

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1892 of 2000**

Sardar S/o of Thepa Nagasia aged about 36 years, Occupation - Agriculture, R/o village – Amtari, P.S. Rajpur, Presently at Village – Gujarwar, P.S. Chourpur (Out Post Lundra) District Surguja.

---- Appellant

**Versus**

The State of Madhya Pradesh (now Chhattisgarh), through:  
Out Post Lundra, Chourpur District – Surguja.

---- Respondent

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|----------------------|---|-----------------------------------------|
| For Appellant        | : | Shri Shashi Kushwaha, Advocate          |
| For Respondent-State | : | Shri Vinod Deshmukh, Dy. Govt. Advocate |

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**Hon'ble The Chief Justice**  
**Hon'ble Shri Justice P. Sam Koshy**

**C A V JUDGEMENT****Per P. Sam Koshy, Judge****12/08/2015**

1. The Appellant has been convicted under Sections 302 and 323 IPC and sentenced to undergo rigorous imprisonment for life under Section 302 IPC and rigorous imprisonment of one year under Section 323 IPC vide impugned judgment dated 23.06.2000 passed by the Second Additional Sessions Judge, Ambikapur (Surguja) in Sessions Trial No. 166/1998.

2. The facts relevant for adjudication of the present Appeal are that on 28.03.1998, in the evening around 6 O'clock, the Appellant is said to have assaulted his father-in-law Dhoti Ram (hereinafter referred as 'the deceased') with a wooden stick who succumbed to the injuries on the next morning i.e. 29.03.1998. It is the case of the prosecution that on 28.03.1998, when the Appellant had assaulted the deceased, the wife of the Appellant who also is the daughter of the deceased namely Darbari Bai (PW-2)

intervened and tried to save her father but the Appellant is said to have also assaulted PW-2 Darbari Bai causing simple injuries to her. FIR, Exhibit P-8, in this regard was lodged by the son of the deceased Ramchandra (PW-19) on 29.03.1998. Subsequently, after death of the deceased on 29.03.1998 Postmortem was conducted by PW-11, Dr. A. K. Jaiswal, the report of which was marked Exhibit P-7 wherein the doctor has found following injuries on the body of the deceased:

- i. One Lacerated wound over the right upper eyelid extending up to the left upper eyelid crossing the base of nose 9x1cm.
- ii. Fracture on nasal bone
- iii. Fracture on right parietal and left parietal bone of the head
- iv. Subdural haematoma near occipital region and right parietal bone region and brain oedema.
- v. Fracture of 6<sup>th</sup> rib right side and haematoma over it.
- vi. Haematoma over the 6<sup>th</sup> and 7<sup>th</sup> rib region on left side

The Doctor has opined that the cause of death was due to Coma as a result of head injury and the duration of death was within 24 hours.

**3.** During the course of trial, the prosecution examined as many as 20 prosecution witnesses of which PW-2 Darbari Bai, PW-8 Beeguram and PW-9 Kalawati are cited as eye witnesses.

**4.** The trial Court taking into consideration the evidences which have come on record vide impugned Order dated 23.06.2000 found the charges leveled against the Appellant under section 302 IPC on account of the death of the deceased and under Section 323 IPC on account of causing simple injuries to PW-2 Darbari Bai proved beyond reasonable doubt. Accordingly, the Court below upholding the Appellant guilty convicted him for the said offence leading to the filing of the present appeal.

**5.** Counsel for the Appellant submitted that the conviction of the Appellant is based on the statement of the eye witnesses PW-2 Darbari Bai, PW-8 Beeguram and PW-9 Kalawati and also the extra judicial confession made

by the Appellant before PW-3 Karam Sai and PW-20 Kheeru.

6. According to the counsel for the appellant, the conviction of the Appellant under Section 302 IPC is without proper appreciation of the evidences which have come on record and that the Court below has not appreciated the evidence in its correct prospective but in a mechanical manner has proceeded to accept the version of the prosecution witnesses and relying upon their deposition has convicted the Appellant. Counsel for the Appellant tried to emphasize on the fact that the prosecution witnesses are not reliable enough and trustworthy to accept their version for the purpose of conviction of the Appellant. Counsel for the Appellant further submitted that a perusal of the statement made by these witnesses in their 161 Cr.P.C. statement as compared to their court statement, would itself reveal a great element of contradiction and omission in these two statements leaving a great amount of doubt on their respective versions and therefore these witnesses not being consistent in their statement made before the Police as well as the Court should not and cannot be accepted to be strong enough material to convict the Appellant for the offence under Section 302 IPC.

7. Counsel for the Appellant submitted that even for the argument sake if the prosecution case is accepted on the face of it would reveal that the Appellant never had any premeditation or intention to kill the deceased. It was submitted that from the deposition of the prosecution witnesses itself it appears that the incident occurred because of the conduct/behaviour of the deceased himself and in the spur of the moment and because of sudden provocation, the Appellant had assaulted the deceased and in the course of assault, the Appellant had given a blow on the head of the deceased which unfortunately proved fatal. Thus, according to the counsel for the Appellant,

in the given facts and circumstances of the case, the offence under Section 302 of IPC is not made out against the Appellant and at best, the Appellant could be convicted only for the offence under Section 304 Part-II of IPC.

**8.** Per contra, State counsel opposing the Appeal submitted that there is no illegality or infirmity in the order passed by the Court below and that the findings of the Court below were purely on the basis of the evidences which have come on record. He submitted that the prosecution has been able to prove its case beyond reasonable doubt in as much as there are three eye witnesses out of which PW-2, Darbari Bai is an injured eye-witness and the other two are PW-8 Beeguram and PW-9 Kalawati. State counsel further submitted that in addition to the aforesaid three eye witnesses, there are also two witnesses; PW-3 Karam Sai and PW-20 Kheeru before whom the extra judicial confession was made by the Appellant which by itself proves the case of the prosecution. Thus, the State Counsel prayed for rejection of the Appeal upholding the conviction and sentence of the Appellant.

**9.** Having considered the rival contentions advanced on either side and on perusal of the record what reveals is that the entire case of the prosecution as well as the conviction of the Appellant by the trial Court is based on the deposition of three eye witnesses i.e. PW-2 Darbari Bai, PW-8 Beeguram and PW-9 Kalawati in addition to two witnesses PW-3 Karam Sai and PW-20 Kheeru before whom the extra judicial confession was made by the Appellant and PW-11 the doctor who had conducted the postmortem. The other witnesses examined by the prosecution were not of much relevance.

**10.** If we first take into account the version of PW-2 Darbari Bai, the injured eyewitness, it proves the fact that it was the Appellant alone who had assaulted the deceased causing injuries and that it was on account of the

said assault the deceased had succumbed. At the same time, in her cross-examination, she accepts the fact that the Appellant did not have any sort of dispute or inimical relationship with the deceased. Though PW-2 in her cross-examination has tried to protect her husband i.e. the Appellant but the incident that occurred on 28.03.1998 has been established and proved by PW-2 which is apparent from her deposition.

**11.** PW-8 Beeguram also is a natural eyewitness presented near the place of occurrence along with his wife PW-9 Kalawati and both have deposed before the Court of having witnessed the Appellant making an assault on the deceased with a wooden stick. Thus, from the deposition of eyewitnesses PW-2, PW-8 and PW-9 so far as the Appellant having assaulted the deceased is concerned stands proved.

**12.** As regards the extra judicial confession made by the Appellant before PW-3 and PW-20, if we peruse the deposition of both these witnesses, it would reveal that PW-3 in paragraph-5 and PW-20 in paragraph-1 have deposed before the Court that after reaching the place of incident when they questioned the Appellant about the incident, the Appellant is said to have stated that he had assaulted the deceased because of altercation that had taken place between the deceased and the Appellant. Further, if we see the deposition of PW-11 Dr. A. K. Jaiswal, the doctor who had conducted the postmortem, it would reveal that the doctor in his postmortem found six injuries on the body of the deceased. However, the doctor has specifically stated that the cause of death was because of head injuries but he has not stated anything in respect of the seriousness of the other injuries nor has he stated that the other injuries could have a cumulative effect for the death of the deceased. On the contrary, the doctor specifically states that it is because of the head injury alone that the deceased died.

**13.** On consideration of the deposition of these witnesses what is coming out is the fact that none of the witnesses have made any deposition before the Court that the Appellant had assaulted the deceased more than once and all the eyewitnesses particularly PW-2, PW-8 and PW-9 have categorically stated of the Appellant having assaulted the deceased on his head on account of which he fell down. There is all probability and possibility of the fact that when the Appellant assaulted the deceased on his head, the deceased fell down on his face on account of which he received injuries near his right eye, nose and ribs. There was only one blow given on the head on account of which the deceased fell down as the prosecution witnesses do not disclose any evidence of the Appellant having assaulted the deceased after he had fallen on the ground.

**14.** Likewise, the prosecution witnesses also establish the fact that the relations between the Appellant and the deceased were very cordial which also has been accepted by PW-2, the injured eye witness. Hence, there is no dispute in respect of the fact that the relations between the Appellant and the deceased were cordial. This fact is also established by the other independent witnesses particularly PW-14 Chhote Ghasi who in very categorical term has stated that the Appellant and the deceased had together come to his house on the date of incident for taking meals and that they left the house together and that the incident took place after they had reached their house. Another aspect which is established from the deposition of PW-20 is that while making the extra judicial confession, the Appellant had said that the incident occurred because of the abusive language used by the deceased against the Appellant.

**15.** From the deposition of the prosecution witnesses it is also established that there was no motive on the part of the Appellant to kill the deceased nor

was there any intention or premeditation on the part of the Appellant for causing assault on the deceased. In addition, another aspect which is reflected from the prosecution case is that the Appellant was not armed with any weapon of assault while assaulting the deceased and the assault was made with a wooden stick which he got from the place of incident which again would depict the fact that the Appellant never had any intention or motive in killing the deceased.

**16.** Under these circumstances, we are of the opinion that the act on the part of the Appellant cannot be said to be one which would fall in the definition of murder but it would be a case which may fall within the purview of an offence u/s 304 Part-II of IPC i.e. culpable homicide not amounting to murder. Accordingly, the accused/Appellant is convicted under section 304 Part-II of IPC instead of section 302 of IPC.

**17.** As regards the sentence, keeping in mind the fact that the Appellant was not armed with any weapon of assault, he had no intention or motive or premeditation in killing the deceased and in the spur of moment and heat of passion the Appellant gave only one blow on the head of the deceased which proved fatal coupled with the fact that the Appellant has already undergone incarceration for a period of about eight years, the sentence imposed on him is reduced to the period already undergone by him.

**18.** The Appeal is allowed in part. The Appellant stands convicted under Section 304 Part-II IPC in stead of 302 IPC and the sentence part is reduced to the period already undergone.

Sd-  
(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-  
(P. Sam Koshy)  
**JUDGE**