

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 685 of 2004**

1. Panik Ram Satnami, son of Premlal Satnami, aged 65 years, Resident of village Turkindih, P.S. Bilaigarh, Tahsil - Bilaigarh, District Raipur (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through – P.S. Bilaigarh, District Raipur (C.G.)

---- Respondent

For Appellant.	:	Shri Vivek Kumar Pandey, Advocete.
For Respondent/State	:	Shri Rahul Tamaskar, PL.

**Hon'ble Shri Justice Rajendra Chandra Singh Samant &
Hon'ble Shri Justice Anil Kumar Shukla**

Judgment On Board**By R.C.S. Samant, J.****30/05/2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 26.06.2004 passed by II Additional Sessions Judge, Baloda Bazar in S.T. No.361/2003 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.500/-, in default of payment of fine amount to further undergo R.I. for six months.

2. The case of the prosecution in brief is that on 26.08.2003 deceased Bharat Nayak met with Puniram Nayak (PW/1) and after

having some conversation deceased went to appellant's house. After 15-20 minutes, Puniram Nayak (PW/1) saw the deceased sitting in the courtyard of the appellant's house talking with appellant and his wife. Thereafter, Puniram Nayak (PW/1) left the place for his field. At about 1.30 pm, the appellant came to him (PW/1) carrying a club in his hand and stated that the deceased was asking his wife to sit near him and to massage his legs and hand, on which he has assaulted him with club and caused injury. Hearing this, Puniram Nayak (PW/1) accompanied the appellant to his house where he saw the deceased squirming with pain and was asking for water. At about 2.00 pm, Bharat Nayak succumbed to injuries. Thereafter, Lalaram Premi (PW/15), Raj Kumar Nishad (PW/4) and Muni Kewat (not examined) came to the spot before whom appellant also gave his statement that he has assaulted the deceased. Merg intimation Ex.P/2 was recorded on 27.08.2003 at 2.50 AM at the instance of Puni Ram (PW/1). Immediately thereafter at 3.00 AM F.I.R. (Ex.P/1) was registered against the appellant under Section 302 of IPC. Inquest over the body of the deceased was conducted vide Ex.P/6. On 27.08.2003 body of deceased was sent for postmortem to B.M.O., Primary Health Center, Bilaigarh vide Ex.P/16-A, where Dr. Pradeep Singh (PW/9) conducted autopsy on the body of deceased and gave his report Ex.P/16 opining the death of deceased to be homicidal in nature. Memorandum of the appellant was recorded vide Ex.P/7, based on which one club was seized from his possession vide Ex.P/4. Blood stained soil and plain soil was also seized from the spot vide Ex.P/9. Clothes which were worn by the deceased at the time of incident preserved for examination were seized vide Ex.P/8.

Shatruhan Prasad Verma (PW/7)- Patwari prepared spot map vide Ex.P/13. Seized articles were sent for chemical examination to FSL, Raipur vide Ex.P/18 and report thereof is on record.

3. Statements of the witnesses were recorded under Section 161 of Cr.P.C.. On completion of investigation, appellant was charge-sheeted. Charge under Section 302 of IPC was framed against the appellant. Appellant denied the charge and prayed for trial. Prosecution has examined 15 witnesses. On examination under Section 313 of Cr.P.C., appellant denied all the implicating circumstances against him in evidence and pleaded innocence and false implication. It was submitted by him that deceased was trying to outrage the modesty of his wife and that was the reason of the incident. No witness was examined by the defence. On completion of trial, the impugned judgment was passed convicting and sentencing the appellant as mentioned above in para 1 of this judgment.

4. The grounds in this appeal are that the judgment of conviction against the appellant has erroneously been passed by the trial Court on the basis of unreliable evidence of the prosecution. The statements of witnesses suffer from contradiction and omission which could not have been made basis for conviction. There is no eye-witness to the incident and the case depends only on circumstantial evidence and the circumstantial evidence have not been proved satisfactorily by the prosecution in accordance with law. The conviction is based on the evidence of last seen together and the evidence of extra-judicial confession, which is a very weak type of evidence. In alternative it is urged that something happened at the time of incident which provoked

the accused to assault the deceased and the offence was committed in the heat of passion without taking any advantage of the accused. On the basis of these grounds, it is pleaded that the appellant may be acquitted of the charge levelled against him.

5. It is submitted by learned counsel for the appellant that there is no eye-witness to the incident and the case is only based on the evidence of extra-judicial confession, which is a weak type of evidence and cannot be made the basis for conviction. Similarly, evidence of last seen together given by Puniram (PW/1) is also not completed so as to prove complicity of the appellant. It is also submitted that it was recorded in the merged intimation that the deceased was sitting in the house of appellant with his wife and asking her to give him massage, which provoked the appellant and has resulted in the incident. Statement was given by the appellant himself in his examination under Section 313 Cr.P.C. that deceased was trying to outrage the modesty of his wife at the time of incident. There is admission in the statement of Antaram (PW/11) that on being asked appellant told him that deceased was asking his wife for massage. This suggested that incident took place due to act and conduct of the deceased which was the cause of sudden provocation and is squarely covered under Exception 1 to Section 300 of IPC. It is also submitted that the conviction of the appellant may be modified and he may be sentenced to the period of custody already undergone by him.

6. Learned State counsel has opposed the grounds in appeal and arguments advanced on behalf of the appellant. It is submitted that although there is no eye-witness to the incident but there is evidence of

last seen together given by Puniram (PW/1) and evidence of extra-judicial confession given by Kanak Ram (PW/2) and Chhahura (PW/13). The evidence of postmortem examination also clearly suggests that the death of deceased was homicidal due to head injury caused to him by hard and blunt object. Hence, there is no scope for interference in the impugned judgment.

7. The question for determination in the case is that whether the death of deceased caused in the incident is covered under any of the Exception to Section 300 IPC.

8. Puniram Nayak (PW/1) has stated that on the date of incident in the morning at about 7.00 am, he met with deceased and after having some conversation, deceased went to the appellant's house. He left the spot for his work and came back after 10-15 minutes and went to the house of appellant where he saw the deceased with the appellant and his wife. Then he again went to his field in connection with agricultural work. At about 1.00 pm, appellant came to him carrying a club in his hand and informed him that he has assaulted and killed the deceased and asked him to come and see the deceased. Thereafter, he went to the house of appellant and saw deceased who was still breathing. Upon seeing him, he (this witness) administered some water but he died immediately. On his information, merger intimation Ex.P/2 and FIR Ex.P/1 were recorded and registered. In cross-examination, his statement has remained un-rebutted. There is no statement in the cross-examination so as to contradict any of his statement given in examination-in-chief.

9. Kanak Ram (PW/2) has supported the statement of PW/1 and

has stated that when he came to the house of appellant he saw the dead body, the appellant made the statement before him that he has killed the deceased. In cross-examination he has given statement that deceased was Bharat Nayak. He has remained firm in the statement given by the appellant.

10. Chhahura (PW/13) has also supported the statement of extra-judicial confession made by the appellant and has remained firm on the statement in his cross-examination. The evidence of last seen together and extra-judicial confession as brought by the prosecution has remained un-rebutted and there is no such statement or admission by any of these witnesses in their cross-examination so as to doubt the credibility of the statements given by them. Other witness Raj Kumar Nishad (PW/4) examined by the prosecution has not supported the case of the prosecution and declared hostile.

11. Tularam (PW/5) has received information from Puniram (PW/1) that the appellant had killed the deceased. Goutam @ Goutram (PW/6) has not supported the prosecution case and declared hostile. Shatruhan Prasad Verma (PW/7) - Patwari prepared spot map vide Ex.P/13 which is not in dispute. Puniram (PW/12) has not supported the prosecution case in any manner. Lala Ram Premi (PW/15) has not given any relevant statement and has been declared hostile by the prosecution.

12. Dr. Pradeep Singh (PW/9) conducted postmortem examination on the body of deceased on 27.08.2003 and gave his report Ex.P/16 and found following injuries:-

- (i) One lethal blow on the right side of occipital region of

head of 4 x 1 cm covering a lacerated wound.

(ii) One injury coupled with fracture on right forearm

After conducting internal examination, he found vide his report Ex.P/16 that the death of deceased was homicidal in nature caused by antemortem head injury. In cross-examination he has denied that the head of the deceased was fractured and that fracture of forearm of the deceased was not sufficient to cause his death. Even then his statement and opinion that the head injury caused to the deceased resulted in his death has remained un-rebutted. It is also submitted that the deceased was 72 years old man and the injury caused to him, though not coupled with fracture or hemorrhage, could have been possible to cause his death. That apart, he has also examined the club on the request of Investigating Officer vide Ex.P/17 and opined that the injury sustained by the deceased might have been caused by this club.

13. R.M. Tiwari (PW/14) is sub inspector has proved the investigation procedure conducted in which he has stated that on the basis of memorandum statement (Ex.P/7) given by the appellant one club was seized from his possession vide Ex.P/4. Witness of this procedure, Sadhram (PW/3) has supported the statement of Investigating Officer. Antaram (PW/11) has equally supported this investigative procedure. FSL report (Ex.P/18-A) has positive finding with respect to presence of blood on the clothes of appellant and club seized from his possession and this report has remained unchallenged. Although there is no further confirmation by scientific examination of the origin of blood or

grouping of blood, but the finding of blood stains on clothes and club also need explanation from the appellant and no plausible explanation has been given by defence in this regard.

14. In conclusion, the finding given by the trial Court on the basis of circumstantial evidence that it is the appellant who was responsible for the death of deceased Bharat Nayak does not suffer from any infirmity.

15. Now, the question for determination in this appeal is taken up for consideration.

16. Although Puniram Nayak (PW/1) was the informant of merg intimation (Ex.P/2) wherein it has been stated that deceased was asking appellant's wife for massage but he has not given any such statement before the Court and no such question was put to him in his cross-examination. Only one witness that is Antaram (PW/11) has admitted in his cross-examination that when appellant was asked, he told that deceased was asking appellant's wife for massage. In Section 313 Cr.P.C. statement, the appellant has stated that deceased was asking his wife for massage which resulted in the incident. The defence taken by the appellant has its root in the information given by Puniram Nayak (PW/1) in merg intimation made under Ex.P/2, which it corroborated by the admission made by Antaram (PW/11). As per narration of the witnesses, it appears that there was no enmity between the deceased and the appellant and for this reason the deceased had been to the house of the appellant to visit him and

was being given hospitality before the incident took place. Looking to the suddenness of the incident, it appears that when something transpired just before the incident which ultimately provoked the appellant who lost his mind and assaulted the deceased. The defence pleaded and the evidence available on record to whatsoever extent is sufficient to support the ground taken by the appellant in his 313 Cr.P.C.. Hence, this ground in the appeal has very much substance and can be taken into consideration.

17. After closely scrutinizing the evidence of prosecution and the material on record, we are of the considered opinion that this is case where appellant committed the act of assaulting the deceased fatally because of sudden provocation given by the act and conduct of the deceased, who asked his wife for massage. Under this circumstance, the appellant lost his self control and assaulted the deceased and that he approached the witnesses Puniram (PW/1) and others narrating them about the incident that he has killed the deceased. Hence, the present case squarely comes under Exception 1 to Section 300 IPC. Considering that the appellant had intention of causing such bodily injury as it likely to cause death, this appears to be a case of Section 304 Part-I of IPC.

18. Accordingly, the appeal is allowed in part. Conviction of the appellant under Section 302 IPC is set aside and he is convicted under Section 304 Part-I IPC and sentenced to undergo R.I. for ten years. The appellant is reported to be on bail. He be taken

into custody forthwith for serving remaining sentence.

Sd/-

(R.C.S. Samant)
Vacation Judge

Sd/-

(Anil Kumar Shukla)
Vacation Judge

Vijay