

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 56 of 2010**

1. Raja Kodaku, S/o Sibam Kodaku, aged about 40 years, R/o Village Gormatia Tola, Mahavirgunj, P.S. Ramanujgunj, District Surguja (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. Ramanujgunj, District – Surguja (C.G.)

---- Respondent

For Appellant	:	Mr. Rajesh Jain, Advocate
For Respondent/State	:	Mr. Neeraj Jain, G.A.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board by T.P.Sharma, J.**11/05/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.11.2009 passed by the Additional Sessions Judge (F.T.C.), Ramanujganj, Dist. Surguja, in Sessions Trial No.392/2007 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Indernath @ Chaathil, the trial Court convicted the appellant under Section 302 of the I.P.C. and sentenced him to imprisonment for life with fine of Rs.500/- and in default to undergo additional SI for six months.

2. Conviction of the appellant is impugned on the ground that without there being any iota of evidence against him the trial Court convicted and sentenced the appellant and thereby committed illegality.

3. As per the case of the prosecution, on fateful day of 03.07.2007 at about 5.00 pm, the appellant assaulted deceased Indernath @ Chaathil by Crowbar over

the head and caused fatal injury, due to which, Indernath @ Chaathil died on the same day. P.W.2 Gopal Yadav went to Police Station Ramanujganj and lodged merger intimation vide Ex.P.3 and F.I.R. vide Ex.P.4.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.1, inquest over the dead body was prepared vide Ex.P.2. Spot map was prepared vide Ex.P.5. Patwari prepared spot map vide Ex.P.6. Crowbar was seized vide Ex.P.7 from the appellant. Dead body was sent for autopsy to Community Health Center, Ramanujganj vide Ex.P.9. Dr. A.K.Tirky (P.W.12) conducted autopsy vide Ex.P.8 and found following injuries and symptoms:

- i. Body was lying in supine condition. Body was swollen. Eyes closed. Mouth open. Tongue protruded.
- ii. Large Haematoma was present over occipital region to neck region.
- iii. Fracture of occipital bone.
- iv. Large haematoma posterior size brain compressed fracture

Mode of death was cardiac arrest due to excessive haemorrhage.

5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

6. After completion of investigation charge sheet was filed before the Court of J.M.F.C. Ramanujganj, who in turn committed the case to the Court of Sessions Surguja at Ambikapur. The learned Additional Sessions Judge has received the case on transfer for its trial.

7. In order to prove the guilt of the appellant, prosecution examined as many as 12 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication is claimed.

8. After providing an opportunity of hearing to the parties, learned Additional Sessions Judge has convicted and sentenced the appellant as aforementioned.

9. We have heard learned counsel for the parties and perused the record of the trial Court including judgment impugned.

10. Mr. Rajesh Jain, learned counsel for the appellant, vehemently argued that although conviction of the appellant is based on the evidence of P.W.4 Vasudev, but his evidence does not inspire confidence and trustworthy. This witness is having enmity with the appellant and on account of enmity, this witness has falsely implicated the appellant. As per his detailed evidence, it was dark and place of incident was not visible from the place where he witnessed. On account of previous enmity, this witness has falsely implicated the appellant, therefore, evidence of P.W.3 Vasudev is not safe for conviction of the appellant. He further submits that this is a case of single blow and the act attributed to the appellant squarely falls within the Section 304 Part II of the I.P.C. and not under Section 302 of the I.P.C.

11. On the other hand, Mr. Neeraj Jain, learned counsel for the State opposed the appeal while submitting that evidence of P.W.4 Vasudev by itself is sufficient to prove the guilt of the appellant as the appellant has applied full force and caused injury by Crowbar upon the head of the deceased which shows grave intention of the appellant.

12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Indernath @ Chathil is not only substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Nageshwar Singh, P.W.2 Gopal Yadav and P.W.4 Vasudev as well as merger intimation Ex.P.3, F.I.R. Ex.P.4, P.W.12 Dr. A.K.Tirkey and his autopsy report

Ex.P.8. Death of deceased was homicidal in nature.

13. As regards complicity of the appellant in crime in question, the conviction of the appellant is substantially based on the evidence of P.W.4 Vasudev. As per his evidence, the appellant assaulted deceased by Crowbar over his head, due to which, deceased died. Defence has cross-examined this witness at length. He has admitted the lack of clear visibility and distance between two places where he was present and incident took place, but, he has clearly deposed that he has witnessed the incident and appellant has caused injury before him. There is improvement in para 8 relating to number of injuries but improvement by itself is not sufficient for rejecting his statement. Evidence of this witness clearly revealed that the appellant had consumed liquor at the time of incident, appellant came after consuming the liquor and assaulted Indernath by Crowbar. Medical evidence reveals that fatal injury has been caused to deceased. There was depressed injury upon the head which shows the application of full force by Crowbar. The appellant was having knowledge that by his act or by causing such injury he will kill the deceased. Evidence of P.W.4 Vasudev coupled with the medical evidence is sufficient for drawing an inference that the appellant has caused homicidal death with intent to cause his death.

14. While appreciating the evidence available on record, the learned Sessions Additional Sessions Judge has rightly convicted and sentenced the appellant. On close scrutiny of the evidence available on record, we do not find any illegality and infirmity in the judgment of conviction and order of sentence.

15. Consequently, appeal, being devoid of merit and substance, is liable to be and is hereby dismissed.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE