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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 2499 of 1998. Single Bench (Criminal)

ADOL son of Sulaiman Lakda, aged about 27 years,
Isai, Cultivator, resident of Mohalla Matloo Toli,
Gram Hardand, P.S. : Kasabel, District: Jashpur Nagar,
M.P., at present in Jail.

APPELLANT

VERSUS

The State of M.P. ...

RESPONDENT

APPEAL UNDER SECTION 374(2) OF CR.P.C.



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 2499 of 1998**

Adol

---- Appellant

Versus

State Of M.P. (Now C.G.)

---- Respondent

For Appellant : Mr. J.K.Saxena, Advocate

For State/Respondent : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****25.09.2017**

1. This appeal is against the judgment of conviction dated 16.10.1998 passed by the learned Additional Sessions Judge, Jashpur Nagar, in Sessions Trial No.126/98 whereby the appellant has been convicted under Section 304 (II) of I.P.C. and sentenced to undergo 5 years R.I. and fine of Rs.5000/-, in default of payment of fine amount, 1 year & 3 months S.I. was ordered.
2. The brief facts of the prosecution case is that on 22.05.1998, the uncle of the appellant namely Benedik Lakda when was going towards his house alongwith cattle, he overheard the conversation in between the appellant Adol with his father namely Suleman as some quarrel on top of the high voice was going in between them. Thereafter, when he saw inside, he saw that the father of the appellant Suleman was lying on the floor and the appellant was holding a wooden Club and was standing nearby. Having asked the appellant, what he has done, why he has beaten his father, he did not answer. Subsequently, Suleman was found to be dead and the villagers were also informed. Having asked the reason, it was disclosed by the wife of the appellant that the deceased Suleman has

kicked the food, which was kept in the Plate (Thali) whereby the incident triggered. The report was made subsequently on 23.05.1998. The FIR was lodged by Ex.P-8 and the merg was recorded by Ex.P-3. Subsequently, during investigation, it reveals that over drinking of liquor, quarrel in between the appellant and his father the deceased took place and when the food was served to Suleman in the *Thali*, he kicked it, thereafter, the issue aggravated. Subsequently, the appellant/accused has given a blow by a Club on the head of his father whereby he died.

3. The prosecution, after investigation, filed the charge sheet before the Court under Section 302 of I.P.C. During the course of trial, the appellant/accused abjured the guilt and claimed to be tried and the prosecution on their behalf had examined Benedik Lakda who was lodger of the FIR as PW-1; Hilariyus Tirkey who was uncle of the accused as PW-2; Jaysingh, the Kotwar of the village as PW-3; Narayan Singh, Patwari of the village as PW-4; Ganesh Prasad, Headmaster of the school as PW-5; Doctor Ashok Kumar Shanyal who conducted the post mortem as PW-6 and I.O. Balbir Singh Rajput as PW-7. The trial Court, after evaluating the entire evidence on record, convicted the accused under Section 304 Part-II of I.P.C. and sentenced as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would submit that the deceased after consuming the liquor himself fell to the ground and he sustained injury. It is not a case that the accused has confessed before the witness about the incident that he has committed the offence. It was the witness who uttered the fact and suggested of such killing and on that basis the trial Court has erroneously come to the finding that the extra judicial confession was made. He further submits that there is no

eye-witness to the incident, consequently the conviction which is passed is on the basis of no evidence, which requires to be set aside.

5. Per contra, learned State counsel supports the judgment and would submit that the order is well merited, which do not call for any interference.
6. I have heard learned counsel for the parties at length and perused the record of the Court below.
7. The FIR in this case was lodged by the uncle of the accused PW-1 Benedik Lakda. Narrating the incident, he stated that while he was coming back to his house, he saw that Suleman, father of the appellant, was lying dead and no injury was seen, his son, the appellant, was roaming here & there; therefore, he presumed that the appellant might have killed his father. This witness was declared hostile while he was cross-examined, he affirmed the FIR, Ex.P-1. Reading of the FIR would show that it was lodged on 23.05.1998 at morning 6:30 wherein he stated that he heard the conversation in between the appellant/accused and his father Suleman and the conversation was that despite the fact he asked to restrain certain things but he did not hear, thereafter, he saw that Suleman was lying on the floor and the appellant/son was standing there with a Club in his hand. Subsequently, Suleman died. The FIR further indicates that his daughter-in-law has disclosed that on account of giving a kick to a food plate, quarrel in between father and son started, therefore, the statement of this witness would indicate that there has been some altercation took place and this witness was in the crime seen immediately before and after the incident and before the incident he heard the conversation of dispute between father and son has the relevancy. Subsequently, it is found that the father of the applicant was lying on the floor and he died thereafter.



8. The witness PW-2, Hilariyus Tirkey, had stated that after hearing the news that Suleman has been killed by his son Adol, he went to see Suleman. He saw Suleman was lying on the floor in the courtyard, having asked the appellant why he has killed his father, the appellant said that he had only inflicted one blow out of his anger. The witness also has affirmed the seizure of the Club, which was seized from the house of the appellant and stated that Adol had handed over such Club and the memorandum & seizure was proved as Ex.P-5 & Ex.P-6. In the cross-examination, the witness stated that while the police was interrogating Adol, at that time, the other villagers were also present. The witness further stated that before the police, he has not disclosed the fact that he has killed his father, thereby the reading of the examination chief and the cross-examination would show that while the police was interrogating, the appellant had not disclosed anything with respect to the extra judicial confession. The confession was made individually while the police was absent. The similar statement is made by PW-3, Jaysingh, Kotwar of the village and PW-5, Ganesh Prasad, Headmaster. The witness PW-5, Ganesh Prasad, had stated that on the day itself on 22.05.1998 while he reached back to his village, the appellant Adol came there and called Kotwar Jaysingh. Jaysingh in such response asked Adol to come to them and told him that whatever he wants to state, he may state himself. Thereafter the appellant had stated that he had given one blow of Club to his father whereby he has fell down and the breathing has stopped. Then Jaysingh stated that why should he assault his father and suggested to go back and give him water etc., thereafter, it was found that Suleman was dead.
9. Doctor Ashok Kumar Sanyal is examined as PW-6, who conducted the post mortem and the post mortem report is marked as Ex.P-8A. In the post mortem report, the antemortem injuries were found to be

present on the body of Suleman : (i) one stick mark like contusion present which was extending from the root of neck left side and running upward below the left ear size - 5" x 1/2" (ii) the injury was present on the temporal region of the head size- 2 1/2" x 2" and having internally examined, he found that muscles of the neck were broken and were having blood. Thereafter, on opening the head, it was found that inside of the head, blood was filled up. According to the Doctor, the death was caused due to cardiac respiratory arrest because of the injury on the head and internal hemorrhagic and the death was homicidal in nature. In reply to the query whether by such wooden Club which was recovered from accused and presented before him injury could have been caused ? The Doctor had given the answer in positive. The query report is marked as Ex.P-9. In the cross examination, the Doctor has suggested that according to him, the death was caused because of the injury by the wooden Club and not for the reason that he fell down over a wooden plank. Justifying further on breaking of neck muscles, he stated that if the blow is given in full flow then it may cause damage to the muscles of the neck, therefore, the statement of the Doctor would also show that the injury was caused because of the blow given by way of Club to the injured.

10. Taking into totality of the entire evidence, it shows that at the time of incident initially the PW-1 Benedik Lakda saw a quarrel going on in between the deceased father Suleman and the present appellant son. Subsequently, he saw that Suleman was lying on the floor and the appellant was standing there with holding a Club. This fact is also corroborated by Ex.P-1, which was the FIR. Thereafter, another witness PW-2 having heard the fact that Suleman has been killed by his son, he went to the spot wherein the appellant confessed the fact that he has only given one blow of Club to his father. PW-3, Kotwar, has also supported the fact that when the appellant wanted to say

something on having asked, he said that he has given a blow to his father. Likewise, PW-5, Headmaster, has also supported the extra judicial confession made by the appellant. The Doctor, PW-6, has also stated that because of the head injury, it could cause cardiac respiratory arrest which was due to blow given on the head and as against the query it was stated that such blow could have been caused by such Club which was seized. The memorandum & seizure has already been proved by PW-2. Therefore, taking into totality, the finding arrived at by the learned Court below do not appears to be perverse or is based on certain facts which are not part of the record.

11. After careful scrutiny of the evidence and the facts, I am of the opinion that the conviction so passed by the learned Court below cannot be faulted with. Consequently, the same is affirmed.
12. So far as sentence part is concerned, considering the fact that the incident took place all of a sudden in a hit of passion in which only one blow was given to the deceased by his son who subsequently repented and further considering the fact that the incident took place in the year 1998 and 19 years have elapsed, I am of the opinion that the ends of justice would be served if his sentence is reduced to three years instead of five years and it is ordered accordingly. From the record, it appears that the accused is on bail. His bail bonds stand canceled and he be taken into custody forthwith for serving remaining sentence as has been ordered.
13. With such modification, the appeal stands disposed off.

Sd/-
Goutam Bhaduri
Judge