



CGHC010030592023



2026:CGHC:34736-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 212 of 2023

Dular Singh Diwan S/o Late Baldau Diwan Aged About 45 Years R/o Jamgaon, Police Station- Fingeshwar, District Gariyaband Chhattisgarh
... **Appellant(s)**

versus

State Of Chhattisgarh Through - Police Station - Rajim District Gariyaband CG
...**Respondent(s)**

(Cause-title taken from Case Information System)

For Appellant : Shri P Chetan Kumar, Advocate
For Respondent/State : Shri SS Baghel, GA

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Justice Ravindra Kumar Agrawal
Judgment on Board

Per Ravindra Kumar Agrawal, J.
07.08.2026

Heard Shri Chetan Kumar, learned counsel for the appellant. Also heard Shri SS Baghel, learned Government Advocate for the State.

1. Present Criminal appeal has been filed by the appellant under Section 374 (2) CrPC, 1973 against the impugned judgment of conviction and order of sentence dated 09.12.2022 passed by the learned Additional Session Judge, Gariyaband (CG) in ST No.76 of 2019, whereby appellant has been convicted for the offence under Section 302 of the

IPC and sentenced RI for life with fine of Rs.1,000/-, in default of payment of fine, further RI for 6 months.

2. Case of the prosecution is that on 30.07.2019, at about 8.00AM when the deceased-Dayaram was working in his field and his grandsons were chatting nearby, appellant came there and assaulted the deceased by a wooden log, by which he received injuries on his head. After causing injuries to the deceased, appellant fled away from the spot. The deceased was immediately taken to the hospital, where he was referred to higher centre and he was taken to the RLC Hospital, Mahasamund, where he was declared dead. On the basis of hospital memo Ex.P18 sent by the doctor to the police, merg intimation Ex.P16 and P17 were recorded by the police. Dehati Nalishi Ex.P20 was also recorded and FIR Ex.P21 was registered against the appellant for the offence under Section 302 of the IPC. Inquest Ex.P11 of the dead body of the deceased was prepared in presence of the witnesses and the dead-body was sent for its postmortem to the Government Hospital, Mahasamund, where PW13 Dr.I.Nageshwar Rao conducted postmortem of the dead-body of the deceased and gave his report Ex.P.13. While conducting postmortem, the doctor has noticed lacerated wound on left parietal region of head, swelling on the orbital region, lacerated wound on left forearm, blood was oozing out from the left ear and contusion on left side of the scalp of head region. He also noticed fracture on left parietal bone of skull and bleeding from left parietal area and left cerebrum region (brain). He opined that cause of death is shock and coma due to cerebral

hemorrhage in left parietal hemisphere of cerebrum (brain) and bleeding from lacerated wound of scalp and fracture of parietal skull bone. Death is homicidal in nature. A query was also raised from the doctor and he replied to the query in Ex.P14 that cause death was shock and coma due to cerebral hemorrhage, and the death is homicidal in nature. Injuries could be caused by hard and blunt object. Spot map Ex.P2 was prepared by the Police and Ex.P9 was prepared by the Patwari. One gamcha and chappal of the deceased were seized vide seizure memo Ex.P3. Spot map Ex.P7 was also prepared by the police.

3. Appellant was arrested on 30.07.2019 and his memorandum statement Ex.P6 was recorded. Based on his memorandum statement one wooden log has been seized vide seizure memo Ex.P4 and one bicycle and chappal have been seized vide seizure memo Ex.P5. The wooden log seized from the appellant, and clothes of the deceased were sent for chemical examination to the State FSL, Raipur, from where its report Ex.P28 was received and blood was found on the clothes of the deceased. However, no blood was found on the wooden log seized from the appellant.

4. Statement of the witnesses under section 161 has been recorded and after completion of usual investigation, charge-sheet was filed against the appellant for the offence under Section 302 of the IPC before the learned JMFC, Rajim, Dist. Ghariyaband. Case was committed to the learned trial court for its trial. The learned trial court framed charge

against the appellant for commission of offence under Section 302 of the IPC. The appellant denied the charge and claimed trial.

5. In order to prove the charge against the appellant, prosecution has examined as many as 26 witnesses, statement of the appellant under Section 313 CRPC has also been recorded in which he denied the circumstances appearing against him, pleaded innocence and submitted that he has been falsely implicated in the offence.

6. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial court convicted the appellant and sentenced him as has been mentioned in the earlier part of this judgment. Hence this appeal.

7. Learned counsel for the appellant would submit that prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict him for the offence in question. He would further submit that though the prosecution has produced two eye witnesses to the incident, however, the evidence of the eye witnesses is inconsistent and not sufficient to convict the appellant for the alleged offence. There is no motive proved by the prosecution for commission of offence and also that no blood was found on the wooden log, allegedly seized from the appellant. Even, only one injury was found on the head of the deceased which might have been received by his fall on a hard surface or while working in the field. He would also submit that

witnesses are interested witnesses, which are not sufficient to hold the appellant guilty and therefore, the appellant is entitled for benefit of doubt and he may be acquitted.

8. On the other hand, learned counsel appearing for the state opposes the submissions made by the learned counsel for the appellant and submitted that prosecution has proved its case beyond reasonable doubt. But for minor omissions and contradictions, the evidence of the eye witnesses is sufficient to convict the appellant which the learned trial court rightly did. The witnesses are consistent on the material point of allegation that it is the appellant who cause injury to the deceased on his head by a wooden log when he was working in the field. He would also submit that in the case where eye witnesses are available, even if the motive could not be proved by the prosecution, that itself is not sufficient to disbelieve by other evidences which consistently supported the prosecution case. The offence has been committed in the broad day light, which has been witnessed by the number of witnesses and their presence on the spot cannot be doubted. Therefore, by the sufficient, cogent and clinching evidence, involvement of the appellant has been proved by the prosecution and his appeal is liable to be dismissed.

9. We have heard learned counsel for the parties and perused the record of the trial court with utmost circumspection.

10. The first question arises for consideration would be nature of death of the deceased as to whether his death is homicidal or not.

11. Prosecution has mainly relied upon evidence of the doctor, PW13 Dr I Nageshwar Rao, who conducted the postmortem of the dead body of the deceased. He stated in his evidence that on 30.07.2019 dead body of the deceased was brought before him for its postmortem and during postmortem he noticed lacerated wound on left parietal area, swelling present on surrounding of orbital cavity, another lacerated wound on the left forearm, bleeding was coming out from the left ear, contusion on left side of the skull and his left parietal bone was found fractured. On internal examination, hemorrhage in meninges of left side of brain and left parietal Loba, Cerebrum. He opined that cause of death is shock and coma due to hemorrhage in left parietal hemisphere cerebrum brain and bleeding from lacerated wound of skull and fracture of parietal skull bone which is homicidal in nature. In the query report also, he opined that cause of death was shock due to cerebrum hemorrhage, which is homicidal in nature. The defense could not be able to extract that death of the deceased was not homicidal or for some other reason.

12. From mere intimation Ex.P18, sent by the doctor when the deceased was being taken to the RLC Hospital, he was declared dead due to head injury and from the postmortem report also death of the deceased was found due to injury and during the inquest Ex.P11, head injury was noticed by the witnesses which was cause of his death. Thus, the homicidal death of the deceased is not in dispute, and the same has been proved by the prosecution by sufficient evidence and the learned

trial court has also rightly considered death of the deceased being homicidal in nature.

13. So far as involvement of the appellant in the offence in question is concerned, the prosecution has produced eye witnesses to prove its case.

14. PW2 Tikam Sahu is the grandson of the deceased, who was also present on the spot while the deceased was working in the field. He stated in his evidence that on the date of incident at about 7 to 8 am, he accompanied his grandfather to the field and at that time, when his grandfather was working in the field, appellant came there and assaulted his grandfather by a wooden log. After seeing the incident, when he rushed to the spot, appellant ran away. He called other persons by crying and then deceased was taken to the hospital, where he was declared dead.

In cross-examination, he admitted that field of his grand father is adjacent to the field of the appellant and there was property dispute between both the families. He denied that the place where he was standing was not visible to the place where his grandfather was working, and he firmly stated that he saw the appellant assaulting his grandfather. Upon raising an alarm, Dwarika Sahu, Shambhu Sahu, Mewalal Tarak, Bisambhar, and others came to the spot.

In his entire cross-examination, defense could not be able to extract any material which makes his evidence doubtful, or that he is not the witness to the incident. He being grandson of the deceased, accompanied him towards field and his presence on the spot was quiet natural. He also remained firm in saying that it is the appellant, who caused injuries to his grandfather.

15. PW3 Shambhuraam Sahu, PW4 Omprakash Sahu, PW7 Hemlal Sinha, PW8 Mewalal Tarak, and PW9 Bisambhar Sahu are the witnesses, who went on the spot on being alarm raised by PW2 Tikam Sahu. They duly supported the prosecution case that when Tikam Sahu shouted for help, they rushed to the place and found the appellant present on the spot having wooden log with him and he was in drunken condition. They saw the appellant present on the spot with wooden log by which he was allegedly assaulted the deceased. They immediately went on the spot and saw the injured also, who was lying in the field having injury on his head. Thereafter, they managed to take him to the hospital.

16. PW10-Thakur Ram Sahu and PW11 Jagatram Sahu are the witnesses before whom the appellant confessed his guilt that he committed murder of the deceased-Dayaram. Both of them have stated in their evidence that when they saw the appellant he exhorted that he committed murder of Dayaram and let them come in the meeting.

17. PW18 is another eye-witness to the incident, who stated in his evidence that at the time of incident he was standing near the field and the deceased was working in his field. All of sudden when they heard the noise asking for help, they saw that the appellant was assaulting the deceased by *danda*. They too rushed to the place and in the meantime, appellant fled away. They found the deceased-Dayaram lying in his field in unconscious condition. Thereafter, they called other villagers and took him to the hospital. He too remained firm in his cross-examination that due to property dispute appellant committed murder of the deceased by assaulting him by a wooden log.

18. From the evidence produced by the prosecution, it unerringly surfaced that the incident was witnessed by PW2-Tikam Sahu, grandson of the deceased, the appellant confessed his guilt before PW10-Thakur Ram Sahu and PW11-Jagatram Sahu and his presence on the spot was also seen by the witnesses PW3-Shambhuraam Sahu, PW4-Omprakash Sahu, PW7-Hemlal Sahu, PW8-Mewalal Tarak, and PW9-Bisambhar Sahu, who immediately came to the spot and saw the appellant having *danda* with him and thus involvement of the appellant has already been proved by the prosecution by leading cogent and clinching evidence that he caused injuries to the deceased by which the deceased died on the spot. The property dispute has been projected by the prosecution as motive to commit murder of the deceased. From the evidence of the witnesses, the allegation of property dispute has not been specifically denied by the appellant in cross-examination.

19. Upon a cumulative consideration of the evidence adduced by the prosecution, guilt of the appellant has been duly established. The evidence led by the prosecution witnesses proves beyond reasonable doubt, that it was the appellant, and none other, who caused the injuries to the deceased and was responsible for the commission of the offence as alleged against him.

20. The defense has raised a submission that evidence of PW2-Tikam Sahu, who is grandson of the deceased and being relative of the deceased, cannot be relied upon.

21. The same issue has been considered by the Hon'ble Supreme Court in case of **Dharnidhar Vs. State of Uttar Pradesh and others**, (2010) 7 SCC 759, that relative can be a competent witness, if their evidence is found reliable and conviction can be sustained on the basis of the evidence of relative witness, and the Hon'ble Supreme Court held as follows:

“12. There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In *Jayabalan v. UT of Pondicherry*, (2010) 1 SCC 199, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely

because it comes from a person closely related to the victim. The Court held as under: (SCC p. 213, paras 23-24)

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

13. Similar view was taken by this Court in *Ram Bharosey v. State of U.P.*, (2010) 1 SCC 722, where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.”

22. Considering the entire evidence available on record and also on perusal of the impugned judgment passed by the learned trial court, we do not find any perversity or infirmity in the impugned judgment of conviction and sentence against the appellant.

23. Accordingly, the appeal filed by the appellant fails and it is hereby dismissed.

24. Appellant is reported to be in jail since 30.07.2019. He shall serve the entire sentence as imposed by the learned trial court.

25. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

26. The record of the case along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

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Digitally signed by V PADMAVATHI Date: 2026.08.13 09:58:55 +0530
