

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 363 of 2011**

Hari Lal S/o Ballu Baiga, aged 30 years, R/o village Karwan, P.S.
Janakpur, Distt. Korea (CG)

---- Appellant**Versus**

State of Chhattisgarh, through P.S. Janakpur, Distt. Korea (CG)

---- Respondent

For appellant	:	Mr. Manoj Mishra, Adv.
For Respondent/State	:	Mr. Arvind Dubey, Panel Lawyer.

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

C A V Judgment**Per Chandra Bhushan Bajpai, J****17/02/2016**

1. This appeal arises out of the judgment of conviction and order of sentence dated 31-3-2011 passed by the 2nd Additional Sessions Judge, Manendragarh Distt. Korea in S.T. No. 59/2010 convicting the appellant under Section 302 of IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo additional RI for 3 months.
2. Brief facts of the case are that on 24-4-2010 there was a contention between the appellant and Dalbir on account of some proposal of marriage. During contention and dispute, the appellant assaulted Dalbir and caused injuries by a club. Dalbir sustained injuries over his head and also on his testicles. The incident was seen by P.W. 3 Hirondia Bai and P.W. 8 Sumitra Bai. As there was none to help, injured Dalbir could not be taken to hospital or no information could be given to the police. On 25-4-2010 at about 12.00 noon Dalbir succumbed to his injuries. On same day, P.W. 3 Hirondia Bai, wife of the deceased reached to police station Janakpur and lodged Merg intimation Ex. P-4. Police also recorded FIR at the same time vide Ex. P-3 under Section 302, IPC against the appellant. After giving inquest notice Ex. P-1 to witnesses, police conducted inquest Ex. P-2 and the dead body was sent for post mortem. On 26-4-2010 at about 11.50 am, P.W. 9 Dr. Manoharlal conducted autopsy and found following

symptom/injuries:-

- i. One contusion over right side of skull present. On dissection there was fracture in parietal bone of right side about 3 cm x ½ cm in size in which hematoma present.
- ii. One contusion over right scapular region about 5 cm x 1 cm in size which was blackish in colour, situated obliquely.
- iii. One contusion over right flank of back of abdomen about 5 ½ cm x 1 cm in size which was blackish in colour, situated obliquely.
- iv. One contusion over in front of right knee joint about 2 ½ cm x 1 cm in size blackish in colour which horizontally situated.
- v. Fecal material comes out.

The autopsy surgeon opined that cause of death was head injury due to fracture in right parietal bone of right side in which hematoma present. Mode of death was homicidal in nature.

3. During investigation, police seized a bamboo stick vide Ex. P-8 on the basis of disclosure statement of accused/appellant Ex. P-7. After investigation charge sheet was filed against the accused/appellant under Section 302 of the IPC before the Judicial Magistrate First Class, Janakpur who in turn committed the case to the court of Sessions, Korea. Learned Second Additional Sessions Judge received the case on transfer and conducted the trial. During trial charge was framed under Section 302, IPC.
4. So as to hold the accused/appellant guilty, prosecution examined as many as 12 witnesses. Statement of the accused/appellant was recorded under Section 313, Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. No defence witness is examined on behalf of the appellant.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, convicted and sentenced the accused/appellant by the impugned judgment as mentioned in para 1 of this judgment.
6. Learned counsel for the appellant submitted that P.W. 3 Hirondia Bai,

wife of the deceased has admitted that she had not seen the incident. She reached to the spot after the incident and lifted her husband. This witness has turned hostile. P.W. 8 Sumitra Bai, alleged eye-witness has also turned hostile. She has also admitted that she had not seen the actual incident. Both of the witnesses have not supported the prosecution case and their statements do not inspire confidence. He further submits that since there is no FSL report adduced by the prosecution during trial, the seizure of a bamboo stick loses its relevance and on the basis of said seizure and memorandum, the appellant cannot be held guilty. The prosecution has failed to prove the guilt against the accused/appellant, therefore, he may be acquitted of the charges.

7. On the other hand, supporting the impugned judgment, learned counsel for the State argued that the judgment passed by the court below is well founded. P.W. 3 Hirondia Bai and P.W. 8 Sumitra Bai have supported the prosecution case. Immediately after death of the deceased, merg Ex. P-4 and FIR Ex. P-3 were lodged. Evidence of eye-witnesses is also supported by P.W. 1 Ramsaroj before whom the appellant made extra judicial confession regarding his guilt. There is no reason for false implication of the accused. Therefore, there is no scope for interference in the impugned judgment.
8. Heard learned counsel for the parties and perused the record.
9. P.W. 1 Ramsaroj, village Kotwar has stated that the accused/appellant had told him that the deceased was making dispute with his wife and thereafter he and the deceased quarreled and he assaulted Dalbir. When this witness reached to the spot, he was lying injured in his courtyard. During cross-examination, this witness has remained very firm regarding extra judicial confession made by the appellant. P.W. 2 Rambhajan is a hearsay witness. After receiving information, he reached to the spot and saw the injured in his house. The witness has turned hostile.
10. P.W. 3 Hirondia Bai is wife of the deceased. As per this witness, she saw the appellant assaulting her husband inside the courtyard and she intervened. She also saw her husband injured. She has also admitted presence of P.W. 8 Sumitra Bai. She has further stated that

after the incident she lifted her husband and took him to the house. On being asked as to whether she had seen her husband beating, she has denied this fact. P.W. 3 is also lodger of FIR Ex. P-3 before the police. During cross-examination, this witness has also remained firm regarding the incident. P.W. 4 Bhaiyalal is a witness of inquest Ex. P-2. P.W. 5 Shanti is daughter of the deceased. She was informed regarding the incident by P.W. 2 Rambhajan. She reached to the spot and noticed injuries over the body of her father. P.W. 6 Fabiyanush Ekka, Revenue Inspector has prepared spot map Ex. P-6. P.W. 7 Ramu is a witness of memorandum Ex. P-7 and seizure of bamboo stick Ex. P-8. He has denied the seizure and memorandum but has admitted his signatures in those documents. P.W. 8 Sumitra Bai is also a witness to the incident. She has turned hostile and in cross-examination she has admitted that she had not seen the appellant beating. As per this witness, the appellant also returned along with with her and P.W. 3 Hirondia Bai. P.W. 9 Dr. Manoharlal is the autopsy surgeon who conducted autopsy and noticed following injuries/symptoms :

- i. One contusion over right side of skull present. On dissection there was fracture in parietal bone of right side about 3 cm x ½ cm in size in which hematoma present.
- ii. One contusion over right scapular region about 5 cm x 1 cm in size which was blackish in colour, situated obliquely.
- lii. One contusion over right flank of back of abdomen about 5 ½ cm x 1 cm in size which was blackish in colour, situated obliquely.
- iv. One contusion over in front of right knee joint about 2 ½ cm x 1 cm in size blackish in colour which horizontally situated.
- v. Fecal material comes out.

The autopsy surgeon opined that cause of death is head injury due to fracture in right parietal bone of right side in which hematoma present. Mode of death was homicidal in nature. He also examined seized stick and opined that the head injury could be caused by seized article vide Ex. P-11-A. P.W. 10 Raj Kumar Patel conducted initial investigation and has supported the prosecution. P.W. 11 Mh. Rafiq Khan is a

witness of memorandum and seizure and has duly supported the same. P.W. 12 C. Lakda has conducted investigation and duly supported the prosecution case.

11. Minute examination of the evidence makes it clear that the accused/appellant made extra judicial contention before P.W. 1 Ramsaroj, the village Kotwar about commission of the crime. There is no reason to disbelieve this circumstance. P.W. 3 Hirondia Bai, wife of the deceased has also remained very firm that she saw the appellant beating her husband in the courtyard. This statement was not categorically denied or changed during cross-examination. Though this witness has admitted in para 1 that at the time of incident she was inside the house and then she came to the spot and saw her husband lying but there is no denial by this witness that the appellant had not caused injury to the deceased. On being asked by the Court as to whether she saw her husband beating, she denied and stated that she had not seen her husband beating. P.W. 8 Sumitra Bai has not supported the prosecution case and has been declared hostile. She has stated in her cross-examination that she had not seen the appellant assaulting the deceased but so far as the statements of P.W. 1 village kotwar and P.W. 3 are concerned, they have supported each other. Statement of P.W. 3 Hirondia Bai is further corroborated by post mortem report Ex. P-10-A whereby the doctor noticed contusions over the body including fracture in the parietal bone of the right side and also noticed hamotoma present. As per doctor's opinion, the injuries were grievous in nature, dangerous to life caused by hard, blunt and rough object. At the instance of the accused/appellant, a bamboo club was seized. Though there is no FSL report, but as per statement of doctor in his query report, the concerned injury could be caused by the seized article. Considering the entire evidence including statement of the witnesses it is clear that it was the accused/appellant who killed deceased Dalbir by a hard, blunt and rough object i.e. bamboo stick.
12. Now the next question for consideration before this court is whether the act of the appellant would fall under any of the exceptions to Section 300, IPC. From the medical report of the deceased, the deceased sustained as many as 6 injuries including fracture on vital

part of the body resulting in his death. There is no explanation offered by the appellant in his statement under Section 313, Cr.P.C. and no suggestion was given to the witnesses in this regard. Looking to the nature of injuries found over the body of the deceased, the incident is not covered under Section 304 part I or II of the IPC and the trial Court has rightly convicted the accused/appellant under Section 302, IPC and there is no scope of any interference in this regard.

13. In the result, the appeal being sans substance deserves to be and is hereby dismissed.
14. The appellant is reported to be in jail. He be kept inside the jail till completion of sentence imposed upon him.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge