

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 796 of 2011**

- Lakhe @ Laikho aged about 40 years, S/o Bandaru Madia R/o Village Kelaur, Dokari Chhuvapara, P.S. Darbha, Distt. Baster (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through P.S. Darbha, Distt. Baster (C.G.)

---- Respondent

For Appellant.	-	Shri D.N. Prajapati, counsel.
For Respondent	-	Shri Ashish Surana, Panel Lawyer

Hon'bel Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Chandra Bhushan Bajpai****Judgment On Board by Pritinker Diwaker, J****03/12/2015**

This appeal arises out of the judgment of conviction and order of sentence dated 23.07.2011 passed by the 1st Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.101/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo R.I. for life and fine of Rs.300/- with default stipulation.

02. Brief facts of the case are that on 28.07.2010 at 9:20 am F.I.R. (Ex.P/3) was lodged by Sukhdev Kashyap (PW/2) alleging in it that on 27.07.2010 at 12.00 mid night, the accused/appellant caused injuries to his servant Aaytu, who was sleeping in the veranda. It has also been alleged that after hearing the noise of assault, he came out with a torch and saw the accused/appellant causing injuries to the deceased by wooden log (मुसर). Based on this FIR, offence under Section 307

IPC was registered against the accused/appellant. Further case of the prosecution is that when the injured Aaytu was medically examined on 28.07.2010 vide Ex.P/10, he was found dead. Merg intimation (Ex.P/4) was recorded, inquest over the body of deceased was conducted vide Ex.P/2 and dead body was sent for postmortem examination. Postmortem examination on the body of deceased was conducted by Dr. P.L. Mandavi (PW/7) who gave his report Ex.P/12-A opining the cause of death to be head injury and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Sections 302 IPC and charge was also framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 08 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been convicted mainly on the basis of statement of Sukhdev (PW/2), so called eye witness, however, from his cross-examination, it appears that he had not seen the actual occurrence and was sleeping inside the house;

(ii) that FIR was not lodged by Sukhdev (PW/2) and it appears

that the same was written by the police without explaining the contents of the same to Sukhdev (PW/2);

(iii) Sonu Ram Kashyap (PW/3), who has allegedly seen the accused/appellant running away from the spot, is also not reliable witness and from his cross-examination it is apparent that he has not narrated the correct fact before the Court;

(iv) that seizure of clothes of the deceased and wooden log (मुसर) vide Ex.P-7 and Ex.P-8 are of no consequence in absence of FSL report.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that Sukhdev (PW/2) and Sonu Ram Kashyap (PW/3) are the uneducated tribal and minor contradiction in their cross-examination is required to be ignored. He argued that very prompt FIR was lodged by Sukhdev (PW/2) categorically mentioning the fact that he saw the accused/appellant assaulting the deceased and there is no reason as to why this witness would falsely implicate the appellant. It has been further argued that in examination-in-chief Sukhdev (PW/2) has categorically stated as to the manner in which deceased was done to death by the appellant. In respect of Sonu Ram Kashyap (PW/3), it has been argued that this witness has also stated in examination-in-chief as to the manner in which he saw the accused/appellant fleeing from the spot.

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

08. Suduram (PW/1) - village Kotwar has stated that he knew the deceased and appellant. On the second day of incident he was

informed by Sukhdev that it is the accused/appellant who had killed the deceased. He has stated that he attended the deceased Aaytu; he was alive and blood was oozing from his head; he was taken to the hospital where he was declared dead. Sukhdev (PW/2) is a person in whose house Aaytu was working as servant. He has stated that it is the accused/appellant who committed murder of the deceased. In the night he was sleeping inside his house whereas Aaytu was sleeping in the veranda and at about 12.00 in the night he felt that somebody was beating someone and when he came out from his room carrying torch in his hand he saw the accused/appellant running away from the spot carrying wooden log (मुसर) in his hand and on the way he left the wooden log. He has stated that he saw the deceased in injured condition and blood was oozing from his head, at that time he was alive. He has further stated that he awakened Sonu who was sleeping in his house and then they went to village Sarpanch and Kotwar to inform them about the incident. He has also stated that the deceased was taken to hospital where he was declared dead. He had also lodged the FIR (Ex.P-3) which was signed by him and likewise merg intimation (Ex.P-4) was also recorded at his instance. He is also witness to inquest (Ex.P-2) and spot mat (Ex.P-5). In para 6 of his cross-examination, this witness has stated that in the night when he woke up to ease himself, he knocked at the door and the door was opened by Aaytu. But at about 5.00 am when he had gone to appellant (it should have been the deceased), though he was alive but was not speaking anything. He has also stated that along with the villagers he had gone to lodge the report but the report was not read over to him and then he clarified that it is the accused/appellant who had beaten the deceased as a result of which he died. Sonu Ram

Kashyap (PW/3) has stated that upon hearing the cries of Sukhdev that the accused/appellant has beaten Aaytu, he woke up; came out from his room and saw the accused/appellant running away from the spot. He has further stated that he was informed by Sukhdev (PW/2) that it is the accused/appellant who caused injuries to Aaytu by wooden log (मुसर), at that time Aaytu was alive. Injured Aaytu was taken to hospital with the help of villagers, Kotwar and others where he was declared dead. In his cross-examination, he has stated that it is Sukhdev (PW/2) who was shouting that it is the accused/appellant who had killed the deceased but he (this witness) had not seen accused/appellant assaulting the deceased. He has denied the fact that some thieves might have gained entry in the house and committed murder of the deceased. Thibaru Ram Kashyap (PW/4) who was Sarpanch of the village at the relevant time, has been declared hostile. He is also a witness to seizure Ex.P-7, Ex.P-8, Ex.P-9 and inquest Ex.P-2. In his cross-examination, he admitted that he was informed by Sukhdev (PW/2) that it is the accused/appellant who killed the deceased. Lacchindhar (PW/5) has also turned hostile but has stated that he was informed by Sukhdev (PW/2) that he saw the accused/appellant killing the deceased. Dr. S.S. Raj (PW/6) conducted MLC vide Ex.P/10 when the Aaytu was brought in the hospital. He has stated that when he examined Aaytu he had already expired. Dr. P.L. Mandavi (PW/7) is the autopsy surgeon who conducted postmortem on the body of the deceased vide Ex.P/12-A and found injury/symptoms as mentioned below:-

- (i) Both upper and lower limbs were extended and rigor mortise present. Tongue was protruded and swollen. Conjunctiva congested. Swelling on face, dried blood on face, chest and back side was present.

- (ii) Contusion of 10 x 8 cm with swelling on left maxillary region on cheek.
- (iii) Lacerated wound of 12 x 2 x 1 cm over left temporal part.
- (iv) Lacerated wound of 3 x 2 x 1 cm over left side just behind the ear.
- (v) Contusion of 5 x 4 cm with swelling over left shoulder.
- (vi) Contusion of 3 x 2 ½ with swelling below left axilla.
- (vii) Contusion of 4 x 5 cm with swelling over right upper forehead.

He has opined that the cause of death of deceased was head injury and death was homicidal in nature.

09. Atma Ram Rathore (PW/8) is investigating officer who has duly supported the prosecution case. He has stated that wooden log (मुसर) was seized from the spot vide Ex.P-8 and likewise clothes of deceased were seized vide Ex.P-7 but there is no FSL report.

10. Close scrutiny of the evidence makes it clear that on 27.07.2010 it is the accused appellant who committed murder of the deceased. Prompt report was lodged by Sukhdev (PW/2) wherein he has categorically stated that he saw the accused/appellant assaulting the deceased by wooden log. After seeing the incident, Sukhdev (PW/2) raised cries and upon hearing the same, Sonu Ram (PW/3) reached there and saw the accused/appellant fleeing from the spot. Though there are some contradictions in the statement of Sukhdev (PW/2) and Sonu Ram (PW/3), but considering the fact that they are rustic uneducated tribal, such contradiction is required to be ignored. If the entire statements of Sukhdev (PW/2) and Sonu Ram (PW/5) is taken into consideration, keeping in view the fact that prompt FIR was lodged by Sukhdev (PW/2) naming the appellant as perpetrator of the offence, we find no reason to disbelieve their evidence, and as such the Court

below was justified in convicting the accused/appellant placing reliance on the statements of Sukhdev (PW/2) and Sonu Ram (PW/3). This apart, postmortem report (Ex.P-12A) of the deceased also supports the prosecution case, wherein corresponding injuries were noticed by the Doctor on the person of the deceased.

10. On the basis of aforesaid discussion, we are of the considered view that the findings recorded by the trial Court holding the appellant guilty of offence under Section 302 IPC is based on proper appreciation of the evidence on record. I find no reason to defer with the findings recorded by the Court below. Thus, the conviction of the accused/appellant is hereby maintained.

11. In the result, the appeal being without any substance is liable to be dismissed and is dismissed as such. As the accused/appellant is already in jail, no further order regarding his surrender etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(C.B. Bajpai)
JUDGE