

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 870 of 2011**

- Peeladau, S/o Parsaid Satnami, aged about 57 years, R/o Banglapara, Tumgaon, Police Station – Tumgaon, District – Mahasamund (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through: police Station – Tumgaon, District Mahasamund (C.G.)

---- Respondent

For Appellant	:	Shri C.R. Sahu, Advocate
For Respondent/State	:	Shri U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board by P. Diwaker, J.**22/05/2017**

This appeal arises out of the impugned judgment and order dated 24.08.2006 passed by by First Additional Sessions Judge, Mahasamund in S.T. No. 211/2006 convicting the accused/appellant under Section 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life and pay fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for one month.

(2) In the present case, name of the deceased is Ravi Satnami, who is next door neighbour of the appellant/accused. It is said that there was some dispute between the appellant and the deceased over

construction of partition wall. On 04.05.2006 at about 6.30 P.M. the appellant gave number of blows with pick-axe on the head of Ravi Satnami and after being taken to the Hospital, he was declared brought dead. F.I.R. to this effect was lodged on 4.5.2006 at about 6.40 pm by Sumar Bai (PW-1), wife of the deceased followed by un-numbered merg intimation (Ex.P-17) and numbered merg intimation (Ex.P-16). Inquest on the body of the deceased was conducted on 5.5.2016 (Ex.P-23) and thereafter the body was sent for postmortem vide (Ex. P-12), which was conducted by Dr. O.P. Dubey (PW-8), who gave his report Ex.P-12. After investigation, charge sheet was filed against the accused/appellant under Sections 302 and 294 of the Indian Penal Code and accordingly charges were also framed by the court below.

(3) In order to establish the guilt of the accused/appellant, prosecution has examined 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C., in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

(4) After hearing learned counsel appearing for the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in opening paragraph of the judgment. Hence, the present appeal.

(4) Learned counsel appearing for the appellant would submit that that Sumar Bai (PW-1) & Ashwani Kumari (PW-2) being the wife and daughter of the deceased are the interested witnesses have falsely

implicated the appellant in the crime in question. He would further submit that Suratidas Manikpur (PW-5), Patwari who had prepared the spot map and Mukesh Dubey (PW-7) have not seen the actual occurrence and have falsely implicated the appellant/accused in the crime in question. He submits that even if the entire case of the prosecution is taken as it is, offence under Section 302 IPC is not made out against the appellant, and considering the nature of injuries caused by the appellant to the deceased at best his act falls under Section 304 Part-I of the Indian Penal Code. It has further been argued that the appellant is languishing in jail for last 10 years and, therefore, after converting his conviction into Section 304 Part I of the IPC he may be sentenced to the period already undergone by him.

(5) On the other hand, counsel for the respondent/State supporting the impugned judgment submits that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He submits that there is no reason for this court to disbelieve the statements of Sumar Bai (PW-1) & Ashwani Kumari (PW-2), wife & daughter of the deceased which get corroboration, may be partial, from Suratidas Manikpur (PW-5) and Mukesh Dubey (PW-7).

(6) We have heard counsel for the parties and perused the material available on record with utmost circumspection.

(7) Sumer Bai (PW-1) - the wife of deceased Ravi Satnami and lodger of the FIR (Ex.P-14) has categorically stated the manner in which appellant caused injuries to her husband. In the court

statement, she has stated that the appellant was constructing wall on the land belonging to her husband, which was objected to by her husband and then accused/appellant caused injuries on the head of the deceased with pick-axe. She has further stated in her evidence that after sustaining injuries, the deceased fell down, but even then accused/appellant did not stop and continued with the assault. Incident was witnessed by Sarswati Bai, Roshanlal and Rupesh and other villagers as well. In her cross-examination, she remained firm and nothing could be elicited from her to the contrary. Ashwani Kumari (PW-2) - minor daughter of deceased and Sumar Bai has also supported the case of the prosecution by stating that appellant was constructing wall on the land belonging to her father and on being obstructed by her father, accused/appellant caused injuries to him. Sarswati (PW-4) though has been branded as the eye witness to the incident but has not supported the case of the prosecution and has been declared hostile. Mukesh Dubey (PW-7) is stated to have reached the place of occurrence after coming to know the quarrel between the appellant and the deceased taken has stated that when he reached the place of occurrence, he saw the accused/appellant holding a big bolder for assaulting the deceased, and at that time the deceased was lying on the ground. He has stated that upon intervention by the villagers, the appellant left the place and the injured was taken to the hospital. Dr. O.P. Dubey (PW-8) is the doctor who conducted postmortem examination on the body of deceased and gave his report (Ex.P-12) stating that he noticed the following injuries thereon:

- “(i) Lacerated wound over left perital region in the size 2 ½ x 1/ x bone deep.
- (ii) Bleed middle cranial fossa.
- (iii) Bleeds both ear. Rigor mortise present.”

According to him, cause of death was due to cardio respiratory arrest resulting from head injury, and the death was homicidal in nature. Ganesh Ram (PW-3) has not supported the prosecution case and has been declared hostile. Suratidas Manikpuri (PW-5) is the Patwari who prepared the spot map (Ex.P-8). Narayan (PW-6) is the witness to seizure of pick-axe made under Ex.P-3; that of plain and blood stand soil and that of pant and shirt of the accused made under Ex. P-5 and also that of arrest of the accused made under Ex.P-9. Smt. Maya Sharma (PW-9) is the investigating officer who has duly supported the case of the prosecution.

(8) After hearing counsel for the parties and going through the material available on record including the evidence of two eye witnesses namely Sumer Bai (PW-1) and Ashwani Kumari (PW-2), it becomes quite apparent that on 4.5.2006 when the deceased objected to the construction of a wall being raised by the accused/appellant, he got furious and dealt three injuries, out of which two were grievous in nature, to the deceased with the help of pick-axe which ultimately resulted in his on-the-spot death. Moreover, Mukesh Dubey (PW-7) has also supported the case of the prosecution to some extent stating that on coming to know about a quarrel when he rushed to the spot, accused/appellant was seen by him holding a big bolder and at the same time the deceased was lying on the ground bleeding profusely. Thus, the complicity of the accused/appellant is

fully established by the evidence adduced by the prosecution. So also the court below appears to have been fully justified in appreciating the evidence of the witnesses and recording a finding of conviction under Section 302 IPC warranting no interference in this appeal. Since there is ample material speaking in volumes against the accused/appellant, the submission put-forth by the counsel for the appellant regarding commutation of the offence under Section 304 part I IPC is rejected because there is clear cut evidence against the accused making him liable for conviction under Section 302 IPC.

(9) In view of above, the appeal appears to be without any substance and is liable for dismissal. It is held so. Judgment impugned gets affirmed. Being already in jail, appellant needs no order to be shifted to jail, etc.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K. Agrawal)
Vacation Judge

Dubey/-