

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1294 of 2002**

Sohan Gond S/o Pahari Gond, Aged 35 years, Occupation Agriculture, Resident of village Songara, PS Pratappur, Chowki Bhatgaon, District Surguja, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station Pratappur, District Surguja, Chhattisgarh

---- Respondent

For Appellant : Neeraj Mehta, Advocate.
For Respondent/State : Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****16/11/2016**

1. This appeal by the convicted Accused/Appellant is directed against the judgment dated 31.10.2002 delivered by the learned Additional Sessions Judge, Surajpur, District Surguja, in Sessions Trial No. 59 of 2002 whereby he convicted the Accused/Appellant for having committed an offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs. 500/-. In default of payment of fine, the Appellant was required to undergo further rigorous imprisonment for two months.
2. The prosecution story, briefly stated is that on 13.01.2001 at about 7:00 am, the deceased-Sundar Gond was doing fencing work in his fields. At that time, the Accused/Appellant came armed with a *Tangiya* (Axe) and gave one blow with a *Tangiya* on the middle part of the head of the deceased. The deceased was taken to the Primary Health Center, Songara where he was administered first aid. Thereafter, he was referred to the District Hospital, Ambikapur. The deceased died eight days after the date of incident.

3. The first information regarding occurrence was given vide Exhibit P/9 which is an unregistered FIR and on the basis of the same, FIR (Exhibit P/10) was recorded. After recording of the FIR, the matter was investigated and the Accused-Appellant was charged for having committed murder of Sundar Gond. He pleaded not guilty to the charge and prayed for trial. After evidence was recorded, the learned trial Court found the Accused-Appellant guilty of having committed an offence of murder and sentenced him as aforesaid. Hence, this appeal.

4. We have heard learned counsel for the Accused-Appellant, learned counsel for the State and have also carefully gone through the records.

5. At the outset, we may notice that there are five eyewitnesses to the occurrence and all of them have clearly stated that the Accused/Appellant gave blow with a *Tangiya* on the head of the deceased. There is virtually no proper cross-examination of these witnesses. One of the suggestion put to these witnesses is that the Accused/Appellant was of unsound mind. The second part of the cross-examination is that the deceased fell down from the tree and sustained injuries.

6. We have carefully gone through the statements of all the eyewitnesses. They are all rustic villagers. These eyewitnesses in their cross-examination have clearly admitted that the Accused/Appellant belongs to their neighbourhood. They have also stated that there was no enmity between the deceased and the Accused/Appellant. They have further stated that there was no motive for the Accused/Appellant to kill the deceased. This shows that they are honest witnesses and we feel that we can place reliance on the testimony of these truthful witnesses. We therefore believe their statement that the blow with a *Tangiya* was given by the Accused/Appellant in the middle of the head of the deceased.

7. Shri Mehta, learned counsel appearing for the Accused/Appellant has mainly argued that no offence under Section 300 IPC is made out. According to him, the Accused/Appellant had no motive or intention to kill the deceased as is the case set out by the witnesses *i.e.* the sons, widow and other relatives of the deceased. He further submits that there is only one blow given with the *Tangiya* and in such a case, the conviction of the Accused/Appellant should have been under Section 304 IPC and not under Section 302 IPC.

8. Culpable homicide has been defined in Section 299 IPC which reads as under:

"299. Culpable homicide. - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Therefore, even when any person commits an act with the knowledge that it is likely to be such act which would cause death of the person, he commits an offence of culpable homicide within the meaning of Section 299 IPC.

9. The issue that arises is whether this culpable homicide falls within the definition of murder as defined in Section 300 IPC or not. We will only deal with clause *fourthly* of Section 300 IPC which reads as follows:

"*Fourthly*. - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

10. In case we find that the act committed by the Accused/Appellant falls within the ambit of clause *fourthly*, then we have to uphold the conviction, otherwise not. From the facts available on record, it is apparent that the Accused/Appellant came to the field of the deceased where he was doing the work of fencing. He came armed with a *Tangiya*. He gave a blow with the *Tangiya* on the head of the

deceased. No doubt, he gave only one blow on the head of the deceased, but the blow was given right in the middle part of the head and it was given with so much force that the skull was fractured. Therefore, we are of the view that we can attribute to the Accused the knowledge that he was causing such an injury which in all likelihood would cause death. No case has been made out as to how the Accused/Appellant had any excuse for causing injury. No defence has been set out that any altercation took place and this was done in a heat of the moment. No suggestion has been put to any of the five witnesses with regard to any excuse on behalf of the Accused/Appellant. It appears that at that time, the main defence taken was that the Accused/Appellant was insane or that the deceased had fallen down from the tree. As far as insanity is concerned, the law is well settled that the Accused who pleads any one of the exceptions including the plea of insanity under Section 84 IPC, has to lead evidence to prove the same. No evidence of any sort has been led in this regard.

11. In view of the above discussion, we are unable to allow the appeal of the Accused/Appellant. The appeal is dismissed. The bail bonds of the Appellant are cancelled and he is directed to surrender forthwith or be taken into custody for serving out the remaining period of sentence.

12. This Court records appreciation of Shri Neeraj Mehta, Advocate for rendering valuable assistance in this case.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE