

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 360 of 2011**

Jaldhari Gond S/o. Late Shri Amarsai Gond aged about 50 years, caste Gond,
 occupation Agriculture, R/o. Vill. Badoli, P.S. Rajpur, Distt. Sarguja (C.G.)

---- Appellant**Versus**

State Of Chhattisgarh, through the Police Station Rajpur, Distt. Sarguja (CG)

---- Respondent

For appellant	: Mr. Jitendra Shrivastava, Advocate.
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****25/01/2016**

1. This appeal arises out of judgment of conviction and order of sentence dated 27-1-2011 passed by the Sessions Judge, Sarguja (Ambikapur) in S.T. No. 35/2010 convicting the accused/appellant under Section 302 of the IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs. 2000/-, in default of payment of fine, to further undergo additional RI for 6 months.
2. In the present case, name of the deceased is Amarsai, father of the appellant. On 19-10-2009 at about 8.25 pm, brother of the appellant Ramjitram Gond (P.W. 2) reached to Police Station Rajpur, Distt. Sarguja and informed that on 19-10-2009 at about 5.00 pm his neighbour P.W. 5 Darbariram informed him that on account of some dispute, the appellant assaulted his father Amarsai by club over his head and thereby killed his father. Rajpur police recorded merged intimation as Ex. P-8 and immediately thereafter at about 8.30 pm police also recorded FIR Ex. P-7 under Section 302, IPC against the accused/appellant. Police registered Crime No. 161/2009. After giving notice Ex. P-1 to witnesses, police conducted inquest vide Ex. P-2. Thereafter the body was sent for post mortem. P.W. 7 Dr. Rajesh Bhajgawali conducted autopsy and found one lacerated wound size 5 x 1 cm over occipital region (left side). The autopsy surgeon opined that the cause of death is intra cranial hemorrhage and nature of death is

homicidal. During investigation police seized a saal log and also blood stained and plain soil vide Ex. P-3 and prepared spot map vide Ex. P-6. Seized articles were sent to FSL for examination. As per FSL report Ex. P-18, blood was found over wooden log and clothes of the deceased.

3. After investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly charge was framed against him.
4. So as to hold the accused/appellant guilty, prosecution examined 7 witnesses in all. Statement of the accused/appellant was also 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. Accused has not examined any witness in his defence.
5. Trial Court after hearing learned 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.
6. Learned counsel for the appellant submits that the eye-witness P.W. 4 Simati Gond, niece of the appellant has denied in her cross-examination that she saw the appellant assaulting the deceased. The body was found outside the house in street. The autopsy surgeon P.W. 7 Dr. Rajesh Bhajgawali noticed smell of alcohol coming from the stomach. As per P.W. 2 Ramjit, brother of the accused/appellant also, the appellant consumed excessive liquor and was under intoxication. Only one injury was noticed over the body of the deceased. The prosecution has failed to prove its case against the accused/appellant beyond reasonable doubt. Statements of the witnesses do not inspire confidence and no one saw the appellant assaulting the deceased. Hence it is argued that the appellant be acquitted of the charge. In alternate, it is argued that as there was no knowledge to cause death, at the best, the appellant may be convicted under Section 304-I or 304-II, IPC.
7. On the other hand, supporting the impugned judgment, learned counsel for the State submitted that the judgment is well founded. The prosecution has proved that it is the appellant only who has killed his father. Act of the accused/appellant definitely falls under Section 302, IPC and not under Section 304-I or 304-II, IPC. The trial court was fully justified in convicting and sentencing the appellant under Section 302, IPC. There is no illegality or infirmity in the impugned judgment warranting interference by this Court.

8. Heard learned learned counsel for the parties and perused the material available on record.
9. P.W. 1 Rajkumar has deposed that he saw the dead body of the deceased in front of the house of the accused. He also noticed blood on earth. He is a witness of inquest Ex. P-2 and also seizure of soil Ex. P-3. Though this witness has turned hostile but admitted his signature on seizure memo. P.W. 2 Ramjit, brother of the appellant has stated that he was informed by his neighbour P.W. 5 Darbarilal regarding the incident. He saw his father Amarsai dead and lying near the door of accused appellant. He also saw the accused / appellant inside the house and there was no other person in the house. His father was living in the house of the accused/appellant for about last 3 days. He noticed the appellant in intoxicated condition. Upon receiving information, police came and entered into the house of the accused/ appellant and thereafter they had taken him to police station. This witness also lodged FIR Ex. P-7 and Merg Ex. P-8. He is also witness of spot map Ex. P-6. He has further stated that club was lying over the roof of the house of the accused/appellant and the police seized said club. P.W. 3 Jungal Singh reached to the spot after hearing cries and saw the dead body of Amarsai and accused appellant sitting outside the house and then seeing him the accused entered into his house. He also noticed P.W. 4 Simati Gond present on the spot. As per this witness, accused /appellant was in his house.
10. P.W. 4 Simati Gond, niece of the appellant, has stated that accused/ appellant assaulted the deceased in the evening by club over his head. When Amarsai cried, she reached to the spot and saw Amarsai lying on the ground. She also saw accused/appellant in the house. When she screamed as to who assaulted the deceased, the accused/appellant came out of the house and said that he would beat Amar Sai again. Then she snatched the club from the accused/appellant, thereafter again the accused /appellant went inside his house. Darbari Ram also came to the spot and thereafter he went to call her father and other family members. When her father and other family members came to the spot they saw Amarsai dead. Though in cross-examination this witness has stated that she had not seen the accused/appellant assaulting Amarsai but she remained very firm regarding other part of her evidence and there is nothing which could be elicited from her statement as to discredit the facts narrated by her in the examination-in-chief.
11. P.W. 5 Darbari Ram, neighbour of the appellant has stated that he saw the

dead body of deceased Amarsai out side the gate of the house of the accused/appellant and blood was oozing from his head and thereafter he went towards field to inform brother of the accused/appellant. This witness has also stated that prior to the day when Amarsai was killed, he was residing with the accused/appellant. Wife of the accused had gone to field and the accused was all alone in the house. In cross-examination, this witnesses has remained very firm about the statement he made in examination-in-chief and supported the facts that he saw the deceased lying near door outside the house of the accused/appellant and blood was oozing from the head. The witness has further supported statement of other witnesses that prior to 2-3 days of the incident, the deceased was residing along with the appellant and when Amarsai died, only accused and the deceased were present in the house. P.W. 6 Chatur Singh, is investigating Officer and has supported the investigation.

12. P.W. 7 Dr. Rajesh Bhajgawali is autopsy surgeon and has opined that cause of death is coma due to intra cranial hemorrhage and nature of death is homicidal. The doctor has categorically denied that the injuries noticed over the head of the deceased may occur on falling on hard surface.
13. Minute examination of the evidence makes it clear that since 2 or 3 days prior to the incident, deceased Amarsai was residing with the accused/appellant in his house. At the time of incident, only the accused/appellant was present in the house along with the deceased. The witness saw the dead body of Amarsai just outside the door of house of appellant. The witnesses saw the appellant sitting out side the house and when the witnesses reached to the spot, the appellant again went inside his house and remained till police came and took him to police station. P.W. 4 Simati Gond though has not witnessed the actual incident but she has remained very firm in cross-examination that when she screamed as to who assaulted, the appellant came out of his house and told that he would again beat Amarsai and at that time he was keeping a club with him. Then this witness snatched the club from his hand. Thereafter again the accused went inside the house. The above facts go to show that it was accused/appellant only who killed his father Amarsai. Though no specific motive is surfaced in the statements of the witnesses but as per prosecution story on account of partition dispute, the accused/appellant has killed his father. Even other wise, motive is just an aid in the criminality. In our considered opinion, it is the appellant who killed his father by club. The prosecution has proved its case beyond all probable doubt.

14. Now the next question for consideration before this court, is that the act of the appellant would fall under which offence. From the autopsy report, it is clear that there was only one assault by club on the head. The accused was having club in his hand. The deceased was aged about 70 years. The accused had opportunity to inflict number of injuries but he did not. The evidence available on record makes it clear that there was no pre-meditation on the part of the accused/appellant to cause death of the deceased. It appears that the incident took place in a sudden fight in a heat of passion upon a sudden quarrel between the parties. Considering this aspect of this the matter, in our considered opinion the act of the appellant is covered under Exception 4 of Section 300, IPC i.e. culpable homicide not amounting to murder.
15. Now the next question for consideration would be whether the act of the appellant is covered under Section 304-I or 304-II of IPC. From medical report, it is apparent that only one injury was caused by the accused on vital part of the body causing fracture of occipital parietal bone of the deceased resulting in instantaneous death. Thus considering the medical evidence, it is clear that the accused/appellant had intention to cause such bodily injury as is likely to cause his death as such the offence committed by the appellant is punishable under Section 304-I, IPC and not under Section 304-II, IPC as argued by the counsel for the appellant.
16. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302, IPC is hereby altered to Section 304-I of IPC and instead of imprisonment for life, the appellant is sentenced to undergo RI for 10 years. The fine sentence awarded by the court below is hereby affirmed.
17. 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