

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**DB : HON' SHRI PRITINKER DIWAKER &
HON'BLE SHRI CHANDRA BHUSHAN BAJPAI, JJ****CRA No. 859 of 2010**

Bachchhraj Gond, son of Ramdhani Gond, aged 19 years, by occupation Agriculturist resident of village Kedia Mohali Tikara, Police Station Ghalgali, Distt Surguja (CG)

---- Appellant**Versus**

State of Chhattisgarh through Police Station Chalgali, Distt. Surguja (CG)

---- Respondent

For appellant	: Mr. Ashok Swarnkar, Advocate
For Respondent/State	: Mr. U.K.S. Chandel, Panel Lawyer

Judgment on board by Justice Pritinker Diwaker**16/11/2015**

1. This appeal arises out of the judgment of conviction and order of sentence dated 13-10-2010 passed by the Additional Sessions Judge (FTC), Pratappur, Distt. Sarguja in Sessions Trial No. 517/2009 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with a fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for 2 months.

2. In the present case, name of the deceased is Motilal, who was the grand father of the accused/appellant. It is alleged that in the family partition, deceased Motilal had not given sufficient land to P.W. 10 Ramdhani, father of the accused/appellant, as a result of which P.W. 10 Ramdhani and the accused/appellant were annoyed with the deceased. On 23-7-2009 at about 11 am, the accused/appellant caused number of injuries on the body of the deceased by a wooden log as a result of which deceased died instantaneously. Merg intimation Ex. P-2 was recorded on 23-7-2009 at the instance of P.W. 2 Manmati, wife of the deceased and thereafter FIR Ex. P-3 was registered on the same day against the accused/appellant under Section 302 of IPC. Inquest on the body of the deceased was performed on 24-7-2009 and thereafter the body was sent for post mortem which was conducted on 24-7-2009 itself by P.W. 4 Dr. J. Ekka. The autopsy surgeon noticed following injuries on the body of the deceased :

Big lacerated wound present on left side of head above and outer left

eyebrow, frontal bone fractured, blood was coming out from wound and dried, bleeding from both ear. Tiny maggots all around body, face compressed and destroyed. Mandible fractured at two places, swelling on both sides of face, swelling on both sides of neck, multiple linear contusions and swelling on right upper side of chest and shoulder. Fracture on right lower end of radius and ulna. All above injuries were ante mortem and caused by hard and blunt object.

According to the autopsy surgeon, cause of death was head injury and strangulation, mode of death was coma and asphyxia and the death was homicidal in nature.

3. After investigation, charge sheet was filed against the accused/appellant for offence punishable under Section 302 of IPC and charge was also framed accordingly.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment.

6. Learned counsel for the appellant submits as under :

(i) that three different versions have been given by three eye-witnesses i.e. P.W. 2 Manmati, P.W. 3 Ramobai wife of Ramprasad and P.W. 6 Ramobai wife of Aliyar. Therefore, benefit should be given to the appellant.

(ii) that even if the entire prosecution case is taken as it is, the appellant is liable to be convicted under Section 304 Part I or Part II of IPC because he had caused injuries to the deceased by a wooden log and not by any dangerous weapon. It has been argued that after converting the conviction of the appellant, the sentence be reduced to the period already undergone by him.

7. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that though there may be some discrepancies in the statements of P.W. 3 Ramobai wife of Ramprasad but P.W. 2 Manmati and P.W. 6 Ramobai wife of Aliyar have categorically stated that they saw the accused/appellant killing the deceased. He submits that considering the nature of the injuries sustained by the deceased, his conviction under Section 302 of IPC is fully justified.

8. We have heard learned counsel for the respective parties and perused the material available on record.

9. P.W. 2 Manmati is grand mother of the accused/appellant and wife of the deceased. While supporting the prosecution case, she has stated that it is the accused/appellant who killed her husband and when the deceased was being beaten, after hearing his cries she came out from her room and saw the accused/appellant pulling and beating the deceased by a wooden log. She has stated that it is she who lodged the report to police. In the cross-examination, she remained very firm and has reiterated as to the manner in which the deceased was done to death by the accused/appellant. She has further stated that as the father of the accused/appellant Ramdhani (P.W. 10) was not happy with the partition, the accused appellant might have killed the deceased because of the said reason. P.W. 3 Ramobai wife of Ramprasad has stated that she saw the accused/appellant and three other persons beating the deceased. This witness was declared hostile. However so far as her statement that accused/appellant had beaten the deceased remained intact. P.W. 6 Ramobai wife of Aliyar is another eye-witness to the incident. While supporting the prosecution case, she has stated that it is the accused/appellant who killed the deceased. Though she has stated that the accused/appellant killed his 'Dadi' however it is to be noticed that 'Dadi' word is used even for grand father. This witness remained very firm and in the cross-examination has reiterated as to the manner in which the deceased was done to death by the accused/appellant.

10. P.W. 4 Dr. J.K. Ekka conducted post mortem on the body of the deceased and had noticed a big lacerated wound on left side of head above and outer left eyebrow, frontal bone fractured, blood was coming out from wound and dried, bleeding from both ear, tiny maggots all around body, face compressed and destroyed, mandible fractured at two places, swelling on both side of face, swelling on both side of neck, multiple linear contusions and swelling on right upper side of chest and shoulder, fracture on right lower end of radius and ulna. He opined that cause of death was head injury and strangulation, mode of death was coma and asphyxia and the death was homicidal in nature. In his query report Ex. P-4, he has stated that the injury sustained by the deceased could have been caused by the wooden log seized by the police shown to him. P.W. 5 Mahaveer is witness to the memorandum of accused/appellant Ex. P-6 and Ex. P-7 by which a wooden log was seized. He has duly supported the the prosecution case. P.W. 7 Uren has stated that on account of land dispute, the accused/appellant has killed the deceased. P.W. 8 Mohan, the other seizure witness has not supported the prosecution case. P.W. 9 Etwa Kujur, the Investigating Officer, has duly supported

the prosecution case.

11. Close scrutiny of the evidence makes it clear that on 23-7-2009, it is the accused/appellant who killed his grand father Motilal by causing several injuries on his body including various fractures. The incident was witnessed by P.W. 2 Manmati, P.W. 3 Ramobai wife of Ramprasad and P.W. 6 Ramobai wife of Aliyar. Though there is some discrepancy in the statement of P.W. 3 Ramobai wife of Ramprasad, however P.W. 2 Manmati and P.W. 6 Ramobai wife of Aliyar remained very firm in the court and have categorically stated as to the manner in which the deceased was done to death by the appellant. Post mortem report of the deceased also confirmed that number of injuries including various fractures were caused by the appellant on the body of the deceased and the deceased died as a result of head injury. On the basis of memorandum of appellant, a wooden log used in commission of the offence has also been seized by the prosecution. P.W. 5 Mahaveer has also supported the prosecution case. Further in reply to a query, the autopsy surgeon has stated that the injury sustained by the deceased could have been caused by the seized wooden log.

12. Taking the entire evidence as it is, we are of the opinion that it is the accused/appellant who had committed murder of the deceased. Looking to the injuries sustained by the deceased and his post mortem report, we find no substance in the argument advanced by the counsel for the appellant that the appellant is liable to be convicted under Section 304 Part I or Part II of IPC. The court below has rightly convicted him under Section 302 of IPC.

13. In the result, the appeal is dismissed.

14. As the appellant is already in jail, no further order is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge