

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1509 of 1998

Dunga alias Donga son of Moddi Madiya, aged about 33 years,
Occupation Agriculture, resident of Toke P.S. Narayanpur, District
Bastar, Madhya Pradesh (Now Chhattisgarh).

---- Appellant

Versus

State of Madhya Pradesh (Now State of Chhattisgarh)
through Police Station, Narayanpur, District Bastar.

---- Respondent

For Appellant:	Smt. Kiran Jain, Advocate.
For Respondent/State:	Smt. Smita Ghai, Panel Lawyer.

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

Judgment on Board

Per Navin Sinha, Chief Justice

15/06/2015

1. The Appellant stands convicted under Section 302 IPC to life imprisonment as ordered on 5.2.1998 by the Additional Sessions Judge, Kanker, District Bastar, in Sessions Trial No. 343 of 1994, for having caused death of one Sukhram.
2. An FIR was lodged on 29.1.1994 (Exhibit P-11) by PW-3, Sonuram, brother of the deceased that the Appellant had assaulted the latter with a wooden platform used for sitting at the house of the informant's sister, PW-4, Bije on 26.1.1994. The postmortem (Exhibit P-9) was conducted by PW-1, Dr. S.M.Asalam on 30.1.1994. The body was in a highly decomposed condition but the Doctor noticed fracture of the right maxillary bone and opined that though no definite cause of death could be stated due to decomposition, the injury could well have been the cause of death.

3. Learned Counsel for the Appellant submitted that the occurrence took place in the night of 26.1.1994. There is approximately two days delay in lodging of the FIR on 29.1.1994. It gives sufficient time for thinking, embellishment for making out a story for false implication. Without prejudice to the same, it was next submitted that the assault was not intentional. It was made on the spur of moment consequent to an altercation while they were all drinking together. No weapon of assault has been used. A single blow was given with the wooden platform used for sitting, available normally in a rural household. There was no previous enmity. There is no motive or evidence for the same. PW-3, Sonuram claimed to have been assaulted and injured in the incident, but there is no MLC report. It suggests the possibility of a false story being made out coupled with the delay in lodging of the FIR. The deceased may have been injured in any other manner, by another at a different place, a possibility that cannot be completely ruled out. The benefit of doubt must be given to the Appellant. It was lastly submitted that he has already undergone custody of nearly 6 ½ years.

4. Learned Counsel for the State opposing the appeal submitted that PW-3, Sonuram, PW-4, Bijje and PW-5, Karve, are all eyewitnesses to the assault which took place at the house of PW-4, Bijje. No reason has been given by the Appellant why he was being falsely implicated. Under Section 313 CrPC, the only defence taken was of false implication due to enmity but no evidence of any previous enmity was led. That the Appellant is undoubtedly the assailant. There is no evidence of any reason for grave and sudden provocation. The MLC of PW-3, Sonuram is available with a covering letter marked Exhibit P-14. The conviction calls for no interference.

5. We have considered the submissions on behalf of the parties and perused the evidence on record.

6. According to the prosecution case, the deceased was the younger brother of PW-3, Sonuram. The assault took place near the house of PW-4, Bijee, the sister of PW-3 evident from the crime spot map Exhibit P-7. PW-5, Karve is the wife of deceased Sukhram. Their evidence is consistent with regard to the Appellant having assaulted the deceased with a wooden platform used for sitting and he then simply went away. In cross-examination, the Appellant has not disputed or given any suggestion that PW-3, PW-4 and PW-5 were not eyewitnesses to the occurrence or that the Appellant had not gone to the house of PW-4, Bijee, much less that he was consuming liquor with them. The Appellant has not disputed the place of occurrence near the house of PW-4, Bijee, or the crime spot map Exhibit P-7. The prosecution, from convincing eyewitness account has clearly been able to establish the basic fact of the Appellant being the assailant. In his defence under Section 313 CrPC, the Appellant baldly claimed false implication due to previous enmity, but has led no evidence with regard to any previous enmity. Because the assault took place near the house of PW-4, while they were all drinking together at night, it was but natural that the witnesses had to be the inmates who were related to each other and not much can be said about absence of any independent witnesses to doubt their credibility on that ground.

7. The submission on behalf of the Appellant with regard to delay in lodgment of the FIR had adequately been considered by the learned Trial Judge and we find no reason to differ with the reasoning and conclusion in this regard.

8. The occurrence is said to have taken place at about 7:00 pm. The village was primarily a rural area with predominance of Scheduled Tribes, plagued by illiteracy. The police station was approximately 45 kilometers away with travelling being an arduous task. The learned Trial Judge has therefore rightly concluded that the distance of the police station from the

village, time of occurrence, the absence of any proper mode of transport and illiteracy etc. were all sufficient reasons to explain the delay. In view of the cogent and convincing eyewitnesses account available, it cannot be said that the Appellant has been prejudiced in any manner by lodgment of the FIR after two days.

9. In (2012) 6 SCC 204 (Jitender Kumar v. State of Haryana) it was observed:-

“43. It is a settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases, but in the given circumstances of a case, delay in lodging the FIR can be one of the factors which corrode the credibility of the prosecution version. Delay in lodging the FIR cannot be a ground by itself for throwing away the entire prosecution case. The court has to seek an explanation for delay and check the truthfulness of the version put forward. If the court is satisfied, then the case of the prosecution cannot fail on this ground alone.”

10. The only question, to our mind that remains is the issue for appropriate sentence. It has already been held that from the eyewitnesses account the Appellant is the assailant and that the deceased was not assaulted by any other or at any other place. Not much help can be drawn by the Appellant from the opinion of the Doctor that the cause of death could not specifically be stated. The postmortem was held four days later. The body was in high state of decomposition. Nonetheless, the fracture of right maxillary bone was clearly visible. The Doctor has opined that it may well have been the cause of death. Considering the eyewitnesses account coupled with the fracture of right maxillary bone, a sensitive part of human body, we are unable to accede to the submission of false implication.

11. But the evidence on record also leads us to the conclusion that the Appellant, the deceased, and the prosecution witnesses were also residents of the same village. The fact that the Appellant was sitting at their house and drinking clearly suggests that they were known to each other since earlier and were on visiting terms. PW-3, Sonuram in his cross-

examination did not deny that there was no previous enmity between the parties. It clearly suggests lack of motive. From the evidence of the same witness, it is also apparent that some altercation took place between the parties while they were drinking. The Appellant was not carrying any weapon of assault which may have been evidence with regard to his intentions. He is stated to have picked up the wooden platform used for sitting lying inside the house and given only one blow to the deceased. There is no allegation for any repetition of the blow. After the assault, the Appellant is alleged to have simply walked away. It suggests that he may have presumed that the deceased had only become unconscious. This further corroborates that the Appellant did not intend to cause death and did not make the assault with severity or great intensity. Had his intention been to assault and kill, he would have repeated the assault to ensure death. There is no evidence on record that the prosecution witnesses even tried to stop him when he was walking away. This again suggests that they also presumed unconsciousness and not death. If the assault was with intention to kill, the Appellant would have run from the place after the assault and would not have walked away unobstructed. We are unable to concur with the conclusion of the Learned Trial Judge for absence of any provocation. The altercation while drinking may have provided the provocation.

12. In the facts and circumstances of the case and the nature of evidence available, absence of any motive and absence of intention to kill, we find it difficult to sustain conviction of the Appellant under Section 302 IPC. The evidence suggests that the assault was preceded by some altercation between them while drinking together. This altercation may have been the immediate provocation for assault by the Appellant on the deceased. Because he assaulted on the head with intensity causing fracture, he can easily be attributed the knowledge of death by the assault.

13. Considering the aggravating and mitigating factors of the case, we are of the considered opinion that the case of the Appellant falls under the exception (4) to Section 300 IPC and is punishable under Section 304 Part II IPC.

14. The occurrence took place on 26.1.1994. The Appellant was taken into custody on 30.1.1994 and he was granted bail on 24.7.2000. He has undergone approximately 6 ½ years of custody. He has had the scepter of the criminal appeal pending over his head since 1998 unsure of what lay in store for him in future. Considering all the facts and circumstances of the case, we therefore modify the conviction of the Appellant from under Section 302 IPC to one under Section 304 Part-II IPC and sentence him to custody for the period undergone.

15. With the aforesaid modification of conviction and sentence, the appeal is allowed in part.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE