

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 365 of 2012**

- Birbal Nageshiya S/o Setoram, Caste - Nageshiya (Tribal), aged about 33 years, R/o Samri, Paschim Para, P.S. Kusmi, District Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through – The Police Station Kusmi, District Surguja (C.G.)

---- Respondent

For Appellant	:	Shri V.K. Pandey and Ms. Neha Verma, Advocates.
For Respondent/State	:	Smt. Smita Ghai, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**By Pritinker Diwaker, J****17/07/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 06.03.2012 passed by the 1st Additional Sessions Judge, Ambikapur District Surguja in S.T. No.46/2011 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, in default of payment of fine amount to further undergo R.I. for four months.

02. In the present case name of the deceased is Kalchu Ram aged about 70 years. It is alleged that on 09.11.2010, the accused/appellant came to the house of deceased and was discussing some land transaction. The accused/appellant was making complaint to the deceased that the land belongs to one Jitu has been arranged to some third person, whereas it could have been arranged to him (appellant). The exchange of hot words led to a quarrel between them in which the accused/appellant is said to have given two lathi blows on the head of deceased - aged about 70 years. On the next day, FIR Ex.P/1 was lodged at 9.00 am by Ramesh Ram (PW/1), son of the deceased, against the accused/appellant under Section 307 IPC. On 10.11.2010 injured was taken to Community Health Center, Kusmi where he was medically examined by Dr. T. Sai (PW/10) who gave his report Ex.P/15 noticing lacerated wound of 7 x 4 cm x bone deep on left frontal region of scalp and lacerated wound of 5 x 3 cm on right occipital region of scalp, however, on same day at about 5.45 pm, he succumbed to his injuries in the hospital. Un-numbered merg Ex.P/21 was recorded on 10.11.2010 and numbered merg Ex.P/20 was recorded on 12.11.2010 at 7.30 pm. Inquest on the body of deceased was prepared vide Ex.P/3 on 11.11.2010 and dead body was sent for postmortem examination to District Hospital, Ambikapur vide Ex.P/22 where Dr. Anupam Minj (PW/9) conducted the postmortem on the body of deceased and gave his report Ex.P/14 opining the cause of death to be coma due to head injury and the death was antemortem in nature. On 14.11.2010 memorandum of the accused/appellant Ex.P/9 was recorded, based on which, one club was seized under Ex.P/10 and as

per FSL report Ex.P/28 blood was found on the seized article. After investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly charge was framed against him by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 17 witnesses. Statements 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.

04. 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 in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) That even if the entire prosecution case is taken as it is, the offence would not travel beyond the scope of Section 304 Part-I or Part-II IPC.

(ii) That the accused/appellant had no intention to cause death of the deceased, the incident occurred on a sudden quarrel in a heat of passion and the accused/appellant is alleged to have given club blow on the head of the deceased which unfortunately resulted in his death on second day in the hospital.

(iii) That the deceased was a weak person aged about 70 years and it appears that he died because of his poor health condition. It has been further argued that case of the appellant would fall under Exception

4 to Section 300 IPC and he can be convicted under Section 304 Part-II IPC; he has already remained in jail for about 6 years and 9 months and, therefore, after converting his conviction into Section 304 Part-II, he may be sentenced to the period already undergone by him. Counsel for the accused/appellant placed his reliance on the decision in the matter of **Kusha Laxman Waghmare V. State of Maharashtra¹**, **Camilo Vaz V. State of Goa²**, **Ganesh Ram V. State of Chhattisgarh³** and **Shivram Hiraji Taral V. The State of Maharashtra⁴**.

06. 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. It has been further argued that Ramesh Ram (PW/1), Bhukhan (PW/2), Bhagmaniya (PW/3), Naihari Bai (PW/6), Fulchand (PW/7) and Machki Bai (PW/8) are the eye-witnesses to the incident who have duly supported the prosecution case.

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

08. Ramesh Ram (PW/1), son of the deceased, while supporting the prosecution case has stated that on the date of incident, the accused/appellant came to his house and asked the deceased as to why he arranged Jitu's land to some other person and not to him. Upon this some altercation took place between them and when the deceased was going for dinner, the accused/appellant assaulted him on his head by club. He has further stated that prior to the incident there was no

1 2014 (4) Crimes 113 (SC)

2 2000 (2) Crimes 129 (SC)

3 2011 (3) Crimes 392 (Chhatt.)

4 2000 (2) Crimes 517

dispute between the appellant and his father and that they were having cordial relationship.

09. Bhukhan (PW/2) before being declared hostile has supported the prosecution case and stated that deceased was assaulted by the accused/appellant. He too has stated that earlier relation between the accused/appellant and the deceased were cordial. Bhagmaniya (PW/3) - wife of Ramesh Ram (PW/1) and daughter-in-law of the deceased, has also supported the prosecution case and had seen the incident. Naihari Bai (PW/6) - daughter-in-law of the deceased, has also seen the accused/appellant assaulting the deceased. Likewise, other eye-witness Machki Bai (PW/8) - wife of the deceased supporting the prosecution case has stated as to the manner in which the accused/appellant assaulted the deceased. Dr. Anupam Minj (PW/9) is the autopsy surgeon who conducted postmortem on the body of deceased vide Ex.P/14 and found following injuries:-

- (i) Lacerated wound in the size of 4 cm x 1 cm over left parietal region of scalp.
- (ii) Lacerated wound in the size of 2 cm x 1 cm x scalp deep vertical over right side of occipital.
- (iii) Edema and backchaining of left eyelids.

The Doctor has also stated that on dissection, he noticed subperiosteal clot and blood present, linear fracture of both parietal bone crossing mid line of about 9 cm in length. The autopsy surgeon has opined the cause of death to be come due to head injury. The doctor has further opined that the injuries sustained by the deceased could have been caused by hard and blunt object.

10. S.R. Sahu (PW/17) is Investigating Officer who has duly

supported the prosecution case.

11. Close scrutiny of the evidence available on record, makes it clear that on 09.11.2010 the accused/appellant came to the house of deceased and was discussing some land transaction as to why he did not arrange Jitu's land for him. The exchange of hot words led to a quarrel between them in which the accused/appellant caused injuries to the deceased on his head by a club which resulted in his death during treatment. The incident was witnessed by PW/1, PW/2, PW/3, PW/6 and PW/8 who have duly supported the prosecution case and stated as to how the quarrel took place. According to postmortem report (Ex.P/14), two lacerated wounds were noticed on parietal and occipital region of scalp including linear fracture of both parietal bone and cause of death was coma due to head injury. This apart, a club was seized by the prosecution at the instance of accused/appellant and as per FSL report Ex.P/28, the presence of blood has been confirmed on it. Thus, the prosecution has been able to establish the complicity of the accused/appellant in crime in question.

12. Now the question which arises for consideration by this Court is whether in the given facts and circumstances of the case, the act of the accused/appellant makes him liable for conviction under Section 302 IPC or it is covered by any of the Exception to Section 300 IPC.

13. From the evidence it appears that relation between the appellant and deceased was cordial and on the date of incident a quarrel took place between them over selling of land to some third person in which the accused/appellant caused injuries on the head of deceased by club

resulting in his death during treatment. Thus, considering the facts and circumstances of the case giving rise to the incident leading to death of the deceased, we are of the opinion that though the appellant had no intention of causing death of the deceased but taking into account the nature and extent of injuries inflicted by him on the vital part of deceased, which led to his death, it can safely be inferred that the appellant had definite knowledge that the injuries being inflicted by him on the deceased would surely result in his death. Being so, his act would cover by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making him liable for conviction under Section 304 Part-II IPC.

14. As regards the sentence, considering the fact that the incident had taken place in the year 2010 and the accused/appellant is languishing in jail for about seven year, this Court deems it just, proper and in the interest of justice if the sentence imposed upon him is reduced to the period already undergone by him. Order accordingly.

15. In the result, the appeal is partly allowed. Conviction of the accused/appellant under Section 302 IPC is altered to Section 304 Part-II IPC and he is sentenced to the period already undergone by him. The accused/appellant is reported to be in jail, he be set at liberty forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge