

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 919 of 2011**

- Somaru Ram, S/o Joga Ram, aged about 28 years, R/o village Gumda Patelpara, P.S. Gidam, Distt. Dantewada (CG)

**---- Appellant (In Jail)**

**Versus**

- State Of Chhattisgarh, through Police Station Gidam, Distt. Dantewada (CG)

**---- Respondent**

---

For Appellant:  
For Respondent:

Shri M.K. Sinha, Advocate.  
Shri Adil Minhaj, Advocate

---

**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Inder Singh Uboweja**

**Judgement**

**Per P. Diwaker, J**

**26/04/2016**

1. This appeal has been filed against the judgment of conviction and order of sentence dated 3.10.2011 passed by the Sessions Judge, South Bastar Dantewada in S.T. No.182/10 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.2,000/-, in default to undergo additional R.I. for 2 months.
2. Accused/appellant is the adopted son of deceased Madkami Paiku.
3. The prosecution story is that on the date of incident Somari Bai (PW-1) had gone to village Madse to drop her mother and accused/appellant & deceased were only present in the house. It is alleged that on the fateful day at about 11.00 p.m. the accused/appellant caused injuries on the

head of deceased by a small wooden stool (पीढा) as a result of which he died instantaneously. Sudru (PW-5) informed about the incident to Somari Bai (PW-1) who immediately came back and lodged dehati nalishi (Ex.P-10) on 2.6.2010 at 12.00 noon. Un-numbered Merg (Ex.P-11) was recorded at 12.30 p.m. and thereafter numbered Merg was recorded vide Ex.P-12 on the same day. FIR (Ex.P-1) was registered against the accused/appellant on 2.6.2010 for the offence under Section 302 IPC. Inquest on the dead body was prepared on 2.6.2010 vide Ex.P-23. Dead body was sent for post-mortem which was conducted by Dr. Suchita James (PW-7) vide Ex.P-8. The doctor conducting post-mortem examination noticed fracture of frontal & all other bones of skull and opined that cause of death was excessive haemorrhage due to aforesaid injuries and the death was homicidal in nature. After investigation, challan was filed under Section 302 IPC followed by framing of charge accordingly.

4. In order to prove complicity of accused/appellant in the crime in question, the prosecution has examined 08 witnesses. Statement of appellant under Section 313 of Cr.P.C. was also recorded in which he abjured his guilt and pleaded innocence & false implication in the case.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;
  - there is absolutely no material to connect the appellant in any manner with the murder of the deceased.
  - the deceased was habitual drunkard and therefore possibility of sustaining injuries by him on account of fall in a drunken state cannot be ruled out.
  - even if the entire prosecution case is taken as it is, at best the

accused/appellant can be held guilty under Section 304 Part-1 of the IPC and not under Section 302 of the IPC as has been done by the trial Court.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He submits that the appellant has made confessional statement before Piluram (PW-3) who has duly supported the prosecution case. He further submits that the appellant had assaulted the deceased in inhuman manner causing multiple fractures in his skull which shows his grave intention of committing murder of the deceased and therefore he does not deserve any leniency.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Smt. Somari Bai (PW-1) is the mother of accused/appellant and wife of the deceased. She has stated that on the date of incident she had gone to her parents house where Sudru (PW-5) came and informed her that accused/appellant had killed her husband. She has further stated that when she reached her house, she found the body of deceased lying in the verandah. Thereafter she lodged the report of incident in the police station. In the cross-examination she has denied the suggestion that the deceased was habitual drunkard and used to quarrel after consuming liquor. However, she admits that her husband used to drink liquor occasionally.
10. Sukhram (PW-2) is the witness who reached the spot on being informed about the incident by Pilukumar (PW-3) and saw the body lying in the courtyard.
11. Piluram (PW-3) is the witness of extra-judicial confession made by

accused/appellant. This witness has stated that on the date of incident accused/appellant came to his house and informed that he has killed the deceased. Thereafter he visited the house of the deceased and saw his body lying in the verandah. In the cross-examination this witness remained very firm.

12. Bhusku Kawasi (PW-4) & Gopiram (PW-6) are the witnesses of memorandum (Ex.P-3) & seizure memo (Ex.P-5). These witnesses have not supported the prosecution case and turned hostile, however, they have admitted his signature over the aforesaid documents.
13. Suduru (PW-5) is the witness who after coming to know about the incident through Sukhram (PW-2) & Piluram (PW-3) had informed about the same to Smt. Somari Bai (PW-1).
14. Dr. Suchita James (PW-7) is the witness who conducted post-mortem examination on the body of deceased and gave her report Ex.P-8. According to this witness, she noticed multiple fracture injuries in the skull of the deceased and opined the cause of death as excessive bleeding from the said injuries and the death was homicidal in nature. The query as to whether the injuries present on the skull of deceased could be caused by the small wooden stool (पीढा) produced before her for examination, has been answered by this witness in the affirmative.
15. Ramadheen Kurre (PW-8) is the Investigating Officer and he has duly supported the prosecution case.
16. Close scrutiny of the evidence available on record, makes it clear that accused/appellant, deceased & Smt. Somari Bai (PW-3) were residing under the same roof and at the relevant time said Smt. Somari Bai (PW-3) had gone to her parental home to drop her mother. Thus on the date of incident it is the accused/appellant who alone was present with the

deceased in the house. Body of the deceased was found in the house and according to post-mortem report (Ex.P-8), injuries present on the body of the deceased were ante mortem in nature, caused by hard & blunt object and the death was homicidal in nature. Thus once the death is proved to be homicidal, the accused/appellant must have come forward with a plausible explanation as to how it occurred because apart from him there was no third person in the house at the relevant time, but he failed to do so. It has time and again been said by the Apex Court that failure of accused to explain incriminating circumstances appearing against him or giving false answer in examination under Section 313 Cr.P.C. provides missing link in chain of circumstances.

Another strong piece of evidence against the accused/appellant is the confessional statement made by him before Piluram (PW-3) who had stated in categorical terms that the accused/appellant came to him and confessed that he had killed the deceased. Furthermore, at the instance of accused/appellant, one bloodstained small wooden stool (पीढा) was seized from his possession and there is no explanation from him in his statement recorded under Section 161 Cr.P.C. as to how the blood stains are there in the wooden stool seized from him. According to the medical evidence also, injuries to the deceased were caused by hard & blunt object and as per query report (Ex.P-9), the injuries found on the body of deceased could have been caused by the wooden stool seized at the instance of accused/appellant. Thus, on the basis of evidence adduced by the prosecution, the complicity of accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

17. We find no substance in the argument of counsel for the accused/appellant that in the facts & circumstances of case the accused/appellant is liable to be held guilty under Section 304 Part-I or II IPC.

The manner in which offence is said to have been committed, weapon of offence i.e. wooden stool (पीढा), the part of body on which assaults were made i.e. skull, and the force with which the assaults were made causing fractures of frontal and all other bones of the skull leading to his instantaneous death, it is evident that the accused/appellant had not only intention to cause death of the deceased but every knowledge that the injuries being inflicted by him on the deceased were sure to result in his death.

18. In the result, the appeal being without any substance is liable to be and is accordingly dismissed.

Sd  
(Pritinker Diwaker)  
Judge

Sd/-  
(I.S. Uboweja)  
Judge

roshan/-