

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 397 of 2013**

1. Radheshyam alias Radhelal Yadav, S/o Sukhauram Yadav, aged about 46 years, R/o Village Tirki, Thana Arjunda, District Durg, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Arjunda, District Durg, CG

---- Respondent

For Appellant	:	Shri Akhilesh Kumar, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri R.C.S. Samant

Judgment on Board by Pritinker Diwaker, J

04/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 26.02.2013 passed by Special Judge Durg in Special Case No. 24/2012 convicting the accused/appellant under Sections 302, 450 and 506-B IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 5000/- u/s 302, RI for three years with fine of Rs. 1000/- u/s 450 and RI for six months u/s 506-B IPC, plus default stipulations.

2. Name of the deceased in this case is Ramadhar who used to practice exorcism. Case of the prosecution in brevity is that the accused/appellant herein used to go to the deceased for getting rid of his health related problems. On 27.8.2011 when the deceased was sitting in his *Pooja* room, the accused being annoyed with the treatment given by him came there and caused injury on his head

with the help of club attached with cycle free-wheel. On hearing the sound of strike with club, son of the deceased went to the spot and saw the accused coming out of the room carrying nail fitted club and when tried to stop him, accused had threatened him too of being killed. Deceased was thereafter taken to the hospital but was declared brought dead. In the meanwhile, at the instance of Hemant Kumar Netam (PW-4) FIR Ex. P-10 was registered against the accused/appellant for the offences punishable under sections 452 and 307 IPC. On the basis of information sent to Police by Bagas Ram Sahu (PW-6), *merg* Ex. P-13 was recorded. After drawing inquest vide Ex. P-2, the dead-body was sent for postmortem examination which was conducted by Dr. R. Prasanna (PW-7) who gave his report Ex. P-14. On 28.8.2011 memorandum of the accused/appellant Ex. P-6 was recorded based on which a club fitted with cycle free-wheel was seized under Ex. P-7 and as per FSL report Ex. P-33 blood was found thereon. Further case of the prosecution is that son of the deceased Hemant (PW-4) saw the accused coming out of the house of the deceased after committing his murder and made extra judicial confession before PW-5. After investigation, charge-sheet was filed by the police under Sections 450, 307, 302 and 506-B IPC followed by framing of charge by the Court below u/s 302, 506 (Part-II) 450 IPC and 3 (1)(x) and 3 (2) (5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, hereafter referred to "Special Act".

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 14 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 the Special Act 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 entire case of the prosecution is based on presumptive and hypothetical circumstances, and not even a single eyewitness is there who claims to have seen the accused/appellant assaulting the deceased.

(ii) That the accused/appellant has been falsely implicated in the case due to previous enmity with the family of the deceased.

(iii) That the statements of the witnesses examined by the prosecution are full of serious contradictions and omissions.

(iv) That the star witness of the prosecution namely Hemant (PW-4) is not trustworthy as he has not seen the accused committing the murder of the deceased.

(v) That the statement of Deepa (PW-5) before whom the accused is said to have made extra-judicial confession is also not reliable.

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 Sections 302, 450 and 506-B 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. Sukalu (PW-1) – the witness to inquest Ex. P-2 has not supported the case of the prosecution and has been declared hostile. Kuleshwar Prasad (PW-2) is also the witness to inquest Ex. P-2 but he has duly supported the case of the prosecution. Chandu Ram Sahu (PW-3) – the witness to memorandum and seizure has not supported the case of the prosecution and has been declared hostile. Hemant Kumar Netam (PW-4) – the son of the deceased has stated that on the date of incident at about 5.30 – 6.00 PM when he was getting fresh in the courtyard, he heard the striking sound of the club and on reaching the spot he found his father drenched with blood and the accused was coming out of the room carrying club with him. He however has stated that he could not see the accused assaulting the deceased and was not aware as to why he made the assault, and at this stage he has been declared hostile. On being confronted with his diary statement Ex. P-12, he has admitted that when he tried to stop the accused, he informed him of killing the deceased and threatened him too of the same fate. Deepa (PW-5) – wife of PW-4 has stated that on hearing the striking sound emanating from the room she followed her husband thereto and saw the deceased drenched with blood. She also saw the accused coming out of the room abusing. According to this witness, accused also told her to have killed the deceased and threatened of killing her husband (PW-4) also. She has also stated that after committing the murder of the deceased, accused kept standing in front of the house of his maternal uncle and one club was kept nearby. In cross-examination she however is stated to have not seen the accused assaulting the deceased but remained

firm to her version on other particulars. Bagas Ram Sahu (PW-6) is the witness who sent information to the police regarding death of the deceased. Dr. R. Prasanna (PW-7) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-14 stating that he noticed lacerated wounds on right parietal bone – 3 cm x 1 cm deep on scalp and in the mid occipital region – 3 cm x 1 cm deep on scalp, and there was fracture in right parietal bone. Cause of death is opined to be head injury and loss of blood and it was homicidal in nature. While satisfying the query whether the injuries suffered by the deceased could have been caused with the club produced before him for examination, he answered the same in affirmative. Hemant Kumar Chandrakar (PW-8) and Ramesh Sinha (PW-9) are the witnesses who assisted in the investigation. Dr. Shirin Parvin (PW-11) is the witness to whom the deceased was brought for medical examination but being already dead she referred the body for postmortem examination. Kalesh Ram Chouhan (PW-12) and Krishna Murari Mishra (PW-13) are the witnesses who did investigation. D.P. Thakur (PW-14) is the witness who filed supplementary charge sheet against the accused under the Special Act.

9. We have gone through the material on record including the evidence of the witnesses very minutely. From the evidence of (PW-4) – the son of the deceased it is manifest that on the date of incident at about 5.30 – 6.00 PM when he was getting fresh in the courtyard, some striking sound of the club fell in his ears and when he rushed to the spot, his father was found in sitting posture but drenched with blood. He also saw the accused coming out of the room carrying club with him. On being confronted with his diary

statement, PW-4 has admitted the fact that he had tried to stop the accused but was threatened by him of being killed. Statement of PW-4 is further corroborated by his wife Deepa (PW-5) who too has stated that on hearing the striking sound emanating from the room she went there and saw the deceased drenched with blood. She also saw the accused abusing and threatening her husband of being finished like the deceased. Both PW-4 and PW-5 have been fair enough in stating that they did not see the accused assaulting the deceased and saw that much as stated above. However, the circumstances on surface and the evidence of PW-4 and PW-5, makes it explicit that it is the accused alone who forced into the house of the deceased and committed his murder. Since he was seen by the witnesses coming out of the house of the deceased carrying club in his hand, it was for him to explain as to what for he had been thereto. However, no satisfactory explanation has come from him. The other fortifying circumstance is the seizure of club on the memorandum of the accused and as per the FSL report Ex. P-33 blood was found on it. Furthermore, postmortem report Ex. P-14 also goes to show lacerated wounds on right parietal bone deep on scalp and in the mid occipital region deep on scalp, as well as the fracture in right parietal bone. Evidence of the doctor (PW-7) further makes it clear that a query was made to him whether the injuries on the body of the deceased could be caused with the club fitted with nails and cycle free-wheel produced before him for examination, he answered the same in affirmative. Thus the overall view formed by this Court on the basis of evidence of the witnesses is that on the fateful day it is the accused/appellant herein who committed a house trespass in order to commit the murder of the deceased and on being stopped by (PW-4) he threatened him also

of being done away with. The conduct of PW-4 and PW-5 appears to be quite natural and there is no reason to discredit their testimony.

10. Court below has thus been well justified in making appraisal of the evidence while arriving at the conclusion of holding the accused/appellant guilty under Section 302, 450 and 506-B IPC. There is nothing to interfere with the judgment impugned and accordingly it is hereby maintained. Appeal is accordingly dismissed being without any substance. Accused/appellant is already in jail and therefore no order to this effect is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge