

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 116 of 2006

- Rajendra Koshariya, S/o. Chaitu Ram Koshariya, aged about 26 years, Occupation Agriculturist, resident of Village Kopedi, Police Station Patan, District Durg, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant	: Shri Dhurander, Advocate
For Respondent/State	: Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement on Board by Diwaker J.

13/01/2017

This appeal arises out of judgment and order dated 02.02.2006 passed by Additional Sessions Judge, Durg, in S.T. No. 59/2005 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000/- plus default stipulation.

2. In the present case, name of the deceased is Mohan. As per prosecution case, a day prior to the incident i.e. on 15.12.04, there was some altercation between the wife of deceased Parvati Bai and mother of the accused/appellant over damaging the fencing of field by son of the appellant. It is said that son of the appellant was scolded by Parvati Bai to which the appellant got annoyed and on the next day i.e.

16.12.2004 at about 9.00 a.m., he assaulted Mohan with club resulting his instantaneous death. FIR Ex.P-7 was lodged on the same day at about 12.30 p.m. by Parvati Bai, wife of the deceased. Based on this, offence under Section 302 IPC was registered against the accused/appellant. Immediately thereafter merg intimation Ex.P-8 was recorded, inquest Ex.P-11 was prepared and body was sent for postmortem examination which was conducted by Dr. S.A. Ali (PW-17) vide Ex.P-17 who opined that the cause of death was shock and haemorrhage due to head injury and death was homicidal in nature. On 17.12.04, memorandum of accused/appellant was recorded wherein he has stated that as his son was scolded by Parvati Bai, on the date of incident, he along with his brother Lalit Kosariya (acquitted co-accused) went to the house of deceased and caused 8-10 injuries on his head resulting his death. He has further stated that he has hidden the club used in the commission of the offence near the tree. Likewise the pant and jacket that he wore at the time of committing the offence were also with him. After filing of the charge sheet the trial judge has framed charge against the present appellant under Section 302 IPC whereas against the acquitted accused under Section 302/34 and 114 IPC.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 21 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant whereas acquitted the co-accused Lalit of all the offences as mentioned in paragraph 1 of

the judgment. Hence the present appeal.

5. Contention of counsel for the appellants is that

i) the accused/appellant has been falsely implicated in the crime in question.

ii) the star witness of the prosecution is Aruna (P:W-1) but considering the fact that she is a child witness aged about 9 years, her testimony is not reliable.

ii) in fact Arun (PW-1) is not an eye witness but is a tutored witness and this is also evident from the fact that in her diary statement she is alleged to have stated that the accused/appellant caused injury to the deceased by a club whereas in the court she has categorically stated that the appellant caused a knife injury on the head of the deceased. It has been argued that the injury sustained by the deceased could not have been caused by knife.

iii) in relation to the other eye witness Kanti Bai (PW-2) it has been argued that she has been a planted witness and if her statement is read carefully it is apparent that she has not seen the incident and the place where the incident has taken place is a far off place.

iv) as per serological report no blood was found on the knife and thus it loses its significance.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that

i) Arun (PW-1) appears to be a natural witness and in a very simple version she has narrated the entire incident. Her testimony cannot be ignored just because she is nine years of age and specially when the statement made by this witness inspire confidence.

ii) Kanti Bai (PW-2) is equally a reliable eyewitness and she too has categorically supported the prosecution case.

iii) on the memorandum of the accused/appellant Ex.P-4, seizure of club (Ex.P-5) was made whereas seizure of jacket and pant of the appellant was made vide Ex.P-6.

iv) as per FSL report Ex. P-29 blood has been found on the club (Article-D), jacket and pant (Article E & F) and most importantly as per serological report Ex. P-35 human blood of group B has been found on the pant and *gamchha* of the deceased.

State counsel submits that this circumstantial evidence is conclusive in nature and is sufficient to uphold the conviction of the accused/appellant.

7. Heard counsel for the parties and perused the material on record.

8. Arun (PW-1) is daughter of the deceased, aged about 9 years, after ascertaining the mental status of this witness the trial court had recorded her statement. She has stated that the deceased was her father and on the date of incident she was going near the pond to prepare dung cakes, his father was consuming tobacco in the house, at that time accused/appellant came there and caused knife injuries on the head of the deceased and the other accused was tying the mouth of his father. She has stated that her father suffered injuries on his head, she immediately informed about the incident to her sister Satrupa but they did not disclose it to anyone. Her mother had gone to the pond for taking bath. In her diary statement this witness has stated that the deceased was assaulted with club whereas in the court she has stated that the knife injury was caused on the head of the deceased. In cross-examination she remained firm so far as the assault made by the appellant on the head of the deceased is concerned. Kanti Bai (PW-2)

another eyewitness to the incident while supporting the prosecution case has stated that she knew the accused persons, on the date of incident she was preparing dung cakes and from that place thrashing field of the deceased was visible. She has stated that she saw the accused/appellant causing club injury on the head of the deceased as a result of which he fell down. She has stated that immediately she returned home but did not narrate about the incident to anyone. In cross-examination various efforts have been made by the defence to establish that the thrashing field of the deceased was not visible from her house but no question has been put to this witness as to the place where she was preparing the dung cakes whether she could see the thrashing field of the deceased. Bhagela (PW-3) is the hearsay witness. Tek singh (PW-4) village kotwar had accompanied Parvati Bai, wife of the deceased while lodging the FIR and he has stated that Arun Bai had disclosed in the police station that her father was assaulted by the accused persons. Satrupa (PW-5) has stated that she was informed about killing of her father by Arun (PW-1). She has further stated that she saw the accused persons fleeing away from the spot. In cross-examination this witness has however stated that her diary statement was not recorded by the police. However in the record, diary statement of this witness is there. Manthir (PW-6), Punni Bai (PW-8) and Rewati Bai (PW-9) have not stated anything against the accused/appellant and have turned hostile. Gurunarayan (PW-10) is a witness to memorandum Ex.P-4 by which seizure of club Ex.P-5 was made, has supported the case of prosecution. Parvati (PW-11) is the wife of deceased and lodger of FIR. She has stated that at the time of incident, she had gone to village pond to take bath and her daughters Arun and Satrupa were at home. She has stated that when she was returning

from the pond she saw the accused persons running away after assaulting her husband. Mehtar Ram (PW-12) has not supported the prosecution case and has been declared hostile. Feku Ram (PW-13) is a witness to inquest Ex.P-11 and seizure Ex.P-12, 13 and 14 by which blood stained soil, plain soil and *gamchha* of the deceased was made. He is also a witness to spot map Ex.P-9. Makhan Lal Deshmukh (PW-14) is the patwari who prepared spot map Ex.P-15. Dr. S.A. Ali (PW-16) is the doctor who has conducted postmortem examination on the body of the deceased vide Ex.P-17 and found following injuries :

- i) Lacerated wound below the left eye in the size 1/2"long x 1/2" wide deep bone
- ii) Abrasion below two lateral to left eye size 2 cm. long x 1 cm. wide
- iii) Lacerated wound at backside of head (Occipital Region) size 4"long x 3/4" wide x deep
- iv) brain matter coming out from lacerated wound multiple fracture of skull bone (frontal, parietal and occipital bone) pieces of bone is 3" long x 2" wide. Some small pieces of bones are missing at occipital region.

According to him, cause of death was shock and haemorrhage due to head injury and death was homicidal in nature. Mahesh Ram Sahu (PW-19) witness to inquest has not supported the prosecution case and has been declared hostile. Top Singh (PW-20) is a formal witness. R. K. Dubey (PW-21) is the investigating officer who has done the investigation.

9. Based on the memorandum of accused/appellant seizure of club was made Ex.P-4 and seizure of jacket and full pant was made vide

Ex.P-6. As per FSL report Ex.P-29 blood has been found on the articles A, C, D, E and F (soil, gamchha, club, jacket and full pant). As per serological report Ex.P-35, human blood of group B has been confirmed in the articles 7,8 and 11 i.e. earth, *gamchha* and full pant of the accused and *gamchha* of the deceased.

10. Close scrutiny of the evidence on record thus makes it clear that on 16.12.2004 ie. the date of incident, it is the accused/appellant who has killed the deceased by causing number of club injuries on his head. True it is that age of the child witness (Arun PW-1) is 5-6 years only at the time of incident and had it been a case of no evidence except the evidence of this witness perhaps it would not have been proper to convict the accused/appellant solely on the basis of evidence of the statement of the said witness. However, in the present case, apart from the evidence of the child witness, her sister Satrupa and one Kanti Bai were also there who had seen the incident and their statement also inspire confidence of this Court. Though Arun (PW-1) in her case diary statement she has deposed that the club injuries were caused on the head of the deceased whereas in the court she has stated that the injuries were caused with knife but if her evidence is considered as a whole, she appears to be a genuine and reliable witness and minor contradictions regarding use of the weapon is required to be ignored. Likewise, there is no discrepancy in the statement of Kanti Bai (PW-2) as she has stated that when she was preparing dung cakes she saw the accused/appellant assaulting the deceased. Efforts have been made by the defence that this witness has not seen the actual occurrence but if the entire testimony is seen, it is apparent that the place of incident was visible to this witness from the place where she

was standing.

11. Yet another important piece of evidence against the appellant is the seizure of club and clothes vide Ex. P-5 and 6. As per FSL report (Ex.P-29) the club, pant and jacket of the appellant contained blood and serological report also contained blood and it has been confirmed that the blood group is B. Furthermore, on the memorandum of the accused/appellant Ex.P-4, seizure of club (Ex.P-5) was made whereas vide Ex.P-6 seizure of jacket and pant of the appellant was made and the said articles contained blood.

12. In view of above, this Court is of the considered opinion that the trial court has been fully justified in convicting the accused/appellant under Section 302 IPC and the findings so recorded by it are based on correct appreciation of evidence on record. The material available on record leads this Court to arrive at one and the only conclusion that it is the accused/appellant who has committed murder of the deceased. This being the position, the appeal appears to be without substance and it is dismissed accordingly. Judgment impugned being based on the correct appreciation of evidence is hereby affirmed.

13. Appellant is reported to be on bail. Bail granted to him is hereby cancelled and he is directed to be sent to jail forthwith to undergo the remaining part of the sentence.

14. In the result the appeal is dismissed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S.Samant
Judge

