. for one year.
U/s 302 of the I.P.C.	R.I. for life and fine of Rs.1,000/- and in default of payment of fine amount, 2 months additional R.I.
Both sentences to run concurrently.	

2. According to the prosecution case, on 20.12.2013, at about 3:00 P.M., deceased Yogesh Chandrakar came along with Kuber Chandrakar (PW-1) to the house of the appellants for demanding the amount borrowed by the appellants which was amounting to Rs.45,000/-. The deceased entered the house of the appellants while complainant Kuber Chandrakar (PW-1) was waiting outside. After 15 minutes, the deceased came running from the house of the appellants exclaiming bachao! bachao! who had one injury on his head. The appellants followed the deceased armed with clubs and assaulted him again causing him various injuries all over the body. The deceased became semi unconscious. The complainant Kuber Chandrakar (PW-1) in an attempt to rescue the deceased from the appellants, during which he was also assaulted and suffered injury on his elbow on his left hand. He took the deceased on motorcycle and admitted him in a Government Hospital, Baghbahara, where he was given preliminary treatment and then he was referred to a hospital in Raipur where the deceased was admitted. The deceased expired on 22.12.2013. Merg intimation was lodged by Kuber Chandrakar (PW-1). He also lodged

Dehati Nalishi (Ex.P-1) with the police personnel from police station, Baghbahara. Subsequent to the death of the deceased, the merger intimation (Ex.P-30) was lodged in the police station, Baghbahara. First Information Report (Ex.P-31) was lodged on the information given by Kuber Chandrakar (PW-1). The police has investigated the case and charge-sheeted the appellants of the commission of offences under Sections 294, 506, 302, 323 read with Section 34 of the Indian Penal Code.

3. The learned trial Court framed the charges against the appellants under Sections 294, 506, 302, 323 read with Section 34 of the Indian Penal Code. The appellants pleaded not guilty. The trial was conducted in which the prosecution has examined 17 witnesses. On conclusion of prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C. No defence witness was examined. The trial Court after hearing the arguments has passed the impugned judgment convicting and sentencing the appellants in the offences mentioned herein above.
4. It is submitted by learned counsel for the appellants that there is no evidence present to show that the appellants had any intention to cause the death of the deceased Yogesh Chandrakar. The event had been this, that deceased had been making demand of the amount borrowed by the appellants because of which the dispute arose and out of sudden provocation, the appellants have assaulted the deceased without any intention of causing his death. It is also reflected from the statements of prosecution witnesses who have admitted that when the witnesses came to rescue of deceased, the appellants left

the deceased and went away. Therefore, the conviction under Section 302 of the Indian Penal Code is not made out. The offence that has been committed by the appellants is clearly covered under Section 304 Part 2 of the Indian Penal Code. Hence, the appellants be granted benefit by reduction in the conviction and reduction in the sentence.

5. Per contra, learned State counsel opposes the submission made by the learned counsel for the appellants and submits that the prosecution has proved its case beyond reasonable doubt. Cause of death of the deceased is clearly the injuries that have been inflicted by the appellants to the deceased on his body. Therefore, it is the intentional act of the appellants for causing death of the deceased. Hence, there is no ground present to interfere with the impugned judgment.
6. We have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents available on record minutely.
7. Kuber Chandrakar (PW-1) has stated in his examination-in-chief that on the date of incident, he was present outside the house of the appellants when he saw the deceased running out of the house of appellants exclaiming bachao! bachao! holding his head with one hand and he also saw injury on his head. This witness also saw the appellants following the deceased armed with clubs, who again assaulted the deceased in the presence of this witness. This witness made an attempt to rescue the deceased but he himself was assaulted and received injuries on elbow of his left hand. The deceased was then taken to the hospital, admitted, provided treatment but he succumbed to the injuries on 22/12/2013. Dehati Nalishi (Ex.P-1) was lodged by

this witness in the hospital. In cross-examination, statement of this witness has remained unrebutted. Moolchand (PW-3) is the neighbour of the appellants, who saw the appellants assaulting the deceased with clubs, hands and fists. He also made an attempt to rescue the deceased but he was slapped by Panchram (appellant No.3), because of which he came back to his house. His statement has remained unrebutted in cross-examination. Dhansheela (PW-4) is another neighbour of the appellants. She has also witnessed that appellants were assaulting a person who was an outsider.

8. Dr. L.N. Dhankar (PW-8) examined the injury of deceased Yogesh Chandrakar who found one lacerated wound of size 2" x 1/2" x 1/4" on the occipital region of the scalp and he opined that this injury was caused by hard and blunt object. He also found one abrasion on the left forehead of the deceased which was caused by some hard and blunt object. The report given by him is Ex.P-24. In cross-examination, the presence of injuries on the body of the deceased has not been disputed.
9. The deceased succumbed to injuries during treatment and on that basis, the merger intimation (Ex.P-30) was recorded by police station Baghbahara on 23.12.2013. The post-mortem examination was conducted by Dr. S.K. Bagh (PW-17). He has mentioned in the post-mortem report (Ex.P-22) that the deceased had one lacerated wound in the parietal region measuring 4 cm along with contusion in the occipital region. Another contusion of size 10 x 6 cm on the occipital region of the head. On dissecting the same, he found hemorrhage in that injury. Another injury was ecchymosis found on the right side of

the neck measuring 6cm x 3 cm. One ecchymosis of size 10 x 6 cm was found on the left elbow along with fracture in the elbow joint. Other injuries of contusion and abrasion have been reported to be found on the left and right back, left shoulder, left leg, both big toes, on left side of waist, right forearm, and on left hypocondrial region. Fracture on 7th, 8th, 9th rib of left side is also reported. This witness has opined that all the injuries caused to the deceased were anti-mortem, caused by hard and blunt object. Regarding the opinion of death, he has expressed that due to complications from multiple injuries death was caused to the deceased and that death has occurred due to cardio-respiratory arrest. His report is Ex.P-32. In cross-examination, the finding of various injuries on body of the deceased have not been disputed and there is opinion of the examining Doctor that the cause of death had been the complications due to various injuries caused to the deceased. Hence, on this basis, it can be held that death of the deceased was homicidal that has resulted due to infliction of the injuries by the appellants and regarding which there is uncontradicted evidence of the eye-witnesses. Therefore, the learned trial Court has correctly drawn conclusion that the appellants are the persons who have caused death of the deceased.

10. On considering the submission made by the counsel for the appellants, it is found that none of the eye-witnesses have made any statement on the basis of which it can be said that appellants caused various injuries to the deceased having intention to cause his death. Kuber Chandrakar (PW-1) is the most relevant witness who was in company of the deceased and according to him, the purpose of visiting the appellants by the deceased was only to demand for the money

borrowed by the appellants. There is no evidence present to show as to what had occurred inside the house of the appellants and what was the reason that the appellants started assaulting the deceased. However, the dispute was present with respect to the demand of money, and there is no suggestion from any of the evidence present that the appellants had any motive for causing death of the deceased. Hence, it appears that the incident has occurred due to some sudden dispute between the appellants and the deceased in which the appellants have unintentionally made use of the clubs, hands and fists and assaulted the deceased. Although, the witnesses who came to rescue the deceased were also assaulted by the appellants but when the deceased was left by the appellants, he was not already dead and his death has occurred after two days as a result of the complications from the injuries caused to him. Hence, we are of the considered view that in the present case, the appellants did not have any intention to cause death of the deceased, although they had knowledge that the injuries they have caused may result in the death of the deceased. Therefore, it is a clear case which is covered under Section 304 Part 2 of the Indian Penal Code.

11. After the discussions that has been made herein above and on the basis of conclusion drawn, this appeal is partly allowed. Conviction of the appellants under Section 302 of the Indian Penal Code is modified to conviction under Section 304 Part 2 of the Indian Penal Code. The appellants herein have nearly completed about 8 years in the jail and, therefore, it is ordered that the appellants are sentenced with jail sentence already undergone by them. The conviction of the appellants under Section 323 of the Indian Penal Code is affirmed. Hence, the

appeal is disposed of.

12. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Sd/-
(Arvind Singh Chandel)
Judge