

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 328 of 2012**

- Kenta Pahadi Korwa, S/o Late Kani Pahadi Korwa, aged about 30 years, R/o village Rakaiya Police Station Shankargarh District Sarguja (Chhattisgarh).

---- Appellant**Versus**

- State of Chhattisgarh Through : District Magistrate, District Sarguja (C.G.)

---- Respondent

For Appellant.	:	Shri Akhil Agrawal, Advocate.
For Respondent.	:	Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board**By Pritinker Diwaker, J****17/11/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 31.01.2012 passed by the 1st Additional Sessions Judge, Ambikapur, District Sarguja, in S.T. No.395/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.1,000/-, in default of payment of fine amount to further undergo R.I. for four months.

02. As per the prosecution case, on 29.06.2010, the appellant had caused seven injuries to his wife Bawal (deceased) by a club as a result of which she died. Merg intimation (Ex.P/1) was recorded on 29.06.2010. On 30.06.2010, inquest on the body of deceased was conducted and body was sent for postmortem examination which was

conducted by Dr. Jagrani Lakda (PW/11) who gave his report (Ex.P/8)

noticing following injuries:-

- (i) Abrasion in the size of 3" x 1" over outer aspect of left arm lower 1/3rd region.
- (ii) Bruise in the size of 10" x 6" over outer aspect of right thigh red black in colour with mild swelling over this area. On dissection of this area coagulation of the effused blood in to the subcutaneous tissues and infiltration of the blood in the muscle tissues.
- (iii) Bruise in the size of 8" x 6" over outer aspect of left thigh medial 2/3 part. On dissection of this area coagulation of the effused blood into the subcutaneous tissues and infiltration of the blood into the muscular tissues.
- (iv) Contusion in the size of 3" x 2" over medial aspect of left side of buttock. On dissection below the skin infiltration of blood into the muscular tissues.
- (v) Bruise with abrasion in the size of 2" x 2" over outer aspect of left knee.
- (vi) Abrasion in the size of 1" x 1" over just below the right knee.
- (vii) Lacerated wound in the size of 1" x 1/2" x 1/4" over frontal region of right lower leg. All injuries were antemortem in nature.

The autopsy surgeon opined the cause of death to be shock and death was homicidal in nature.

03. On 02.07.2010 FIR (Ex.P/10) was registered against the appellant under Section 302 of IPC and on 04.07.2010, memorandum of accused/appellant was recorded vide Ex.P/3, based on which, one club was seized vide Ex.P/4, however, there is no FSL report on record to confirm presence of blood on it. After filing of the charge sheet, the

trial Judge has framed the charge against the accused/appellant under Section 302 of IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned above. Hence, this appeal.

06. Learned counsel for the appellants submits :

(i) That even if the entire prosecution case is taken as it is, at best the appellant can be convicted under Section 323 of IPC.

(ii) That the accused/appellant has already remained in jail for more than seven years and, therefore, he is liable to be set free forthwith.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Jangu Ram (PW/1), lodger of merg intimation (Ex.P/1), has turned hostile. Sanaya Ram (PW/2) is a hearsay witness. Panchan (PW/4)- father of the deceased is a hearsay witness. He is also a witness to inquest (Ex.P/14). Shiv Prasad (PW/5), witness to memorandum of the

appellant (Ex.P/3) and seizure (Ex.P/4), has turned hostile. Sohara (PW/6) is also a witness to memorandum of the appellant (Ex.P/3) and seizure (Ex.P/4). Ashish Kumar Yadav (PW/7) - Constable, took the body of deceased for postmortem examination. Vishnu Kant Mishra (PW/8) - Constable assisted in the investigation. Sohano Bai (PW/9), eye-witness to the incident, has stated that near Kerakachar river she saw the accused/appellant assaulting the deceased by club. Fulmatia Bai (PW/10), another eye-witness to the incident, has made almost similar statement as has been made by PW/9. Dr. Jagrani Lakda (PW/11) conducted postmortem on the body of deceased and gave his report Ex.P/8 opining the cause of death of deceased to be shock and death was homicidal in nature. Reng Kunwar (PW/12) is also eye-witness to the incident. He too has stated that he had seen the accused/appellant assaulting the deceased by club. S.R. Yadav (PW/13) - Investigating Officer has duly supported the prosecution case. M.L. Shukla (PW/14) - Sub Inspector, assisted in the investigation.

10. Close scrutiny of the evidence available on record, makes it clear that on 29.06.2010, the accused/appellant caused injuries on non vital parts i.e. left arm, right & left thigh, left & right knee, left leg and left buttock of the deceased by a club. Though the deceased suffered seven injuries but all were simple in nature that too on non vital parts of the body. The incident was witnessed by PW/9, PW/10 and PW/12 who have categorically stated that it is the appellant who caused injuries to the deceased by club, and on the memorandum of the accused/appellant, one club has also been seized from him. Evidence of these witnesses gets corroboration from medical evidence according

to which injuries on non vital parts of the deceased were noticed and the same were caused by hard and blunt object. The Autopsy Surgeon in his query report (Ex.P/9) has opined that the injuries sustained by the deceased could have been caused by the club. Considering the statements of the eye-witnesses coupled with the medical evidence, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

11. Now the question to be considered by this Court is whether the act of the appellant makes him liable to be convicted under Section 302 IPC?

12. Looking to the facts and circumstances of case, the nature of injuries sustained by the deceased, it would not be safe to hold that the appellant caused injuries to the deceased in an attempt to commit her murder. However, considering the nature of injuries caused and the weapon used (club) for causing such injuries, it can safely be said that the accused/appellant had voluntarily caused hurt to the deceased by club which unfortunately resulted in her death. No motive has been attributed to the appellant for commission of the offence. Thus, considering the overall facts and circumstances of the case giving rise to the unfortunate incident, we are of the opinion that the trial Court was not justified in holding the appellant guilty under Section 302 of IPC and he is liable to be convicted under Section 323 of IPC.

13. As regards the sentence, considering the fact that the appellant has already remained in jail for a period of seven years whereas maximum sentence provided under Section 323 of IPC is one year, he

is required to set free forthwith.

14. Accordingly, the appeal is partly allowed. While acquitting the appellant of the charge under Section 302 IPC, he is held guilty under Section 323 IPC. As the appellant has already served more than the maximum jail sentence prescribed under Section 323 of IPC, he be set at liberty at once.

15. Registry to send a copy of this judgment to the concerned jail and the Court, who in turn, shall inform this Court about the release of the accused/appellant.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Arvind Singh Chandel)
JUDGE