

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.270 of 2013**

- Pramod Kumar Panika S/o Late Bagar Sai, aged about 35 years, R/o Bardiya, Police Station-Patna, District-Koriya (C.G.)

---- Appellant

**Versus**

- State Of Chhattisgarh, through Station House Officer, Police Station Patna, District-Koriya (C.G.)

---- Respondent

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| For Appellant        | : | Mr.Roshan Dubey, Advocate       |
| For Respondent/State | : | Ms Pushpa Dwivedi, Panel Lawyer |

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

**Judgment On Board by T.P.Sharma, J.****08/05/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 4.1.2013 passed by the Additional Sessions Judge, Manendragarh at Baikunthpur, in S.T.No.69/2012, whereby & whereunder the trial Court after holding the appellant guilty for causing homicidal death amounting to murder of his mother Remun Bai convicted him under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.500/-, in default of payment of fine to further undergo R.I. for two months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on the fateful evening of 27.5.2012 at about 8.15 p.m. the appellant abused his mother, he took out iron rod and caused fatal injury upon the head of his mother Remun Bai, she fell down and become unconscious and the appellant fled away from the spot. She was brought to

District Hospital, Baikunthpur where she was examined by Dr.A.K.Singh (PW-7) vide Ex.P/16. Remun Bai died on 27.5.2012 at 9.30 p.m. Merg was recorded vide Ex.P/2. F.I.R. was registered vide Ex.P/3. After summoning the witnesses vide Ex.P/4 inquest over the body of the deceased was prepared vide Ex.P/10. Spot map was prepared by investigating officer vide Exs.P/6 and P/7. Bloodstained & plain soil, one bloodstained brick and one plain brick were recovered from the spot vide Ex.P/13. Dead body of the deceased was sent for autopsy to District Hospital, Baikunthpur. Dr.S.Paikra (PW-8) conducted autopsy vide Ex.P/18 and found following injuries:-

- Right eyelid which is blackish in coloured. Left shoulder with arm blackish in coloured.
- Stitched wound over scalp of left parietal region of head, obliquely 5 knots, sized 2½", clotted blood present & stitched wound over parieto occipital region size 2" obliquely back side, clotted blood present, 4 knots present.

Cause of death was shock and death was homicidal in nature. Clothes of the deceased were sealed and seized vide Ex.P/20. Numberi merg intimation was recorded vide Ex.P/21. Patwari also prepared spot map vide Ex.P/8. During the course of investigation, the appellant was taken into custody, he made disclosure statement of iron rod vide Ex.P/11 and same was recovered at his instance vide Ex.P/12. Bloodstained clothes of the appellant were seized vide Ex.P/14. Seized articles were sent for chemical examination to FSL.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed in the Court of Chief Judicial Magistrate, Baikunthpur, who in turn, committed the case to the Court of Sessions, Koriya (Baikunthpur), from where the Additional Sessions Judge, Manendragarh, received the case on transfer for trial.
5. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as twelve witnesses. Accused/appellant was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and claimed innocence and false implication in crime in question. He has also examined defence witness Dr.Sukhdev Hiranman Shende (DW-1), who has noticed the injuries upon the body of the appellant.
6. After providing opportunity of hearing to the parties, the trial Court has convicted and sentenced the appellant as aforementioned.

7. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
8. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of child witnesses Ku.Gayatri (PW-2) and Ku.Rekha Dewangan (PW-3), whose evidence do not inspire confidence and trustworthy, they are child witnesses and there is every likelihood of their tutoring. Their evidence alone are not sufficient for basing the reliance without further corroboration from independent sources. Even otherwise, this is the case of single blow in which all of sudden the appellant has caused injury. Learned counsel further argued that the appellant is in custody since 2012.
9. On the other hand, learned Panel Lawyer for the respondent/State opposed the appeal and argued that evidence of child witnesses Ku.Gayatri (PW-2) and Ku.Rekha Dewangan (PW-3) are sufficient for proving the guilt of the appellant. The appellant has used full force and caused fatal injury by iron rod. Causing multiple fractures of bones of scalp that too of his mother shows his grave intention for committing murder. Even otherwise, after causing injury instead of providing immediate treatment the appellant fled from the spot which further shows his intention.
10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.
11. In the present case, homicidal death of deceased Remun Bai as a result of fatal injury found over her body has not been substantially disputed on behalf of the appellant, on the other hand, same is also established by the evidence of child witnesses Ku.Gayatri (PW-2) and Ku.Rekha Dewangan (PW-3), merg Ex.P/2, F.I.R. Ex.P/3, evidence of Dr.A.K.Singh (PW-7), MLC report Ex.P/16, evidence of Dr.S.Paikra (PW-8) and autopsy report Ex.P/18. Death of deceased Remun Bai was homicidal in nature.
12. As regards the complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of child witnesses Ku.Gayatri (PW-2) and Ku.Rekha Dewangan (PW-3). They are child witnesses. After satisfying it that they were able to answer the questions rationally the Court has examined them. In their detailed evidence, they have clearly deposed that deceased Remun Bai was present in her house, the appellant came at the time of incident, he demanded money for hen, which

was refused by Remun Bai, then the deceased told that he is having hen and directed to use the same on second day, at that time, the appellant annoyed and went towards kitchen garden, he came out with some weapon and caused fatal injury upon the head of the deceased, the deceased fell down and thereafter the appellant fled from the spot.

13. Defence has cross-examined these witnesses at length, but has not been able to elicit anything in their cross-examinations to discredit their testimonies to the extent that the appellant did not go towards kitchen garden, did not come with weapon and did not cause injury. As per evidence of Dr.S.Paikra (PW-8), there was fracture of scalp bone from left ear to right ear, which shows that head was completely crushed and also shows that the appellant has applied full force while causing such fatal injury. This evidence is sufficient for proving the fact that the appellant has caused homicidal death of the deceased.
14. As regards the question of motive, in case of direct evidence, question of motive loses its importance. Even otherwise, motive is aid in criminality and it can be inferred from the kind of weapon used, part of body effected and nature of injury and other circumstances.
15. In the present case, the appellant has applied full force and caused fatal injury upon the head of the deceased i.e. his mother by rod. Most of the scalp bones have been broken by such injury. Virtually it was crushed injury. The appellant has not taken the weapon from the spot, but he went towards kitchen garden, he took out the weapon, came to the spot and thereafter he assaulted. It shows the grave intention of the appellant for causing homicidal death amounting to murder of his mother.
16. Considering the aforesaid fact, by convicting and sentencing the appellant the trial Court has not committed any illegality.
17. On close scrutiny of the evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
18. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

**JUDGE**

**JUDGE**