

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2085 of 2000**

Deodhar Bada, Aged about 23 years, S/o Bhauwa Uraon R/o Maheshpur,
PS. Darima, District Surguja, Madhya Pradesh (Now Chhattisgarh)

---- Appellant**Versus**

The State of Madhya Pradesh (Now Chhattisgarh).

---- Respondent

For Appellant	: Shri R.N.Jha, Advocate.
For Respondent	: Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Sanjay K. Agrawal J.****Judgment on Board****Per Deepak Gupta, Chief Justice****28/06/2016**

1. This appeal by the accused is directed against the judgment dated 31.07.2000 passed by the learned 1st Additional Sessions Judge, Ambikapur (Surguja) in Sessions Trial No. 408 of 1999. Vide the said judgment, the accused has been convicted of having committed an offence punishable under Section 302 Indian Penal Code (for short 'the IPC') and sentenced to undergo rigorous imprisonment for life.

2. The prosecution story, briefly stated, is that on the night of 07.11.1999, the Appellant went to the house of the deceased-Sukhram where an altercation took place between the Appellant/accused and Sukhram over some issue. The Appellant got enraged and threw a stone on the stomach of Sukhram. Thereafter, he ran away to his own house. Sukhram complained of pain and his abdomen developed a swelling. Next morning, PW-7, Foolaso Bai, wife of the deceased went to the house of PW-1, Jeevan Sai and informed him that her husband's abdomen had swollen. Jeevan Sai went to the house of Sukhram and Sukhram

told him that he had received injury at the hand of the Appellant/accused. Thereafter, the son of Sukhram arranged a vehicle for taking him to the hospital, but unfortunately, he succumbed to the injuries before he could reach the hospital.

3. PW-7, Foolaso Bai is the star witness of the prosecution. She states that she and her son were at home alongwith her husband Sukhram. She was preparing meals for her husband. At that time, the Appellant came. He was armed with a big stone and he threw the stone at her husband. The stone hit her husband on the chest, but the Court has recorded that the witness pointed her hand to the area between chest and stomach. Therefore, it appears that the stone hit the abdominal area. Her husband was injured and was lying down. Rest of her version is similar to what has already been mentioned hereinabove. In cross examination, she admitted the suggestion that her husband died within 10-15 minutes of the injury by the stone.

4. Jeevan Sai (PW-1) has not supported the prosecution case. Despite that fact, he was not declared hostile. Mano Bai (PW-2), Basant Ram (PW-3) and Jeet Ram (PW-4) have not supported the prosecution case and have been declared hostile. Dr. R.N.Gupta (PW-5) is the doctor who has conducted the postmortem. He opined that the death occurred due to rupture of spleen which caused excessive bleeding. Ram Nath (PW-6) is the cousin of the deceased. He states that his aunt came to his house and informed him that his cousin Sukhram and accused had an altercation. Thereafter, he visited to the house of Sukhram and he found that Sukhram was lying with an injury on his stomach. Sukhram informed him that the Appellant had given him a blow with a stone on his stomach. Even if the statement of these two witnesses is believed, all that is proved is that some altercation took place and in that altercation, the Appellant gave a blow with a stone on the stomach of Sukhram. That was not the direct cause of death but that blow caused rupture of the spleen and this resulted in death of Sukhram.

5. One blow with a stone, that too as a result of some altercation which suddenly took place, does not prove the intention to kill the deceased. It also does not prove that the deceased had knowledge that this act was such an act which would cause death of the deceased in all probability. This offence would not fall within the ambit of Section 302 IPC and at best it would be an offence under Section 304 Part II IPC because the knowledge can be attributed to the accused that if he used a heavy stone against stomach, it may cause death. The stone was 1 ½ Kg and it was a big stone. Therefore, in our opinion, the offence would be under second part of Section 304 IPC.

6. The Appellant has already undergone more than 5 ½ years imprisonment. The occurrence took place more than 16 years back and it would not be in the interest of justice to send the Appellant back to jail after he was released on bail for such a long time.

7. In view of the above discussion, the appeal is partly allowed. The conviction of the Appellant is altered from Section 302 IPC to one under Section 304 Part II IPC and the sentence is reduced to the period of incarceration already undergone.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay K. Agrawal)
JUDGE