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**(2018) 08 CHH CK 0283**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 1235 Of 2013

Digamber Gond

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Aug. 27, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 300, 302, 304
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Pritinker Diwaker, J; Rajani Dubey, J

**Bench:** Division Bench

**Advocate:** R.R. Soni, Adil Minhaj

**Final Decision:** Allowed

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### **Judgement**

Pritinker Diwaker, J

01. This appeal arises out of the judgment of conviction and order of sentence dated 29.11.2013 passed by the Sessions Judge, Surguja (Ambikapur) in

ST No.43/2012 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/-

with default stipulation.

02. As per prosecution case, the accused/appellant was uncle of the deceased Munnaram and there was an old land dispute between them. On

12.10.2011 at about 4.30 pm the appellant and the deceased had a quarrel, at the relevant time the deceased was carrying a club in his hand and

during quarrel, the said club was snatched by the appellant and he assaulted on the head and back of Munnaram with the same as a result of which

unfortunately Munnara died. At the instance of PW-7 Indrajeet, brother of the deceased, FIR (Ex.P/10) was registered on 13.10.2011 at 9 am against the appellant u/s 302 of IPC. Soon thereafter at 9.10 am merg intimation Ex.P/11 was registered at the instance of PW-7. Inquest over the dead body was conducted vide Ex.P/3 on 13.10.2011 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-1 Dr. Janeshwar Singh vide Ex.P/1. The autopsy surgeon noticed multiple abrasions over chin, lower lips, forehead, knee, penis, chest, right upper arm; lacerated wound over head at left occipital region with swelling; fracture of 7th rib of left side of chest; rupture of left lung; and haematoma between skull and skin. In his opinion, the cause of death was coma due to head injury and rupture of left lung leading to cardio- respiratory arrest. On the memorandum of the appellant (Ex.P/5) recorded on 13.10.2011, one club was seized vide Ex.P/6. However, there is no FSL report in respect of the seized club. While framing charge, the trial Judge charged the appellant u/s 302 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. 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 appellant as mentioned above.

05. Counsel for the appellant submits that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under

Section 304 Part-II of IPC because the incident occurred all of a sudden in the heat of passion upon a sudden quarrel without there being any

premeditation on the part of the appellant and looking to the manner in which the assault was made and the weapon used, it is clear that the appellant

had no intention of causing death of the deceased. He submits that the appellant has already remained in jail for the last about seven years and

therefore, after conversion of his conviction into Section 304 Part-II of IPC, he may be sentenced to the period already suffered by him.

06. On the other hand, State counsel supporting the impugned judgment submits that conviction of the accused/appellant is strictly in accordance with

law and there is no illegality or infirmity in it warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material available on record.

08. PW-4 Dhaneshwari is the independent eyewitness to the incident. While supporting the prosecution case she states that at the time of incident, the

appellant and the deceased were quarreling and while doing so, they came upto her house. When she came out from her house after hearing the

sound of quarrel, she saw the deceased lying on the floor and by that time the appellant had gone away. After declaring her hostile when the

prosecution cross-examined her, she states that while the appellant was running away from the place of occurrence he was carrying a club in his

hand.

09. PW-8 Premlata, another eyewitness to the incident, states that both the appellant and the deceased came near her house quarreling and that the

appellant assaulted the deceased with club repeatedly. She states that earlier also there used to be quarrel between them. In para-3 she has clarified

that the club which was being carried by the deceased was snatched by the appellant and he assaulted the deceased with the same.

10. PW-6 TR Nagwanshi, investigating officer, has duly supported the prosecution case. PW-1 Dr. Janeshwar Singh conducted postmortem on the

body of the deceased on 13.10.2011 vide Ex.P/1 and noticed multiple abrasions over chin, lower lips, forehead, knee, penis, chest, right upper arm;

lacerated wound over head at left occipital region with swelling; fracture of 7th rib of left side of chest; rupture of left lung; and haematoma between

skull and skin. In his opinion, the cause of death was coma due to head injury and rupture of left lung leading to cardio- respiratory arrest. PW-2

Prayag Singh & PW-3 Khelawan Ram are witnesses to inquest, memorandum of the appellant and seizure. Though PW-2 has not supported the

prosecution case in respect of memorandum (Ex.P/5) and seizure (Ex.P/6) and only admitted his signature, but PW-3 has fully supported the

prosecution case on this point. PW-5 Surit Sarthi, ASI, assisted in the investigation.

PW-7 Indrajeet, brother of the deceased, lodged the FIR and the

merg intimation and proved the same.

11. DW-1 Bachchalal Prajapati states that it is the deceased who assaulted the appellant by club, however, on account of being drunk, the deceased

fell down on the ground strewn with stones. He also admits that there was old land dispute between the two, on the date of incident there was quarrel

between them, the deceased was carrying a club and that the deceased fell down near the house of PW-8 Premlata in injured condition.

12. Close scrutiny of the evidence makes it clear that there was old land dispute between the appellant and the deceased and on account of that there

used to quarrel between the two frequently. On the fateful day also they had a quarrel over this. According to eyewitness PW-8 Hemlata both the

appellant and the deceased came near her house quarreling and the appellant having snatched the club being carried by the deceased assaulted him

with the same repeatedly which led to his death. The other eyewitness PW-4 Dhaneshwari also supports the prosecution case. She states that when

she came out from her house after hearing the sound of quarrel, she saw the deceased lying on the floor and while the appellant was running away

from the place of occurrence he was carrying a club in his hand. Memorandum of the appellant (Ex.P/5) also led to recovery of a club (Ex.P/6).

Though one of the witnesses to memorandum and seizure i.e. PW-2 Prayag Singh has not supported the prosecution case in respect of such

proceedings, however, the other witness & PW-3 Khelawan Ram has fully supported the prosecution case on this point. True it is that there is no FSL

report on record in respect to the said club, however, it is not going to affect the credibility of the prosecution case particularly when the prosecution

case rests mainly on the eyewitness account and they have supported the prosecution case on material particulars. In such a case, the circumstance

of seizure of weapon of offence at the instance of appellant serves as an additional evidence against him. Furthermore, medical evidence is also in

consonance with the ocular evidence, thereby fortifying the prosecution case. Thus, regard being had to the ocular as well as medical evidence on

record, we are of the opinion that complicity of the accused/appellant in the crime in question stands proved beyond all reasonable doubt.

13. Now what remains to be seen is whether the act of the accused/appellant makes him liable for conviction u/s 302 of IPC or for any lesser offence.

14. There is no denying the fact that at the time of quarrel between the appellant and the deceased over old land dispute, it is the deceased who was having club in his hand and the appellant was empty handed. From the evidence it reflects that the appellant during the course of quarrel got furious and therefore, having snatched the club from the deceased assaulted him with the same which ultimately led to his death. Thus, there was no premeditation on the part of the appellant to inflict injury on the deceased, the incident appears to have occurred all of a sudden in the spur of moment upon a sudden quarrel, and more so, the appellant after giving two-three club blows to the deceased fled from there and as such, he did not act in a cruel or unusual manner. Being so, the act of the appellant does not make him guilty of commission of murder but it is covered by Exception 4 to Section 300 of IPC i.e. culpable homicide not amounting to murder.

15. According to the autopsy surgeon, the cause of death of the deceased was coma due to head injury and rupture of left lung leading to cardio-respiratory arrest. Thus, considering the manner in which the assault was made, the part of the body where the injury was caused and the force with which such fatal injury was caused, one thing is clear that the appellant while inflicting injury on the deceased was though not having intention to cause such bodily injury as would result in his death but had every knowledge such infliction of such injury on the vital part-head would certainly result in his death. In this view of the matter, the appellant can safely be held guilty u/s 304 Part-II of IPC.

16. As regards sentence, considering the overall facts and circumstances of the case giving rise to the incident, the fact that the incident occurred about seven years back and the appellant is in jail for the last about seven years, we are of the opinion that ends of justice would be served if the appellant is sentenced to the period already undergone by him and is directed to pay Rs.15,000/- as compensation u/s 357 of CrPC to the family of the deceased.

17. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-II of IPC and sentenced to the period already undergone by him. He is, however, directed to deposit a sum of Rs.15,000/- with the concerned trial Court within a period of three months from today, failing which he shall have to suffer additional imprisonment for six months. The amount so deposited shall be disbursed to the family of the deceased after due verification by the trial Court.