

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 797 of 2009**

1. Dau Singh @ Nanhi S/o Ramsai Manjhi, aged about 35 years, caste - Manjhi, Occupation Labourer, R/o Chirramuda, PS Tamnar, Tahsil Gharghoda, District Raigarh, CG

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Raigarh, CG

---- Respondent

For Appellant	:	Shri Manoj Jaiswal, Advocate
For Respondent/State	:	Shri Sangharsh Pandey, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice A.S. Chandel

Judgment on Board by Pritinker Diwaker, J

06/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 29.8.2009 passed by Additional Sessions Judge (FTC) Raigarh in Sessions Trial No. 39/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1000/-, plus default stipulation.

2. Facts of the case in brief are that on 10.3.2009 the accused/appellant herein and his wife had gone to the house of the deceased where after taking food there was some quarrel between them. It is said that when Dukhan Manjhi (deceased herein) asked the accused not to quarrel, he assaulted him with the help of a wooden stool. The injuries received by Dukhan Manjhi proved fatal resulting in death after some time. Thereafter on 11.3.2009 FIR Ex.

P-1 was lodged at the instance of Etwar Manjhi (PW-1) – son of the deceased and an injured eyewitness to the incident for the offence punishable under Section 302 IPC. FIR further states that the accused/appellant beat PW-1 also with hand and fist. *Merg* Ex. P-14 was recorded, inquest Ex. P-6 was drawn and the dead-body was sent for postmortem examination which was conducted by Dr. Dhan Singh Penkra (PW-12) who gave his report Ex. P-15. On 16.3.2009 confessional statement of the accused Ex. P-7 was recorded and a wooden stool was seized at his instance. Injured (PW-1) was medically examined by Dr. S. Tigga (PW-5) vide report Ex. P-10. After investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below u/s 323 and 302 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 12 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below acquitted the accused/appellant of the charge under section 323 IPC but has convicted and sentenced him as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That the eyewitnesses to the incident namely Etwar Manjhi (PW-1), Suhano (PW-2) and Injori (PW-3) have not supported the case of the prosecution and have been declared hostile.

(ii) That though at the instance of accused seizure of wooden

stool was made but there is no FSL report on record.

(iii) That though the prosecution has utterly failed to collect any evidence against the accused/appellant yet he has been convicted for committing the murder of the deceased, which is arbitrary and illegal.

6. On the other hand, counsel for the State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Etwar Manjhi (PW-1), Suhano (PW-2) and Injori (PW-3) are the son, daughter-in-law and wife of the deceased and eyewitnesses to the incident. All three have not supported the case of the prosecution and have been declared hostile. Mehattar Rathia (PW-4) is the witness to inquest Ex. P-6, memorandum of accused Ex. P-7 and seizure of wooden stool made under Ex. P-8 who has supported the case of the prosecution. Dr. S. Tigga (PW-5) is the witness who medically examined the injured (PW-1) and gave his report Ex. P-10 stating that he noticed lacerated wound on occipital region and the injury was simple in nature. Santu (PW-6) is the witness to memorandum Ex. P-7 and seizure based thereon vide Ex. P-8. Ratiram (PW-7) is the village *Kotwar* and witness to inquest Ex. P-6 and seizure of plain and blood stained soil made under Ex. P-11. Surit Ram (PW-9) is the witness who took the dead-body for

postmortem examination. Jagannath Prasad Sahu (PW-10) is the Patwari who prepared spot map Ex. P-12. N.P. Mishra (PW-11) is the investigating officer who has duly supported the case of the prosecution. Dr. Dhan Singh Penkra (PW-12) is the witness conducted postmortem examination on the body of the deceased and gave his report Ex. P-15 stating that he noticed bleeding from nose and ear. He also noticed blood stains on his chest and abdomen. Postmortem report further says that there was no fracture on the tracheal ring. Mode of death has been opined as shock and cardio respiratory arrest and it was homicidal in nature. He has further opined that the injuries suffered by the deceased could also have been caused by fall on a hard and blunt object and that except nose and ear he did not notice any injury.

9. This Court has analysed the entire material collected by the prosecution as well as the evidence of the witnesses. Prosecution examined three persons namely Etwar Manjhi (PW-1), Suhano (PW-2) and Injori (PW-3) who claimed to have seen the incident but in the long run they have also chosen not to lend support to its case and turned hostile. It is worth mentioning here that the witnesses declared hostile are none else but the son, daughter-in-law and wife of the deceased. Though the wooden stool was seized by the police on the memorandum of the accused but there is no FSL report on record and therefore the seizure so made is of no help to the case of the prosecution. Even the doctor (PW-12) conducting postmortem examination on the body of the deceased has stated that the injuries suffered by the deceased could have been caused by fall on a hard and blunt object and that there was no other injury

on his body including fracture. So, in other words there is no evidence on record on the basis of which the accused/appellant could be connected with the crime in question and being so the findings recorded by the Court below are not sustainable in the eye of law.

10. Accordingly, the appeal is hereby allowed, the judgment impugned convicting and sentencing the accused/appellant as described above is hereby set aside and he is acquitted of the charge levelled against him. Bail bonds furnished by the accused/appellant stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(A.S. Chandel)
Judge