

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CORAM:** **Hon'ble Shri Rajeev Gupta, C.J. &**  
**Hon'ble Shri Sunil Kumar Sinha, J.**

**Criminal Appeal No. 644 of 2005**

Thori @ Rajendra

Vs.

State of Chhattisgarh

**JUDGMENT**

For consideration

Sd/-  
Sunil Kumar Sinha  
Judge

**HON'BLE SHRI JUSTICE RAJEEV GUPTA**

*I agree.*

Sd/-  
Chief Justice

Post for Judgment : 28/02/2009

Sd/-  
Sunil Kumar Sinha  
Judge

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CORAM:** **Hon'ble Shri Rajeev Gupta, C.J. &**  
**Hon'ble Shri Sunil Kumar Sinha, J.**

**Criminal Appeal No. 644 of 2005**

**APPELLANTS**

1. Thori @ Rajendra S/o Hanslal Gond,  
aged 42 years
2. Foolmati Bai W/o Thori @ Rajendra,  
aged 37 years

Both resident of Village- Basantpur,  
Occupation- Agriculture, P.S.  
Basantpur, District- Surguja (C.G.)

Versus

**RESPONDENT**

State of Chhattisgarh Through Police  
Station- Basantpur, District Surguja  
(C.G.)

**(Appeal under Section 374 (2) of The Code of Criminal Procedure)**

---

**Appearance:**

Shri Ranbir Singh Marhas, Counsel for the appellants.

Shri Akhil Mishra, Dy. Govt. Advocate, for the State.

---

**JUDGMENT**  
**(28.02.2009)**

Following judgment of the Court was delivered by  
**Sunil Kumar Sinha, J.**

(1) Challenge is made to the judgment and order dated 30.3.2005 passed in Sessions Trial No. 394/2003 by the Additional Sessions Judge (F.T.C.), Ramanujganj, District Surguja (C.G.), where by the appellants have been convicted u/ss. 302/34 & 323/34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- and R.I. for 1 year respectively, with a further direction to run the sentences concurrently. It was also directed that if the fine is not paid, they shall be liable to undergo additional imprisonment for 6 months.

(2) The case of the prosecution is that in the evening of 2.4.2003, the appellants and two other co-accused persons namely Manu Pando and his wife Foolpati, in furtherance of their common intention, assaulted the deceased Ramdhani with *lathi*, rod & stones. When it was intervened by Bifni Bai (PW-2), she also received injuries. The specific allegations are that appellant Thori @ Rajendra used iron rod, co-accused Manu Pando used *lathi* and appellant Foolmati and Foolpati used stones. Along with Bifni (PW-2), the incident was also witnessed by Jhubli (PW-3), Rambachan (PW-1), Balma, Cherkin and Tirwa. The deceased died on 2.4.2003 at about 5.00 p.m. The matter was reported by Bifni Bai (PW-2) to the concerned police station on the same day at about 19 hours, on which, a First Information Report (Ex.-P/1) was registered. It was a named F.I.R.

(3) The Investigating Officer reached to the scene of occurrence on 3.4.2003; gave notice (Ex.-P/6) to the Panchas and prepared inquest (Ex.-P/2) on the body of the deceased. The dead body of the deceased was sent for its post-mortem to Govt. Hospital Wadrafnagar, where the post-mortem examination was conducted by Dr. B.R. Prajapati (PW-10), who prepared his report Ex.-P/14. He noticed that there were 2 bluish spots, size 12 cm x 2.5 cm on the right side of the chest. On internal examination, he found that right 4<sup>th</sup> & 5<sup>th</sup> ribs were fractured, which were corresponding to the external injuries. Lungs were whitish and right lung was ruptured. According to him, the injuries were caused by hard and rough object and the cause of death was shock due to injuries to the ribs and lung with haemorrhage in plural cavity. On 5.5.2003, he had also examined one stone, which was triangular and rough having a weight of 1 Kg & 800 gms. Blood like stains were present on the stone. He opined that the injuries caused to the deceased could be possible by the said article. His report is Ex.-P/18.

(4) In further investigation, injured Bifni Bai (PW-2) was sent for her medical examination and was examined by Dr. H.L. Singh (PW-15), who prepared his report Ex.-P/17. According to the MLC report, he noticed a simple injury on her left thumb. There was tenderness around the injury.

(5) After taking the accused/appellants into custody, their memorandum statements were recorded u/s 27 of the Evidence Act. According to the memorandum (Ex.-P/7) of Foolmati, one stone was seized on her instance under Ex.-P/10 and according to the memorandum (Ex.-P/8) of Thori @ Rajendra, a rod was seized on his instance under Ex.-P/11.

(6) Since 2 other co-accused persons namely Manu Pando and his wife Foolpati were absconding, therefore, the charge-sheet was filed only against the present appellants in the Court of Judicial Magistrate, First Class, Ramanujganj, who in turn, committed the matter to the concerned Sessions Court, from where, it was received on transfer by the Additional Sessions Judge (F.T.C.), Ramanujganj, District Surguja, where the trial was conducted and the appellants were convicted and sentenced as aforementioned and permanent warrants have been issued against the absconding accused persons.

(7) Shri Ranbir Singh Marhas, learned counsel appearing on behalf of the appellants, has not disputed the homicidal death of the deceased as also the involvement of the appellants in crime in question. Moreover, it comes in the evidence of Bifni Bai (PW-2) that the deceased was assaulted by the appellants and other co-accused persons by *danda*, rod and stones, due to which, he sustained injuries and died after sometime. Such version is also supported by the contents of the F.I.R. (Ex.-P/1). It is further supported by the evidence of Dr. B.R. Prajapati (PW-10), who conducted the post-mortem examination and noticed that there were 2 bluish spots on the right side of the chest of the deceased and right 4<sup>th</sup> & 5<sup>th</sup> ribs were also fractured and there was rupture of right lung. He opined that the cause of death was shock due to injuries to the ribs and lung with haemorrhage in plural cavity. Therefore, it was established that the death of the deceased was homicidal in nature.

(8) Shri Marhas has argued that, in fact, the appellants were having no intention to cause death of the deceased. They had caused superficial injuries. The bluish injuries found on the chest, resulted in the fracture of

ribs, which in turn damaged the lung, which proved fatal to the deceased. He argued that in such situation, the act of the appellants would not be punishable u/s 302 IPC and they shall be liable for punishment under some lesser Section preferably under Part-II of Section 304 IPC. He relied on the decision of the Apex Court rendered in the matter of Karam Singh -Vs- State of Punjab, 1993 CRI.L.J. 3673.

(9) On the other hand, Shri Akhil Mishra, learned Dy. Govt. Advocate appearing on behalf of the State, opposed these arguments and supported the judgment and order passed by the Sessions Court.

(10) We have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

(11) In the matter of *Karam Singh's* (supra), there were 10 injuries on the body of the deceased. Some of them were abrasions. A lacerated wound was also found on the head but there was no corresponding internal injury. The contusions on the chest and injuries Nos. 5 to 7 resulted in the fracture of the ribs which caused the death of the deceased and the Doctor in his evidence had admitted that the fracture of the ribs could have in turn caused the rupture of the liver and the spleen. The Apex Court held that under these circumstances, it was difficult to hold that the appellant intended to cause the injuries to the liver and spleen which unfortunately proved to be fatal. The Apex Court considering the nature of weapon used and the parts of the body on which the blows were dealt as also the injuries, held that it was difficult to hold that the appellant intended to cause the death or intended to cause that particular injuries to the liver and the spleen. However, under the circumstance he must be attributed to have the knowledge that by dealing such blows he was likely to cause the death of the deceased in which case the offence is one punishable u/s 304 Part-II IPC.

(12) In case on hand, Dr. B.R. Prajapati (PW-10) noticed only 2 bluish spots on the right side of the chest of the deceased and there were fractures of right 4<sup>th</sup> & 5<sup>th</sup> ribs. He has admitted that the fractures were

corresponding to the above external injuries. It appears that the damage caused to the right lung was a consequence of fractures of right ribs. The cause of death was injury to the lung and haemorrhage in plural cavity. Under these circumstances, it was difficult to hold that the appellants had intention to cause injuries to the lung which ultimately proved to be fatal. It comes in the evidence of wife of the deceased namely Foolkunwar (PW-4) that "the deceased was having illicit relation with Bifni Bai (PW-2). The absconding accused Manu is her brother-in-law (*Dewar*) and the present appellant No.1 Thori @ Rajendra is brother of the deceased in village relations." The case of the prosecution is that the accused persons had gone to take the deceased back to his house, who was in drunken condition, from the house of Bifni Bai (PW-2) and the quarrel took place there, in which, the deceased received above injuries. This all shows that the appellants had no intention to cause death of the deceased, but, under the above circumstances, they must be attributed to have the knowledge that by dealing such blows, they were likely to cause death of the deceased, in which case they would be liable for punishment u/s 304 Part-II IPC.

(13) For the foregoing reasons, the appeal is partly allowed. The conviction and sentence awarded to the appellants u/s 302/34 IPC are set aside. Instead, they are convicted u/s 304 Part-II IPC and sentenced to undergo rigorous imprisonment for 7 years. The conviction and sentence awarded u/s 323/34 IPC are upheld with a direction to run the sentences concurrently. It is stated that the appellants are in jail since 7.4.2003. They shall be entitled to set-off the period already undergone by them.

Sd/-  
Chief Justice

Sd/-  
Sunil Kumar Sinha  
Judge