

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 959 of 2014

Jalsu Ram, S/o. Kartik Ram, aged about 27 years, R/o. Village-Sukhri,
Police Station – Chando, District – Balrampur – Ramanujganj, Civil District
– Sarguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through : Police Station – Chando, District
-Balrampur – Ramanujganj (C.G.), Civil District – Sarguja, Chhattisgarh

-----Respondent

For Appellant	: Mrs. Meera Jaiswal, Advocate
For Respondent/State	: Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker &

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board by R.C.S. Samant

04/11/2017

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 23.08.2014, passed in S.T. No.386/2010, passed by the Additional Sessions Judge, Ramanujganj, District – Balrampur-Ramanujganj (C.G.), whereby and whereunder the learned Additional Sessions Judge has convicted the appellant under Section 302 and 323 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/- and to undergo R.I. for 6 months with default stipulation, respectively.

2. The case of the prosecution in brief is that the deceased - Nanku and appellant/accused were related to each other being married two sisters. The father of wife of the deceased and appellant had distributed his movable and immovable property between his daughters. Appellant/accused was not satisfied with this partition and was continuously raising dispute. On 20.06.2010, appellant/accused came armed with a club using abusive words and thereafter assaulted on the head of the deceased - Nanku with club, getting injured – Nanku fell down, Bhagwanti Bai (P.W.-1) intervened was also assaulted by the appellant/accused. Injured – Nanku was taken to hospital on 21.06.2010 and FIR (Ex.P/1) was lodged on the same date. In the meanwhile, Nanku expired during the course of treatment. Morgue intimation (Ex.P/12) was recorded by the Police Station – Chando. After inquest and postmortem examination, it was reported that deceased died homicidal death. The offence under Section 302 of Indian Penal Code was added in the investigation proceedings. At the instance of the appellant/accused vide memorandum (Ex.P7), club was seized. After completion of investigation, charge sheet was filed before the Court having jurisdiction.
3. The learned trial Court charged the appellant/accused for offence under Section 302, 323 of Indian Penal Code. Prosecution examined as many as 13 witnesses. No witness was examined in defence. Appellant in his examination under Section 313 denied all the incriminating evidence against him and pleaded innocence and false implication. The impugned judgment was passed, by which the

appellant has been convicted and sentenced as aforementioned.
Hence this appeal.

4. It is submitted by the learned counsel for the appellant that trial Court has passed erroneous judgment of conviction of appellant under Section 302 of Indian Penal Code. Deceased – Nanku died due to non-availability of medical aid soon after the incident. The wooden plank, seized from the appellant had a blood stain, which was to be proved to be the blood of the deceased but was not proved, hence for this reasons, the appellant was entitled for benefit of doubt. It is further submitted that memorandum statement of appellant/accused had not been acceptable in this case and the witnesses examined by the prosecution are interested witnesses being related to the deceased. On these grounds, it is prayed that the appellant may be acquitted of the charges as aforementioned.
5. Counsel for the State/respondent opposes the grounds in appeal and the submission made in this respect. It is submitted that there are eye-witnesses of incident namely Bhagwantin Bai (P.W.-1), Shri Kawal (P.W.-3) and Swita (P.W.-5), who have clearly supported the case by eye-witnesses account. Hence, no case is made out for acquittal of the appellant.
6. The question for determination on the basis of grounds in criminal appeal and the arguments submitted is that, whether the prosecution has proved the charge against the appellant beyond all reasonable doubt ?
7. I have heard the learned counsel for the parties and perused the

statement of the witnesses and the material available on record.

8. Bhagwantin Bai (P.W.-1) has stated that she witnessed the incident, when the appellant came armed with a club and assaulted her husband – Nanku three to four times on his head, on account of which Nanku fell down. This witness tried to intervene and she was also slapped by the appellant and then he fled from the spot. She could not get her husband treated and her husband died. She has stated about lodging of FIR (Ex.P/1). Her statement has remained unrebutted in cross-examination. Shri Kawal (P.W.-3) has also given statement about witnessing the incident and he has also stated that the appellant threatened him. This witness is son of the deceased. His statement has also remained unrebutted in his cross-examination. Some discrepancies in his previous statement is of no consequence.
9. Another eye-witness Swita (P.W.-5) is the brother of the deceased, he has also similarly stated about witnessing the incident, when the appellant assaulted the deceased with club, his statement has also unrebutted in his cross-examination. Shiv Das (P.W.-4) has stated about previous enmity between the appellant and deceased on account of partition of the property, which is a undisputed fact that appellant and deceased had dispute between them regarding partition of property.
10. A.S.I., Kailash Singh (P.W.-10) has stated regarding memorandum statement on the basis which, club was seized

from the possession of the appellant vide Ex.P/8. He has remained firm on this statement, which is partly supported by Kariman (P.W.-6) that appellant was interrogated and a club was seized from his possession. This shows that article, which may have been used for the assault was found in possession of he appellant.

11. Dr. T.Say (P.W.-7) has conducted postmortem examination. According to his report (Ex.P/9), deceased had lacerated wound on right frontal region, lacerated wound on left parietal region, lacerated wound on temporal region and bruise on posterior aspect of left thorax. On internal examination, fracture was found on the right frontal bone of the scalp, membrane rupture and in the brain haematoma was present. On these findings, he has reported that deceased died due to shock received from the injuries and excessive hemorrhage due to head injury. He has opined that death was homicidal. In cross-examination, his statement has remained unshaken. There is no need to scrutinize and analyze the rest of the evidence. On close scrutiny of evidence of the main witnesses, it is found that prosecution has established by bringing evidence beyond reasonable doubt that, it was the appellant, who assaulted the deceased with club causing him grievous injuries on his head externally and internally, which has resulted in his death.
12. It is argued by the learned counsel for the appellant that this is not a case where the appellant had intention to cause death of

deceased – Nanku. The incident has taken place all of a sudden, without there being any intention or *mens rea* on the part of the appellant.

13. Counsel for the respondents in reply submits that looking to the number and nature of injuries, the only view that can be taken is that appellant intended to cause death of the deceased.
14. After due consideration of all the evidence on record, we are of this opinion that on account of dispute regarding partition of property, appellant assaulted the deceased with club knowingly and with intention that the act may cause death and that case falls under exception 1 of Section 300 of I.P.C., as the accused lost self control on account of being provoked by the dispute regarding partition. As there is no such material on record to show that the deceased reacted in any manner to the onslaught made by the appellant, hence, continued assault made by the appellant on the head of the deceased shows that he intended to cause death of the deceased although he had lost self control. Hence this is an offence, which is covered under Section 304 Part-I of the Indian Penal Code.
15. On the basis of the reasons as aforementioned, this appeal is allowed in part. The conviction of the appellant under Section 302 of Indian Penal Code is set-aside. Instead of that, appellant is convicted for the offence under Section 304 Part-I of Indian Penal Code and sentenced with rigorous imprisonment of 10 years

along with fine of Rs.500/- and in default of payment of fine, additional R.I. for 6 months. The period of sentence already undergone by him in jail shall be adjusted in accordance with the provisions of Section 428 of Cr.P.C. The conviction under Section 323 of Indian Penal Code is maintained as it is.

16. Accordingly, the appeal stands disposed off.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.C.S. Samant)
Judge

Balram