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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 151 of 2020**

1. Fuljens Bhagat son of Mohar Lal Bhagat, aged about 28 years, resident of Village-Jambahar, Dhidhoriana, Police Station-Lailunga, District-Raigarh (C.G.)
2. Manoj Bhagat son of Rajkumar Bhagat, aged about 25 years, resident of Village-Jambahar, Dhidhoriana, Police Station- Lailunga, District Raigarh (C.G.)

---- Appellants/Accused**Versus**

- State of Chhattisgarh, through the Station House Officer, Police Station-Lailunga, District Raigarh (C.G.)

---- Respondent

For Appellants/Accused	:	Shri Ashish Gupta, Advocate
For Respondent/State	:	Shri Chitendra Singh, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

18.11.2021

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.07.2019 passed by the Additional Sessions Judge, Gharghoda, District Raigarh (C.G.) in Sessions Trial No. 49/2018, whereby, each of the appellants stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 304 Part-II/34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC')	Rigorous imprisonment for five years and pay a fine of Rs. 500/- each and in default of payment to further undergo rigorous imprisonment for two months each

2. Case of the prosecution, in brief, is that on 27.04.2018 at about 04:30 pm complainant Sanjeev Bhagat (PW-2) lodged a report at Police Station Lailunga alleging that on 22.04.2018 in the morning, both the

appellants/accused assaulted his father namely Teejram by legs and fists as a result of which he sustained injuries on his chest and back. Sanjeev Bhagat took his father to Community Health Centre, Lailunga for treatment from where the complainant took his father/injured to the clinic of Dr. Rupendra Patel. Dr. Rupendra Patel advised the complainant to take his father to Metro Hospital, Raigarh for better treatment. Thereafter, the complainant took his father/injured to Metro Hospital, Raigarh, but on account of not having sufficient money, he could not admit his father in Metro Hospital and took his father to the house on 24.04.2018. On 24.04.2018 in the evening, the condition of Teejram became serious and was admitted in Amlidih and he died during his treatment on 26.04.2018.

3. The assault was witnessed by complainant Sanjeev Bhagat (PW-2), the son of deceased. PW-2 lodged the F.I.R. on 27.04.2018 vide Ex.-P/2 which was registered under Section 302/34 of IPC against the appellants under Crime No. 66/18 in Police Station Lailunga, Raigarh. The police summoned the witnesses, prepared inquest (Ex.-P/6) and recorded the statements of the witnesses. Spot map was prepared vide Ex.-P/3. Dead body of Teejram (deceased) was sent for autopsy to Community Health Center, Lailunga vide Ex.-P/7, Dr. Manoj Patel (PW-1) conducted autopsy vide Ex.-P/1 and found following injuries and symptoms:

- i. Blunt injury over left side of abdomen in size of 10 cm x 5 cm x 5 cm in oval shape.
- ii. Abrasion mark in size of 0.5 cm x 0.5 cm below the back was present, skin loss with dark brownish red colour.

Doctor PW-1 mentioned in his report Ex.-P/1 that injury no. (ii) is simple in nature and opined that the injuries were antemortem, caused by hard & blunt object. The cause of death was haemorrhagic shock as a result of which spleen got ruptured and death was homicidal in nature. The time of death was approximately 48 hours prior to postmortem examination.

4. During investigation, underwear of deceased was seized by the police from CHC Lailunga, Raigarh vide Ex.-P/8. Discharge ticket of Teejram also was seized. Accused/appellants were arrested on 30.04.2018 vide Ex.-P/9 & Ex.-P/10.
5. After completion of investigation, the charge-sheet was filed against the accused/appellants Section 302/34 IPC and while framing the charges, the Fifth Additional Sessions Judge, Raigarh framed the charge against the appellants under Section 302/34 of IPC. Thereafter, the Additional Sessions Judge, Gharghoda, District Raigarh received the case on transfer for trial.
6. So as to hold the accused/appellants guilty, the prosecution, in all has examined as many as 07 witnesses namely PW-1 Dr. Manoj Patel, PW-2 Sanjeev Bhagat, PW-3 Rani Bhagat, PW-4 Moharmati, PW-5 Sita Ram Bhagat, PW-6 Ramniranjan Rathia and PW-7 B. Ekka. 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. No defence witness has been examined by the appellants.
7. After appreciation of the evidence available on record, the trial Court convicted and sentenced the accused/appellants under Section 304 Part-II/34 in place Section 302/34 of IPC. Hence, the instant appeal.
8. Learned counsel for the appellants submits that PW-2 Sanjeev Bhagat, (son of deceased Teejram) is the eyewitness of the incident and the trial Court has not appreciated his evidence properly and on the basis of evidence of this interested witness convicted the appellants. He also submits that there was no preparation, or premeditation on the part of the appellants to commit murder of deceased Teejram, nor they used any weapon. He further submits that only one abrasion was found on the back of Teejram and one injury was found on abdomen of Teejram which was not caused by any weapon. Thus, there does not appear to be either an element of intention or knowledge

attributable to the appellants which may bring their act within the ambit of even the offence of culpable homicide not amounting to murder. Therefore, the conviction of the appellants under Section 304 Part-II/34 of IPC is liable to be altered to Section 325/34 of IPC and considering the facts and circumstances, the detention period of the appellants who are young offenders, they may be sentenced to the period already undergone by them. Reliance has been placed in the matters of ***Rakesh Kumar & Another Vs. State of Chhattisgarh, Dated 7-5-2018, CRA No. 729 of 2010*** and ***Botha Uraon Vs. State of Chhattisgarh, Dated 28th July, 2014, Cr.A. No. 160/2009*** passed by the Division Benches of this Court.

9. On the other hand, learned counsel for the State opposes the appeal and supported the judgment of conviction and order of sentence passed by the trial Court.
10. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence available on record.
11. PW-1 Dr. Manoj Patel conducted the autopsy of deceased Teejram and found two injuries on the body of the deceased as mentioned in para- 3 of this judgment and has duly proved the postmortem report Ex.-P/1.
12. PW-2 Sanjeev Bhagat is the son of deceased Teejram. PW-2 stated that he heard about the incident from his sister-in-law (*bhabhi*) that appellants- Fuljens Bhagat and Manoj Bhagat are assaulting his father near platform (*chabutra*) of street, then he (PW-2) reached the spot and saw that both the appellants were assaulting his father by legs. Thereafter, both the appellants fled from the place of occurrence. PW-2 stated that he took his father to Lailunga Hospital for treatment. PW-2 lodged the F.I.R. (Ex.-P/2), spot map (Ex.-P/3) was prepared by the police in his presence and he has duly proved the same. The aforesaid evidence of eyewitness (PW-2) remains unconverted in cross-examination. There is nothing on record to show that there was any previous enmity between the family of the deceased and that

of the appellants. Thus, evidence of eye witness Sanjeev Bhagat (PW-2) finds due corroboration of the promptly lodged the F.I.R. (Ex.-P/2) as also medical evidence in the form of postmortem report (Ex.-P/1) and the evidence of Autopsy Surgeon Dr. Manoj Patel (PW-1). In these circumstances and the evidence available on record, complicity of the appellants in the crime in question stands proved beyond all reasonable doubt.

13. Considering the fact that the deceased was assaulted by the appellants by legs & fists, there is no use of any weapon for making assault, they did not act in any unusual or cruel manner, there was no any premeditation on the part of the appellants, the incident took place on 22.04.2018, the deceased was admitted in hospital at Raigarh on 23.04.2018 and on the same day he was referred to higher centre at Bilaspur due to lack of money the deceased could not be taken to Bilaspur for further treatment as admitted by PW-2 in his deposition and he died on the way while being taken from Raigarh to home, keeping in view decisions of the coordinate benches of this Court in *Rakesh Kumar* (supra) & *Botha Uraon* (supra), this Court is of the opinion that the offence committed by the appellants makes them liable for conviction under Section 325/34 of IPC i.e. for voluntarily causing grievous hurt and no offence under Section 304 Part-II/34 of IPC as has been held by the trial Court.

14. As regard the sentence, considering the facts and circumstances of the case, the fact that the appellants have remained in custody for about 3 years and 6 months, the incident took place on 22.04.2018, this Court is of the opinion that ends of justice would be served if the appellants are sentenced to the period already undergone by them by enhancing the fine amount from Rs.500/- to Rs.5,000/- with default stipulation.

15. Consequently, the appeal is allowed in part. Conviction of the appellants under Section 304 Part-II/34 of IPC awarded by the trial Court is hereby set

aside and instead they are convicted under Section 325/34 of IPC and sentenced to undergo R.I. for the period already undergone by them. However, the fine sentence of 500/- imposed by the trial Court on each of the appellants is enhanced to Rs.5,000/- each which shall be payable to complainant Sanjeev Bhagat (PW-2 – son of the deceased) as compensation under Section 357 Cr.P.C. by the trial Court after due verification. If the fine amount of Rs.500/- has already been deposited by each of the appellants, it shall be adjusted accordingly. Let the enhanced sum be deposited in the trial Court failing which each of the appellants shall be liable to remain in jail for a period of six months. The appellants are in jail and therefore, they be set free forthwith if not required in any other case.

Sd/-

(Gautam Chourdiya)
Judge