

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 860 of 2010**

- Sukhram Nishad, S/o Late Jahar Lal Nishad, aged about 38 years, R/o Atari, Police Station Amanaka, Distt. Raipur (CG)

**---- Appellant****In Jail****Versus**

- State Of Chhattisgarh, through District Magistrate, Raipur, arising out Police Station Amanaka, Distt. Durg (CG)

**---- Respondent**


---

For appellant : Shri Jitendra Gupta, Advocate.  
For Respondent : Shri Arvind Dubey, PL.

---

**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Judgment on board by Justice Pritinker Diwaker****20/11/2015**

This appeal arises out of the judgment of conviction and order of sentence dated 22.9.2010 passed by Sessions Judge, Raipur in S.T.No.40/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.500/- and in default thereof to undergo one month additional R.I.

02. As per the prosecution case, on 5.9.2009 at about 10 pm on account of land dispute the accused/appellant killed his uncle Bodhan Nishad by causing spade injury on his head and other parts of the body. Immediately after the incident on 6.9.2009 at 00.50 am FIR (Ex.P/2) was lodged by Balram Nishad, nephew of the deceased,

against the appellant under Section 302 of IPC. Merg intimation Ex.P/1 was also registered on the same day at 00.55 am. Inquest over the body of the deceased was performed on 6.9.2009 and thereafter, the dead body was sent for postmortem which was conducted by PW-8 Dr. Ullas Gonnade vide Ex.P/10 wherein he noticed lacerated wounds on head and lateral aspect of eye, including fracture and opined that the cause of death was haemorrhage and shock as a result of head injury. He had also examined the weapon of offence spade sent by the police vide Ex.P/11 and opined that the injuries suffered by the deceased could be caused by the said weapon. After completion of investigation charge sheet was filed against the appellant under Section 302 of IPC and accordingly charge was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses. Statement of the accused 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, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the prosecution has projected five persons as eyewitnesses to the incident but as all of them are close relatives of the deceased they have falsely implicated the appellant.

(ii) that all the eyewitnesses have interest in the land in question, somehow they wanted to send the appellant to jail so that they could grab his share in the land in question and hence they have falsely implicated him.

(iii) even if the entire prosecution case is taken as it is, at best the accused/appellant is liable to be convicted under Section 304 Part-II of IPC because he had no intention to cause death of the deceased and in fact, the incident occurred all of a sudden in the heat of passion without any premeditation when the appellant out of anger assaulted the deceased with spade which unfortunately resulted in his death.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that PW-2 Salikram, PW-3 Ramlal Chandrakar, PW-4 Smt. Indirabai, PW-5 Chandulal Nishad and PW-7 Rohit Nishad are the eyewitnesses to the incident which took place in the mid of the village when the deceased was sitting on the platform of the village along with the eyewitnesses. At that time, the accused/appellant carrying spade in his hand reached there and caused injuries to the deceased, particularly on his head, as a result he died.

(ii) the mere fact that the eyewitnesses are relatives of the deceased itself is not sufficient to discard their evidence because it is they who were sitting along with the deceased and as such, appear to be natural witnesses.

(iii) that considering the manner in which the appellant caused injuries

to the deceased it speaks volumes about his intention to cause death of the deceased and as such, his conviction under Section 302 of IPC is strictly in accordance with law.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Balram Nishad is lodger of FIR and merged intimation. He has stated that on the date of incident the accused/appellant came to him and told that "you have done partition as per your choice without consulting him" on which he informed the appellant that the partition has been done after consulting the appellant and his brother, however, the appellant went away from there angrily. In the night he was awakened by his sister who informed him that the accused/appellant has killed his uncle Bodhan. He immediately came out of the house and saw the deceased drenched with blood lying near the platform of one Nammo. However, while being taken to hospital Bodhan expired.

09. PW-2 Salikram an independent witness has stated that on the date of incident he was sitting along with deceased and Ramlal (PW-3) on the platform of Nammo, at that time the accused/appellant came there carrying spade in his hand and assaulted on the head and leg of the deceased as a result of which deceased fell down and blood started oozing. In cross-examination this witnesses remained very firm. PW-3 Ramlal Chandrakar, PW-4 Smt. Indirabai, PW-5 Chandulal Nishad and PW-7 Rohit Nishad are other eyewitnesses to the incident and have also duly supported the prosecution case. PW-7 has further stated that when he tried to intervene in the matter he too was chased by the

appellant. PW-9 Triveni Prasad Dwivedi, investigating officer, has duly supported the prosecution case. PW-8 Dr. Ullas Gonnade conducted postmortem on the body of the deceased vide Ex.P/10 wherein he noticed following injuries:

(i) 11 cm x 1 cm x bone deep lacerated wound on the upper side of the head.

(ii) 3 cm x 1 cm x skin deep lacerated wound on lateral aspect of left eye.

(iii) 8.5 cm x 1.5 cm x subcutaneous deep lacerated wound on lateral aspect of left thigh.

In his opinion, the cause of death was hemorrhage and shock as a result of head injury. He had also examined the weapon of offence spade sent by the police vide Ex.P/11 and opined that the injuries suffered by the deceased could be caused by the said weapon.

10. Close scrutiny of the evidence makes it clear that on 5.9.2009 it is the accused/appellant who caused several injuries by spade to the deceased as a result of which he died. The incident was witnessed by PW-2 Salikram, PW-3 Ramlal Chandrakar, PW-4 Smt. Indirabai, PW-5 Chandulal Nishad and PW-7 Rohit Nishad and they have fully supported the prosecution case. The mere fact that some of the witnesses are close relatives of the deceased will not discard their evidence, especially when their presence on the spot is not disputed and in the merg and FIR it has come that they were present on the spot at the time of incident. PW-1 has also stated that on the date of

incident the accused/appellant had come to him and expressed his annoyance over partition of the land in question. This apart, medical evidence also lends support to the version of the eyewitnesses. Thus on the basis of ocular and medical evidence complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt.

11. We find no substance in the argument of the appellant that in the facts and circumstances of the case, at best the appellant is liable to be convicted under Section 304 Part-II of IPC. Considering the nature and extent of injuries suffered by the deceased, the manner in which the appellant assaulted and part of the body where the assault was made, it can safely be inferred that the appellant assaulted the deceased with intention to kill him and he had every knowledge that injuries being inflicted by him would result in his death. Therefore, his conviction under Section 302 of IPC is based on proper appreciation of the evidence warranting no interference.

12. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed. 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**