

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 251 of 2012**

1. Ashok Kenvat S/o Shanker @ Ramsingh Kenvat, aged about 51 years, Occupation-Begger, R/o Thethawarpara , Dongergarh, Distt. Rajnandgaon (C.G.)

---- Appellant**Versus**

1. State Of Chhattisgarh Through - The Station House Officer, Police Station, Dongergarh, Distt. Rajnandgaon C.G.

---- Respondent

For Appellant.	:	Shri R.K. Tiwari, Advocate
For Respondent.	:	Shri U.K.S. Chandel, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board By**Pritinker Diwaker, J****10/09/2015**

This appeal arises out of the judgment of conviction and order of sentence dated 11.01.2012 passed by the Additional Sessions Judge, Link Court Dongargarh, District Rajnandgaon, in S.T.No.14/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay fine of Rs.300/- with default stipulation.

02. As per the prosecution case, on 19.08.2010 at about 12 noon the accused/appellant asked his son Bhola Kenvat (deceased) to go for begging and on his refusal, he pressed his neck by putting leg which ultimately resulted in his death. Thereafter the appellant buried the body of deceased in his courtyard itself and to conceal his act, the

place of burial was cemented by him. As the deceased remained unseen in the village for few days, the villagers grew a suspicion in their mind that he (deceased) might have been killed by someone. On coming to know about the body being buried in the courtyard of the accused/appellant itself, the police took permission from the Executive Magistrate vide Ex.P/16 to exhume the same. On being exhumed, the body was identified to be that of the deceased and then unnumbered *merg* Ex.P/20 was recorded on 21.08.2010. Numbered *merg* Ex.P/21 was also recorded followed by FIR Ex.P/22 registered on 21.08.2010 against the appellant under Sections 302 and 201 of the IPC. Postmortem on the body of deceased was conducted on 21.08.2010 by PW-15 Dr. S. Shrivastava vide Ex.P/17. After investigation, charge sheet was filed against the accused/appellant under Sections 302 and 201 of IPC and charges were also framed accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 17 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. Appellant has also examined one defence witness.

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. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

- (i) that the accused/appellant has been convicted only on the basis of circumstantial evidence but nature of circumstantial evidence is not as such which can be made basis for conviction of the accused/appellant;
- (ii) that there is absolutely no evidence that it is the accused/appellant who killed the deceased;
- (ii) that the appellant has falsely been implicated in the crime in question.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the dead body of deceased was found in the courtyard of the accused/appellant, the place which was plastered by cement and no plausible explanation has been offered by the accused/appellant as to who killed the deceased or how the death took place. He further submits that as the accused/appellant was residing along with the deceased under the same roof and there was no other inmate in the house, in the absence of any satisfactory explanation the finger of doubt goes against the accused and none else.

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

08. PW-1 Suraj Kumar Nishad though has been declared hostile, he has stated that on 21.08.2010 he came across a rumor of the deceased having been killed by his own father and then courtyard of the accused/appellant was searched and his statement was recorded by the police. This witness has also stated that as the accused/appellant had suffered paralytic attack, he was not in a position to work and he used to live only on begging.

09. PW-2 Gita Bai, aunt of the deceased has also been declared hostile. She however has stated that she came to know that after committing murder of the deceased, the accused/appellant had buried the dead body in his courtyard. She has stated that the accused/appellant used to beat his wife and son.

10. PW-3 Bhuri Bai - mother of the deceased has stated that she had taken the deceased along with her to her parental house but the accused/appellant came there and took him away by force. She has stated that the accused/appellant buried her school going son.

11. PW-4 Khemin Bai has stated that before Rakshabandhan festival the Police party came to house of the accused/appellant and exhumed the dead body by digging open the cemented place. She has also stated that it is incorrect to say that the accused/appellant was not in a position to work and was taking help of his son while begging.

12. PW-5 Kumari Bai though has been declared hostile but she has stated that the accused/appellant frequently used to go to his bathroom and cry there. Thereafter, according to her, she came to know that police party reached the house of accused/appellant and exhumed the dead body by digging out the particular portion.

13. PW-6 Rani who happens to be sister of the deceased has stated that in her presence the accused/appellant had disclosed the fact to the police that he had asked the deceased to go for begging and when he refused, he killed him.

14. PW-7 Baisakhu Yadav and PW-8 Moujiram Yadav, witnesses of

inquest Ex.P/7, have stated that in their presence the body of deceased was exhumed from the courtyard of the accused/appellant. They are also witnesses of dead body recovery panchnama Ex.P/5.

15. PW-9 Anand Kumar Mishra has stated that prior to the date of incident, deceased had come to his house and was trying to hide himself. On inquiry, the deceased informed him that the accused/appellant used to beat him and that many a time other persons of the vicinity had also seen his subjection to beating. When deceased was not seen for few days, the people had suspicion about the deceased being murdered. He has also stated that information thereof was given by him to the police, search of deceased was undertaken and eventually the dead body was exhumed from the house of the accused/appellant after completion of necessary formalities. He is also a witness of dead body recovery *panchanama*.

16. PW-10 Rajaram Deshmukh has stated that he also reached the place of occurrence and after arrival of police party the body of deceased was exhumed from the house of the appellant itself. He has also stated that upon search being made in the house of the accused/appellant, crowbar was seized therefrom, memorandum of the accused/appellant was recorded and seizure was effected vide Ex.P/10.

17. PW-11 Sundarlal Dhritlahare is Executive Magistrate in whose presence the body of the deceased was exhumed after completion of necessary formalities at the place of incident. He has also described the manner in which the dead body was found and exhumed.

18. PW-12 Parmesh Netam is the Police Constable who took the body of deceased for postmortem examination.

19. PW-13 Dr. S. Choudhari is the witness who medically examined the accused/appellant and noticed scratch injury on his forehead which could have been caused 1 or 2 days before his examination i.e. 22.08.2010. In cross-examination, he has stated that he had not noticed any fracture on the hand of the appellant and that he was in a position to work. He has categorically denied the fact that the accused/appellant was handicapped.

20. PW-14 Harprasad Pandey did initial investigation like recording of merg and F.I.R. He had also taken permission from the Executive Magistrate to exhume the body of the deceased.

21. PW-15 Dr. S. Shrivastava is the witness who conducted postmortem on the body of the deceased vide Ex.P/17 and found the symptoms as mentioned below:-

- (i) Dead body in supine condition with flexed knee joint and elbow joint; right cheek flat; whole body swollen; skin pilled off; rigor mortise developed and body was badly foul smelling.
- (ii) No external injury was seen all over the body. Tongue in between teeth; eyeball protruded and bleeding dried in nostrils. He has opined that the cause of death of deceased was asphyxia due to throttling and death was homicidal in nature.

22. PW-16 Lal Chand Khobragade - Revenue Inspector, prepared the spot map vide Ex.P/18, which shows that the body of deceased

was exhumed from the house of the appellant.

23. PW-17 Vishwas Chandrakar, Investigating Officer, has duly supported the case of the prosecution.

24. DW-1 Dr. Prakash Bhalerao has stated that on 12.10.2011 the accused/appellant was brought before him and that he had noticed fracture of right elbow as well as its dislocation. He had also noticed fracture of radius and ulna. It is relevant to note that this witness had examined the accused/appellant after one year of the date of incident.

25. Close scrutiny of the evidence makes it clear that as the deceased was not seen for few days by the villagers, they suspected some foul play behind it and accordingly an information to this effect was given to the police and after the police swung into action, body of the deceased was exhumed from the courtyard of the accused/appellant itself after obtaining permission from the Executive Magistrate. This fact has been duly supported by most of the prosecution witnesses who have stated in their deposition that after the death of the deceased, the accused/appellant used to sit near the cemented burial and lament by looking at it. Undisputedly, the dead body was found buried in the courtyard of the accused/appellant where apart from the deceased and the accused, no third person was residing and in these circumstances it is the accused/appellant who is supposed to know as to how all that had happened, but surprisingly he kept quiet and did not offer any explanation regarding the same. In his memorandum Ex.P/9, accused/appellant has categorically stated as to the manner in which he killed the deceased and that at his instance the

crowbar by which the courtyard was dug was seized from inside the house which has been duly supported by the prosecution witnesses. Most important aspect of this case is that if the body of son of the accused was found inside the courtyard of accused/appellant himself, it was for him to explain the same but no plausible explanation has been offered by him in his statement recorded under Section 313 of the Cr.P.C. Thus, taking into consideration the cumulative effect of the evidence of the witnesses, it can safely be inferred that death of deceased was within special knowledge of the accused/appellant and it was he who authored the crime in question.

26. The trial Court has been fully justified in appreciating the evidence on record while holding the accused/appellant guilty under Section 302 of IPC. There is no illegality or infirmity in the findings recorded by it.

27. Accordingly, the appeal has no substance and it is liable for dismissal.

28. We thus dismiss the appeal. Appellant is already in jail and hence no direction regarding his surrender etc. is needed to be written.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(I.S. Uboweja)
JUDGE