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**(2003) 05 CHH CK 0002**  
**In the Chhattisgarh High Court**  
**Case No : Criminal Appeal No. 2236/97**

Purru alias Laxmi Narayan

APPELLANT

Vs

State of Madhya Pradesh (now Chhattisgarh)

RESPONDENT

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**Date of Decision :** 07-05-2003

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 304

**Citation :** (2004) CriLJ 870 : (2003) 4 MPHT 65

**Hon'ble Judges :** K.H.N. Kuranga, C.J.; L.C. Bhadoo, J

**Bench :** Full Bench

**Advocate :** P. Diwakar, for the Appellant; Ashok Verma, Dy. A.G., for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

L.C. Bhadoo, J.—The appellant has preferred this criminal appeal through the Superintendent of Jail, Bilaspur being aggrieved by the judgment dated 29-8-97 of conviction passed by the Second Additional Sessions Judge, Bilaspur by which the learned Additional Sessions Judge after holding the accused/appellant guilty convicted him u/s 302 of the IPC and sentenced to undergo imprisonment for life and pay a fine of Rs. 100/-, in default of payment of fine to further undergo simple imprisonment for fifteen days.

2. The relevant facts for the disposal of this appeal are that deceased Khemu Singh, the Sarpanch of village was the son of Purani Singh. On 10-9-96 at about 4 p.m. when Amarnath was sitting on the Chabutara of Shivaram and Shivaram was also present there, at that time accused/appellant Purru alias Laxmi Narayan also came there and after some time deceased Sarpanch Khemu Singh also came and asked the accused/appellant as to why he is regularly roaming in the street. On this statement of the deceased, some altercation took place between the two and thereafter, a scuffle took place between them in which the deceased fell down on the earth. Thereafter, the accused/appellant sat on the chest of the deceased and caused the injuries by chappal and fist on his throat and beat the

deceased and thereafter, the accused/appellant fled from the scene of occurrence. The father of the deceased Purani Singh was informed about the incident and when he came, Khemu Singh was lying unconscious. The deceased was first taken to the residence from there he was taken to the hospital in a car but, he died on the way. On receiving this information, the Station House Officer, Police Station Banki Mongra registered a case vide Crime No. 161/96, for the offence punishable u/s 302 of the IPC and took up the investigation. He recorded the statement of the witnesses and in the presence of the witnesses he prepared the Naksha Panchayat-nama of the dead body of the deceased (Ex. P-2) and the dead body was sent to the Primary Health Centre, Banki Mongra, Distt. Bilaspur for post-mortem examination. After conducting the post-mortem, the doctor prepared the post-mortem report (Ex. P-3). The map of the site was prepared and after completion of the investigation the police filed the charge-sheet against the accused/appellant. The charge was framed against the accused/appellant by the learned Additional Sessions Judge. The accused/appellant denied the charge. In order to prove the offence against the accused/appellant, in all nine witnesses were examined by the prosecution. The statement of the accused/appellant u/s 313 of the Cr.PC was recorded in which he either stated that he does not know anything or that the statements of the witnesses are false and ultimately in the last, he said that he is innocent and he has been falsely implicated in the crime. After hearing the arguments, the learned Additional Sessions Judge convicted the accused/appellant as mentioned above.

3. We have heard the learned Counsel for the accused/appellant and the learned Deputy Advocate General for the State-respondent.

4. The learned Counsel for the appellant did not dispute the homicidal nature of the death of the deceased. Even otherwise, Dr. R.S. Kanwar (P.W. 5) has stated in his statement that on 11-9-96 at 10:30 a.m. he conducted the post-mortem on the dead body of deceased Khemu Singh and found there was one contusion 2 1/2 x 1 inch on the right side of the neck below the right jaw. On opening the neck he found that the upper bone (carnua of hyoid bone) was fractured, in the lower portion of the neck clotted blood was present, the muscle's flesh was crushed and throat bone was fractured before the death. The death of the deceased was caused due to asphyxia and blockage of the throat due to which the heart beat was stopped. The doctor's report is Ex. P-4. In Ex. P-4 it is written that the cause of the death was shock due to reflux cardiac arrest resulting from anti-mortem strangulation.

5. In view of the above statement of the doctor which has not been challenged by the learned Counsel for the accused/appellant it is proved that the death of deceased Khemu Singh was homicidal in nature.

6. Now coming to the point that the accused/appellant caused the fatal injury, the learned Counsel did not dispute it also. However, Amarnath (P.W. 1) has stated that the deceased was Sarpanch of the village, 6-7 months prior to his statement at 5 O'clock in the evening when he was sitting in front of the house

of Shivaram on a Chabutara along with Shivaram, accused/appellant Purru came and sat down there and after some time deceased Khemu Singh (Sarpanch) also came and at that time the deceased (Sarpanch) asked accused/appellant Purru as to why he is frequently roaming in the street and the deceased further told the accused/appellant that if he will repeat it again he will slap him. On this, accused/appellant Purru replied and said how he will slap and on this a scuffle took place between the two and in that scuffle the deceased (Sarpanch) fell down. After felling down, the accused/appellant sat on the chest of the deceased (Sarpanch) and thereafter he pressed the neck. The father of the deceased came to know about this. P.W. 1 went to the house of the father of the deceased and informed him about the incident. P.W. 1 has further stated in his statement that at the time of the incident deceased Khemu Singh was in a drunken condition.

7. Shivaram (P.W. 2) who is an eye-witness to the incident has supported the statement of Amarnath (P.W. 1) and stated that the deceased (Sarpanch) told the accused/appellant that he was involved in the rape case. The accused/appellant replied that he was not involved in the rape case. On this the deceased (Sarpanch) told the accused/appellant that he is telling lie and slapped him. On this, the accused/appellant also slapped the deceased (Sarpanch) and a scuffle took place between the two. The Sarpanch fell down on the ground, but he stood up and again the scuffle took place. The Sarpanch again fell down. Thereafter, P.W. 1 and P.W. 2 intervened and the accused/appellant left the scene and the Sarpanch was lying down. On this Amarnath (P.W. 1) went to inform the father of the deceased, the father of the deceased came and they took away deceased Khemu Singh. P.W. 2 has further stated in his statement that in the morning he came to know about the death of the deceased (Sarpanch). This witness has been declared hostile by the prosecution.

8. Purani Singh (P.W. 3) who is the father of the deceased has stated that ten months before his statement when he was at his residence and his son was also in the residence, in the morning one Sawan came and reported to the deceased (Sarpanch) that during the night Panchram trespassed in his house. The deceased (Sarpanch) told Sawan that they will convene the meeting of the Panchayat next day. Thereafter, at 3 O'clock in the day Sawan again came and talked to the deceased (Sarpanch) about Panchram. Thereafter, P.W. 3 has stated that his son Khemu Singh went to advise Panchram and he remained at his residence. After some time, Amarnath (P.W. 1) came and informed that Laxmi Narayan, the appellant herein, has beaten his son. P.W. 1 also informed that Shivaram was also present there. P.W. 3 has further stated in his statement that Amarnath (P.W. 1) also advised him to take some persons along with him and bring the deceased (Sarpanch). Thereafter, P.W. 3 went to the scene of occurrence and saw that Khemu Singh was lying unconscious and he was not talking. Thereafter, after lifting Khemu Singh they brought him to the house and thereafter, they took the deceased to Banki Mongra Hospital. P.W. 3 has further stated in his statement that he had not gone to the hospital along with his son. He further stated that later, two persons came and informed him that Khemu

Singh has died.

9. Ram Prasad (P.W. 4) is the brother of the deceased. He has stated in his statement that they took the deceased to the hospital and Naksha Panchayatnama (Ex. P-2) was prepared in his presence. P.W. 6 is S.S. Pandey who has stated that on 11-9-96 he took up the investigation, prepared the Panchayatnama (Ex. P-2), through Ex. P-5 sent the dead body of the deceased for post-mortem examination and recorded the statements of the witnesses.

10. In view of the above statements, Amarnath (P.W. 1) and Shivaram (P.W. 2) are the eye-witnesses to the incident and it is proved that the accused/appellant scuffled with the deceased and assaulted him on his neck. Nothing has come in the cross-examination of these witnesses which make their statements untrustworthy. They are independent and natural witnesses. Therefore, the Trial Court has rightly placed reliance on the statements of these witnesses. Their statements are supported by the medical evidence also because the bone of the throat was found fractured. Therefore, it is proved that the accused/appellant is the person who caused the fatal injury on the neck of the deceased by fracturing the throat bone.

11. Learned Counsel for the accused/appellant argued that the offence against the accused/appellant does not travel beyond the simple injury. At the most, it does not travel beyond Section 304 Part-II of the IPC because it is on record that the deceased was in a drunken condition and the scuffle took place between the two at the spur of the moment that too on saying something by the deceased against the accused/appellant, so, there was no intention of the accused/appellant to murder deceased Khemu Singh. On the contrary, deceased Khemu Singh first slapped accused/appellant Purru, thereafter Purru started beating.

12. In order to appreciate the above argument of the learned Counsel for the appellant, there is the statement of the eye-witness Amarnath (P.W. 1) who had clearly stated that the deceased was in a drunken condition and when he along with Shivaram (P.W. 2) were sitting on the Chabutara of Shivaram (P.W. 2), accused/appellant came there and thereafter the deceased (Sarpanch) also came there and the deceased said to the accused/appellant as to why he was regularly roaming in the street, he will slap him, on which the accused/appellant said how he will slap and in that process scuffle took place between the two and the accused/appellant caused the injury on the neck of the deceased by his hand. The statement is supported by Shivaram (P.W. 2). Therefore, from the evidence available on the record it is proved that the scuffle took place between the two, i.e., the deceased and the accused/appellant, at the spur of the moment on an altercation which took place between the two, otherwise it is not a pre-planned murder or pre-concerted plan of the accused to murder the deceased. Even the injury was caused by the hand and no deadly weapon has been used, therefore, from the facts and circumstances the intention to murder can not be attributed to the accused/appellant or it can not also be inferred that the accused/appellant has caused the injury with the intention to cause such injury which is likely to

cause death in the ordinary course of nature. But, in facts and circumstances it can safely be concluded and inferred that the accused/appellant, after felling down the deceased, sat on the chest and thereafter throttled him. He had the knowledge that by causing such injury the deceased is likely to die. Therefore, the offence u/s 304 Part II of the IPC is made out against the accused/appellant. As far as the question of simple injury is concerned, the accused/appellant sat on the chest of the deceased, thereafter he throttled him by the hand. Therefore, it can not be said that the accused/appellant caused the simple injury voluntarily.

13. In view of the above, while upholding the conviction of the accused/appellant his conviction u/s 302 of the IPC is set aside. However, he is convicted u/s 304 Part II of the IPC. It is informed that the accused/appellant has already served 6 1/2 years of sentence, therefore, the ends of the justice will meet if the accused/appellant is sentenced to the period of imprisonment already undergone.

14. In the result, the appeal of the appellant is partly allowed. His conviction u/s 302 of the IPC is set aside and the same is converted into Section 304 Part II of the IPC and he is sentenced to 6 1/2 years of imprisonment which he has already undergone. It is therefore, directed that if the accused/appellant is not required in any other case, he may be set at liberty with immediate effect.