

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 469 of 2009**

- Naihar Sai Majhwar S/o Ratan Sai Majhwar, aged 45 years, R/o village Batati, Police Station Kapu, District Raigarh (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The District Magistrate, Raigarh

---- Respondent

For Appellant	-	Shri Hanuman Prasad Agrawal, Advocate
For Respondent	-	Smt M. Asha, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Judgment On Board****08/09/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 23.03.2009 passed by Sessions Judge, Raigarh, District Raigarh, in Sessions Trial No.108/08 convicting the accused/appellant under Section 304 Part-I IPC and sentencing him to undergo R.I. for ten years.

02. As per the prosecution case, on 24.06.2008 the accused/appellant killed his son Tilak Ram by causing several injuries to him by hands and fists. The incident was witnessed by Chamru Ram (PW/4), brother-in-law of the accused/appellant. At the instance of Jhadu Ram (PW/3), brother of the accused/appellant, FIR (Ex.P/6) was registered on 25.06.2008 at 8.30 AM under Section 302 IPC against the accused/appellant followed by merg (Ex.P/8) at 8.40 AM.

On the same day body of deceased was sent for postmortem examination to Govt. Hospital, Dharamjaigarh vide Ex.P/4-A where Dr. B.L. Bhagat (PW/6) conducted postmortem on the body of deceased and gave his report Ex.P/4 noticing multiple minor scratch over the left side of neck. No other internal injury was notice on body. The autopsy surgeon opined the cause of death of deceased to be shock due to excessive internal bleeding caused by rapture of spleen and death was homicidal in nature.

03. After investigation, the charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, prosecution examined as many as 8 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure 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 in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits that he is not pressing this appeal on merit and would confine his argument to the sentence part thereof only. He further submits that the accused/appellant has already undergone the sentence imposed upon him as his sentence was not suspended by this Court.

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

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

09. Charmru Ram (PW/4), eye-witness to the incident, while supporting the prosecution case has stated that upon hearing the cries of deceased Tilak Ram when he reached to the appellant's house, he saw the accused/appellant pressing the neck of the deceased and causing injuries to him on chest by hands and fists. The accused/appellant was sitting on his chest. He has further stated that he tried to intervene the matter and pacify the dispute but it could not be. He has also stated that thereafter the deceased died. In cross-examination, this witness remained firm and nothing could be elicited from him to discredit his testimony. Kadar Khan (PW/1) and Jhadu Ram (PW/3) are the witnesses before whom extra-judicial confession was made by the accused/appellant. Dr. B.L. Bhagat (PW/6) conducted postmortem examination on the body of deceased and gave his report (Ex.P/4) opining the cause of death of deceased to be shock due to excessive bleeding caused by rupture of spleen. Jwakim Lakda (PW/8) - Investigating Officer has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 24.06.2008 at 11.00 PM, the accused/appellant sat on the chest of deceased, pressed his neck and gave fist blow on his chest resulting in his death. The incident has been witnessed by PW/4 who has categorically stated that it is the accused/appellant who killed the deceased. That apart, the

accused/appellant made extra-judicial confession before PW/1 and PW/3 that it is he who killed the deceased. The evidence of these witnesses is well corroborated by the evidence of Doctor PW/6 who gave his report (Ex.P/4) noticing multiple minor scratch on the left side of neck. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially to the fact that the accused/appellant has not killed the deceased. The statements of PW/1, PW/3 and PW/4 inspire full confidence of this Court and I have no reason to disbelieve the statement of these witnesses.

11. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

12. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly.

Sd/-

(Pritinker Diwaker)
JUDGE