

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 52 of 2011**

- Jamdhar, S/o Rohidas, aged about 44 years, R/o Kudekel, Police Station-Basna, District Mahasamund (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, through Station House Officer, Police Station-Basna, District-Mahasamund (C.G.)

---- Respondent

For Appellant	:	Ms. Shubha Shrivastava, Advocate
For Respondent-State	:	Shri UKS Chandel, GA for the State

Hon'ble the Vacation Judge
Order On Board By

RCS Samant, J**29/05/2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by learned First Additional Sessions Judge, Mahasamund in Sessions Trial No.10/10 on 30.06.2010, whereby the appellant has been convicted under Section 302 IPC and sentenced to undergo life imprisonment along with fine of Rs.100/- with usual default stipulation.
2. The Case of the prosecution in brief is that on 16.12.2009 at about 3PM in the afternoon, the appellant and deceased Sait Ram quarreled with each other in front of the house of Pahalwan (PW-7), in which they abused each other. Thereafter, deceased Sait Ram came back to his place of residence and went to send the daughter Divya to her place of residence and when he

was coming back at about 4PM, the appellant came armed with a club near the tube well and assaulted the deceased with the club on his head. Deceased fell down on the ground. Mother of the deceased Jemabai (PW-6), who was present nearby, raised alarm, hearing which the other witnesses Sahas Singh (PW-5) and Jagdish Sao arrived on the spot. A report (Ex-P/13) was lodged by Jemabai (PW-6) in Police Station, Basna, District-Mahasamund. On the basis of which, FIR Ex-P/14 was recorded. Offence under Section 302 IPC was registered against the appellant. Inquest on the dead body of the deceased was conducted vide Ex-P/5. Postmortem examination on the body of the deceased was conducted by Dr. B.R. Malik (PW-1) and vide his report Ex-P/1 he opined that the cause of death of the deceased was cardio respiratory failure due to cranial hemorrhage.

3. The appellant was taken into custody and at his instance vide Ex-P/8 a club was seized from his possession. During the investigation, one spot map Ex-P/3 was prepared by the Patwari Dilip Kumar Mishra (PW-2). A Panchnama of the spot of incident was prepared vide Ex-P/5. Spot map Ex-P/6 was prepared by investigating officer. Seizure of blood stained soil preserved and sealed condition was made vide Ex-P/7. All blood stained clothes of deceased were seized vide Ex-P/10 and blood stained clothes of appellant/accused were seized vide Ex-P/9. Seized articles were examined by Dr. B.R. Malik (PW-1) and report submitted in this regard is Ex-P/2. Seized articles were also sent to FSL examination and report Ex-P/17 is on record. On completion of investigation, the appellant was charge-sheeted.
4. The appellant was charged under Section 302 IPC. He denied the charge and prayed for trial. Prosecution examined 9 witnesses in support of its case. On examination under Section 313 Cr.P.C., the appellant denied all

the charges framed against him, pleaded innocence and false implication. No witness was examined in defence. After affording opportunity of hearing, leading evidence to the prosecution and defense, the impugned judgment has been passed in which the appellant stands convicted and sentenced as mentioned in the first para.

5. The grounds in this appeal are that the trial Court has passed an erroneous judgment on the basis of unreliable evidence of the prosecution. Statement of only eyewitness Jemabai (PW-6) suffers from contradictions and omissions and she is an interested witness as she is the mother of the deceased, which could not have been formed the basis for conviction. There is a contradiction in the prosecution case that on the one hand the deceased was assaulted by club and on the other hand the deceased was thrown by the appellant from a bullock cart, which raises a serious doubt on the case of the prosecution. The FSL report is also not conclusive. Similarly, statements of the other witnesses are also not reliable. Thus, it is prayed that the appellant be acquitted of charge.
6. It is submitted by counsel for the appellant that the deceased suffered only one blow from a club, which has resulted in his death. Neither there had been any premeditation on the part of the appellant nor he had any intention to cause death of the deceased. It is admitted by the prosecution witnesses that the appellant and the deceased had been good friends and because of some quarrel between them, the appellant lost his temper and assaulted the deceased, which has unfortunately resulted in his death. Hence this case would fall under exception to Section 300 IPC and the conviction of the appellant may be set aside and may be converted into offence under Section 304 IPC.

7. It is submitted by the State counsel that the prosecution has proved its case beyond all reasonable doubts. The case as it is, does not come under any of the exceptions given under Section 300 IPC. The altercation between appellant and deceased took place more than 1 hour before the incident, hence, there had been sufficient time for the appellant to cool down and thus it cannot be said that the act took place under any provocation or without any premeditation. On the contrary, it is a clear case that the appellant came with preparation to assault and cause death of the deceased. Hence there is no scope for interference with the impugned judgment.
8. The question which arises for determination, on the basis of grounds urged and arguments submitted, is whether the incident of death of deceased Sait Ram caused by the appellant comes under any exception of Section 300 IPC.
9. We have perused the evidence of the prosecution witnesses and all the material present on record.
10. The main witness in this case is Jemabai (PW-6). She has stated that when her son came back from work and was basking in sun, the appellant arrived armed with club and assaulted him. Hearing her cries, Sahas Singh (PW-5) came on the spot, to whom she narrated the incident. She is the lodger of FIR. In cross-examination, she has reiterated that she saw the incident. She has denied all the adverse suggestions given in defence. She could not give any reason as to why the appellant assaulted her son. There is no other statement in her cross-examination so as to contradict her statement in examination in chief.
11. Sahas Singh (PW-5) is the relevant witness, who arrived on the spot soon

after the incident and was informed about the incident by Jemabai (PW-6) and he also saw deceased Sait Ram, who was bleeding from mouth. In cross-examination, he declares that he has not witnessed the incident but his statement that he was immediately informed that the appellant was the assailant of the deceased by Jemabai (PW-6), has remained an unrebutted statement. Pahalwan (PW-7) has stated that when he was having food in his place of residence, he heard appellant and deceased quarreling with each other, on intervention of the mother of deceased, the quarrel ended and appellant went to his house. When he came out of his house, he saw appellant and deceased going towards their houses. He has not witnessed the later part of the incident.

12. Rest of the witnesses are related to investigating and Merg procedures. Dr. B.R. Malik (PW-1) has conducted postmortem examination of the deceased, who found one injury on central occipital region of head of size 4x2 cm and bone deep, coupled with fracture. Another lacerated wound was found on the left eyebrow of size 4x2 cm and bone deep, similar injury of size 2x1 cm and bone deep injury was found on the eyebrow of right eye, two stab wounds on right cheek size 1x0.5x1cm and another of size 1.5x1cm crossing the thickness of cheek and one swelling was found on right side of the upper lips was also found. On internal examination he has found hemorrhage inside the temporal region. On the basis of these findings, he has opined vide report Ex-P/9 that because of cranial hemorrhage cardio respiratory failure occurred, which has resulted in the death of the deceased and this death is homicidal in nature. In cross-examination, his report was remained unrebutted. There is no such admission that the injuries to the deceased could have been caused otherwise or in any accident.

13. Dilip Kumar Mishra (PW-2), Patwari, who has prepared the spot map Ex-

P/3. The Constable Ramcharan (PW-3) has helped in the investigation. Usatram (PW-8) is the witness of memorandum and seizure. He has not supported the prosecution with respect to memorandum statement Ex-P/8 given by the appellant for which he has been declared hostile, however, he has supported that one club was seized from the possession of the appellant vide Ex-P/9. He is also witness to the seizure of clothes of deceased vide Ex-P/10. He has been declared hostile and the prosecution has cross-examined by putting leading questions to him, in which he has admitted seizure of clothes in his presence. He has partially supported the investigation procedures. Amar Singh Dhruv (PW-9) has proved the investigation procedures of memorandum of seizure Ex-P/8, Ex-P/9, Ex-P/10 & Ex-P/11, which has remained unrebutted in the cross-examination.

14. The seized articles were sent for FSL examination and the report Ex-P/17 is produced on record, according to which, presence of blood was found on the clothes of the deceased, clothes of the appellant, club and blood stained soil seized from the spot of incident, but there is no report whether it was human blood or some other blood. The articles were also sent for serological examination, but no serological report is obtained and produced on record. Hence, FSL report by itself is not conclusive and is not helpful for the prosecution.

15. Considering all the evidence of prosecution, in conclusion we find that the evidence of prosecution before this Court is simply true to the extent that the appellant came armed with club and without any reason assaulted the deceased, which resulted in his immediate death. It clearly demonstrates that when the deceased was assaulted no exchange of words took place and there was no reason for the appellant to find any provocation from the deceased. The only incident of quarrel which has been stated by Pahalwan

(PW-7) does not seem to be directly connected with this incident as he has not stated about the time when he heard appellant and deceased quarreling and further he has not stated anything as to after how much time the incident of causing death of deceased took place, though, there is some story in the FIR that there had been a quarrel between the appellant and deceased about an hour before the incident. Looking to the time elapsed, this quarrel between appellant and deceased is not found connected with the incident that took place at about 4PM in the evening. Hence, it is not a case of grave provocation given by the deceased, neither it had been a case of exceeding the right of private defense, nor it is covered under Exception III to Section 300 IPC nor the death of deceased was a result of sudden fight as the appellant was the only assailant in this case. Hence, for these reasons, the act of the appellant is found to have been based on premeditation with intention to cause death of the deceased.

16. For these reasons, we are of the considered opinion that this appeal has no substance. Appeal is dismissed.

Sd/-

(RCS Samant)

V. Judge

Sd/-

(Anil Kumar Shukla)

V. Judge

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