

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.1103 of 2012**

- Ramkhilawan S/o Balla @ Bisali Yadav, Aged About 30 Years, R/o Village – Khallaripara, Bemcha, Police Station & District - Mahasamund C.G.

**---- Appellant**

**Versus**

- State Of Chhattisgarh Through the Station House Officer, Police Station - Mahasamund, District - Mahasamund C.G.

**---- Respondent**

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For Appellant – Shri Bharat Rajput, Advocate.

For Respondent/State – Shri Arvind Dubey, Panel Lawyer.

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**Hon'ble Shri Justice Pritinker Diwaker**

**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Judgment on Board**

**By Pritinker Diwaker, J.**

**04-11-2017**

1. This appeal arises out of the judgment of conviction and order of sentence dated 31-12-2010 passed by the Sessions Judge, Mahasamund, C.G., in Sessions Trial No.50/2010 convicting the appellant under Section 302 of the IPC and sentencing him to undergo life imprisonment and to pay fine of Rs.2000/- with default stipulation.

2. In the present case name of the deceased is Sukalu @ Baba, cousin of the accused/appellant. As per the prosecution case, the accused/appellant used to doubt the fidelity of his wife and had suspicion that his wife was having illicit relation with the deceased. Deceased Sukalu and Nathuram (PW-3) were members of the band party of the village. In the intervening night of 16/17-05-2010 the band party was returning after performing in a marriage and on the way the party stopped near a temple. Deceased Sukalu and Nathuram (PW-3) stopped near the temple for taking rest and when they were asleep,

Nathuram (PW-3) heard some noise and when he woke up he saw the accused/appellant fleeing from the spot. He chased him by calling his name, but the appellant/accused did not stop and soon thereafter he saw the dead body of deceased Sukalu. Merg intimation Ex.P/1 was recorded at the instance of Sattu (PW-1) on 17-05-2010 at 07.10 a.m. and thereafter the FIR (Ex.-P/7) was registered on 17-05-2010 against the unknown person under Section 302 of the IPC. Inquest over the dead body was conducted on 17-05-2010 vide Ex.-P/3. The dead body of deceased was sent for postmortem. Postmortem over the dead body of Sukalu was conducted on 17-05-2010 by PW-9 Dr. Girdhari Lal Chandrakar vide Ex.P/12 who noticed (i) lacerated wound over right parietal region, size 5 x 2 x 3 cm., (ii) fracture of right parietal bone, size 7 x ½ cm. in zigzag manner, heamotoma over and around fractured region and opined that the cause of death is cardio respiratory failure due to injury to vital organ brain, fracture of skull with lacerated wound in skull and severe haemorrhage. According to the prosecution the accused/appellant gave a blow of stone of about 5 kg. on the head of the deceased resulting in his death. On 18-05-2010 memorandum of the accused/appellant was recorded vide Ex.-P/4. On the basis of memorandum statement of the accused/appellant, seizure of the stone was effected vide Ex.P/5. Plain soil and blood stained soil from the place of occurrence were seized vide Ex.-P/6. The articles seized were sent for examination, however, there is no FSL report on record. Further case of the prosecution is that the accused/appellant made extra judicial confession before Santu Nishad (PW-5) about committing murder of the deceased. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the accused/appellant.

3. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all. Statement of the accused 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.

4 The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

5. Counsel for the accused/appellant submits that:-

(i) there is no eye-witness to the occurrence and conviction of the appellant is based on the circumstantial evidence, but none of the circumstances from which inference of guilt of the appellant could be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that it was the appellant who committed murder.

(ii) the witness of last seen Nathuram (PW-3) is not reliable and as it was dark night, he could not have seen the accused/appellant.

(iii) the witness of extra judicial confession Santu Nishad (PW-5) is also not reliable.

(iv) alternatively it is argued that the appellant gave solitary blow on the head of the deceased; if there had been any intention on his part to commit murder of the deceased, he would have given repeated blow on the other parts of the body of the deceased as well. Thus, even if the entire prosecution case is taken as it is, at

best, the appellant/accused is liable to be convicted under Section 304 Part I or Part II of the IPC.

(v) that the accused/appellant is in jail since 18-05-2010 and therefore, after converting his conviction into lesser offence his sentence may be reduced for the period already undergone by him.

6. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

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

8. Sattu @ Santu (PW-1) is lodger of the merg intimation (Ex.-P/1). Gagan Das (PW-2), Village Kotwar reached the place of occurrence after the incident. Nathuram (PW-3) is a witness of memorandum and seizure and he is also a witness of last seen. He has stated that he and the deceased were members of the band party and were returning along with other members after performing the band in the marriage. At about 12 night they stayed near the temple and then he, one Rangila and deceased Sukalu slept in the temple and after hearing some sound when he woke up he saw the accused/appellant fleeing from the spot. He states that he chased the accused/appellant, but he did not stop and fled away from the spot. He has further stated that immediately thereafter he saw the deceased drenched with blood. Tribhuvan (PW-4) is a witness of memorandum and seizure. Santu Nishad (PW-5) is a

villager before whom the extra judicial confession was made by the accused/appellant. He states that on the date of incident he met the appellant, he informed that his wife is befooling him and that he would kill the deceased. He further states that after committing murder of the deceased the accused/appellant came to him and informed that he had killed the deceased. Dilip Kumar Manikpuri (PW-6) is a person in whose house the marriage had taken place. Rajaram Yadav (PW-7), Sub-Inspector, did part of the investigation. Siraj Ahamad Khan (PW-8), Senior Constable, assisted in the investigation. Dr. Girdhari Lal Chandrakar (PW-9) conducted the postmortem on the dead body of deceased Sukalu on 17-05-2010 and noticed (i) lacerated wound over right parietal region, size 5 x 2 x 3 cm., (ii) fracture of right parietal bone, size 7 x ½ cm. in zigzag manner, heamotoma over and around fractured region and gave his report vide by vide Ex.P/12 and opined that the cause of death is cardio respiratory failure due to injury to vital organ brain, fracture of skull with lacerated wound in skull and severe haemorrhage. Pramila Mandavi (PW-10), Inspector, is Investigating Officer who conducted the investigation in the matter.

9. Close scrutiny of the evidence makes it clear that the accused/appellant had a doubt that the deceased was having illicit relation with his wife. Availing the opportunity, in the intervening night of 16/17-05-2010, the accused/appellant gave a single blow on the head of the deceased by a stone of about 5 kg. Resulting in instantaneous death of the deceased. Nathuram (PW-3) saw the accused/appellant fleeing from the spot, then he immediately found the dead body of the deceased lying in a pool of blood. This apart, on the memorandum of

the accused/appellant, the stone was seized vide Ex.-P/5 from the spot. Further, the accused/appellant made extra judicial confession before Santu Nishad (PW-5) and we have no reason to disbelieve his statement. This apart, before killing the deceased in the intervening hours on 16/17-05-2010 the accused/appellant had told Santu Nishad (PW-5) that he is going to kill the deceased.

10. Considering all the evidence, the complicity of the accused/appellant in commission of the offence has duly been proved by the prosecution beyond doubt.

11. The next question which arises for consideration of this Court is whether the act of the accused/appellant would fall under any of the Exceptions to Section 300 of the IPC, i.e., culpable homicide not amounting to murder.

12. As per the medical report, single blow on the head of the deceased was found resulting in fracture of parietal bone and other injuries. The accused/appellant had enough opportunity to give repeated blows on the body of the deceased, but he gave only one blow resulting in his death. Thus, considering the facts and circumstances of this case giving rise to the incident, the manner in which the offence was committed resulting in instantaneous death of the deceased, it can safely be inferred that the appellant had intention of causing such bodily injury to the deceased as was likely to result in his death but had no knowledge that infliction of such injury would cause his death. Being so, his conviction under Section 302 of the IPC is liable to be altered to Section 304 Part I of the IPC. As regards the sentence, in our considered opinion, R.I. for 10 years under this Section would be

sufficient to meet the ends of justice.

13. Accordingly, the appeal filed by the accused/appellant is partly allowed. The conviction of the accused/appellant under Section 302 of the IPC is altered to Section 304 Part-I of the IPC and he is sentenced to undergo R.I. for ten years. Since he is reported to be in jail, therefore, no order is required to be passed in relation to his custody.

Sd/-

**(Pritinker Diwaker)**  
**JUDGE**

Sd/-

**(Rajendra Chandra Singh Samant)**  
**JUDGE**