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JUGUT RAM

v.

THE STATE OF CHHATTISGARH

(Criminal Appeal No. 616 of 2020)

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SEPTEMBER 16, 2020

**[R. F. NARIMAN, NAVIN SINHA AND
INDIRA BANERJEE, JJ.]**

Penal Code, 1860:

- C s. 304 (Part II) – Assault by Lathi – Resulting in death of the victim after one day – Conviction u/s. 302 IPC and life imprisonment by Courts below – Appeal to Supreme Court – Held: ‘Lathi’ is a common item carried by a villager – It cannot be called a weapon of assault simpliciter – In the case of an assault by ‘lathi’, it has to be ascertained whether there was intention or knowledge – The circumstances, manner of assault, nature and number of injuries will have to be considered cumulatively to decipher the intention or knowledge as the case may be – In the facts of the present case, conviction is altered to one u/s. 304 (Part II) – Accused since has already undergone maximum period of sentence, is directed to be set at liberty.

Allowing the appeal, the Court

- F HELD: 1. A lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault *simpliciter*. In a case like the present, of an assault on the head with a lathi, it is always a question fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. The circumstances, manner of assault, nature and number of injuries will all have to be considered cumulatively to decipher the intention or knowledge as the case may be. [Para 7][1142-G-H; 1143-A]
- G 2. Accordingly the conviction of the appellant is altered from Section 302 IPC to Section 304 (Part II) IPC. The appellant is in custody since 2004. He has already undergone the maximum period of sentence prescribed under the same. The appellant is,

therefore, directed to be set at liberty forthwith unless wanted in any other case. [Para 11][1144-E-F]

Chamru Budhwa v. State of Madhya Pradesh, AIR 1954 SC 652; Gurmukh Singh v. State of Haryana, (2009) 15 SCC 635 : [2009] 13 SCR 548; Mohd. Shakeel v. State of A.P., (2007) 3 SCC 119 – relied on.

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Virsa Singh v. The State of Punjab, [1958] SCR 1495; Joseph v. State of Kerala, (1995) SCC (Crl.) 165; Laltu Ghosh v. State of West Bengal (2019) 15 SCC 344; State of A.P. v. S. Rayappa, (2006) 4 SCC 512 : [2006] 2 SCR 200 – referred to.

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Case Law Reference

[1958] SCR 1495	referred to	Para 7	
[2009] 13 SCR 548	relied on	Para 9	
(2007) 3 SCC 119	relied on	Para 9	D
(2019) 15 SCC 344	referred to	Para 10	
[2006] 2 SCR 200	referred to	Para 10	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 616 of 2020

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From the Judgment and Order dated 25.08.2010 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 446 of 2004.

Sourav Roy, Dy. AG, Mrs. Nanita Sharma, Mahesh Kumar, Pranav Sachdeva, Prabudh Singh, Suushant Yadav, Ms. Devika Khanna, Leeladhar Prajapat, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

NAVIN SINHA, J.

1. Leave granted.

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2. The appellant assails his conviction under Section 302 of the Indian Penal Code (in short, “IPC”) and the consequent sentence of life imprisonment, upheld by the High Court.

3. Ms. Nanita Sharma, learned counsel for the appellant, submits that all the four witnesses are related to the deceased. The two

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- A independent witnesses were not examined. The serological report with regard to the blood group of the deceased matching that alleged to have been found on the lathi have not been established. The recovery of the lathi has not been properly proved. The deceased did not die immediately, but succumbed to the injuries in the hospital. The assault was at spur of the moment with no premeditation. The appellant had also suffered injuries.
- B 4. Learned counsel for the State, Sri Sourav Roy opposing the appeal submits that the deceased was in possession of the field. The appellant was the aggressor. The deceased succumbed on the spot. The intention to cause death is apparent from the assault made on the head, a sensitive part of the human body. The appellant cannot urge to have acted in self defence as he was the aggressor. He relies on *State of A.P. vs. S. Rayappa*, (2006) 4 SCC 512 and *Laltu Ghosh vs. State of West Bengal* (2019) 15 SCC 344, to contend that the evidence of related witnesses cannot be discarded.
- C 5. We have heard learned counsel for the parties at length. There existed a civil land dispute between the parties. The occurrence is stated to have taken place on 23.11.2001 at about 02.00 P.M. while the deceased was harvesting crops. The appellant assaulted him with a lathi on the head. The deceased expired in the hospital the next day at about 07.45 P.M. The post mortem report proved by the Doctor, P.W. 13 found two contusions on the left and right parietal portion and fracture on the left parietal bone opining it to be dangerous to life. Other injured witnesses have confirmed that the appellant also suffered injuries in the occurrence.
- D 6. The High Court on appreciation of evidence has come to the conclusion that the assault was not premeditated but had taken place in a heat of passion due to a land dispute. If the appellant had the intention, nothing prevented him from further assaulting the deceased. Nonetheless it maintained the sentence of the appellant under Section 302, IPC because death had taken place pursuant to the assault by him.
- E 7. A lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault simpliciter. In a case like the present, of an assault on the head with a lathi, it is always a question fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. The circumstances, manner of assault, nature and number of injuries will all have to be

considered cumulatively to decipher the intention or knowledge as the case may be. We do not consider it necessary to dilate on the first principles laid down in this regard in *Virsa Singh vs. The State of Punjab*, 1958 SCR 1495, which stand well established. Suffice it to notice from precedents that in *Joseph vs. State of Kerala*, (1995) SCC (Crl.) 165, the appellant dealt two blows on the head of the deceased. The deceased died two days later. The post mortem report found lacerated injury on the head and internal examination revealed fracture to the occipital bone extended up to the temporal bone. The High Court convicted the appellant under Section 302 IPC holding that the injury caused by the lathi was sufficient to cause death of the deceased. This Court observed as follows:

“3.The weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a trivial incident and in those circumstances the accused dealt two blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient (*sic*). At the most it can be said that by inflicting such injuries he had knowledge that he was likely to cause the death. In which case the offence committed by him would be culpable homicide not amounting to murder. We accordingly set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict the appellant under Section 304 Part II IPC and sentence him to five years’ RI.”

8. In *Chamru Budhwa vs. State of Madhya Pradesh*, AIR 1954 SC 652, the appellant dealt a blow on the head of the deceased with a lathi and which proved fatal. The injury was medically opined sufficient in the ordinary course to cause death. Conviction under Section 302, IPC followed. This court observed as follows:

“5. It now remains to consider whether the offence which he committed falls within the first part or the second part of Section 304 of the Indian Penal Code. When the fatal injury was inflicted by the appellant on the head of the deceased by only one blow given in the manner alleged by the prosecution it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any

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- A intention to cause death or to cause such bodily injury as is likely to cause death within the meaning of Part II of Section 304 of the Indian Penal Code.
- B 6. We accordingly allow the appeal to this extent that the conviction of the appellant under Section 302 of the Indian Penal Code and the sentence of transportation for life awarded to him will be set aside, but the appellant will be convicted of having committed the offence under Section 304 Part II of the Indian Penal Code and will be sentenced to seven years' rigorous imprisonment."
- C 9. In *Gurmukh Singh vs. State of Haryana*, (2009) 15 SCC 635, the deceased died three days later after an assault on the head with a lathi opined to be sufficient in the ordinary course of nature to cause death. Holding that the assault was made on the spur of the moment without premeditation the conviction was altered from one under Section 302 to Section 304 Part II and a sentence of seven years was handed.
- D Similarly in *Mohd. Shakeel vs. State of A.P.*, (2007) 3 SCC 119, the appellant had caused only one injury and had suffered injury himself also. Altering the conviction from under Section 302 IPC to 304 Part II, the appellant was sentenced to the period undergone since 1999.
- E 10. We do not consider that *Laltu Ghosh* (supra) and *S. Rayappa* (supra), with regard to credibility of related witnesses, have any relevance to the issue in question being decided by us.
- F 11. We accordingly alter the conviction of the appellant from Section 302 IPC to Section 304 Part II, IPC. The appellant is in custody since 2004. He has already undergone the maximum period of sentence prescribed under the same. The appellant is, therefore, directed to be set at liberty forthwith unless wanted in any other case.
12. The appeal is allowed.

Kalpana K. Tripathy

Appeal allowed.