

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 149 of 2015**

- Paddu Pahadi Korwa S/o Dasra Pahadi Korwa, aged about 22 years, R/o village : Rakaiya, Police Station Shankargarh, District – Balrampur-Ramanujganj (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, through Station House Officer, Police Station Shankargarh, District Balrampur – Ramanujganj (C.G.), Civil District-Sarguja (C.G.)

---- Respondent

For Appellant	: Ms. Nirupama Bajpai, Advocate
For Respondent/State	: Shri Adil Minhaz, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board By Justice Gautam Chourdiya**24/07/2018**

1. This appeal arises out of the judgment of conviction and order of sentence dated 24.11.2014 passed by the Additional Judge to the Court of Additional Sessions Judge, Ramanujganj of Additional Judge, Ramanujganj, District Sarguja (Ambikapur), C.G. in Sessions Trial No. 18/2013, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentence:</u>
Under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for life and to pay a fine of Rs.500/- and in default of payment to further undergo additional rigorous imprisonment for one month

2. As per First Information Report (FIR – Ex.-P/2), the case of the prosecution, in brief, is that on the fateful day i.e. on 22.06.2013, Faudi (PW-1) was present in

her house. Her husband- Bindeshwar (since deceased) and accused/appellant – Paddu Pahadi Korwa were drinking liquor in the *baadi* adjacent to her house. As to why both of them (deceased and accused) were quarreled each other. At about 5:00 PM, she heard the commotion of quarrel between the deceased and accused, she (PW-1 - Faudi) and her mother (PW-2 - Daali) came out from house and saw that accused- Paddu was assaulting her husband with club. When PW-1 and PW-2 went for trying to intervene and protect the deceased, the accused/appellant was also chasing to assault them by club. Because of fear, they (PW-1 and PW-2) came back inside the house. Accused- Paddu after killing her husband, brought the dead body of Bindeshwar from *baadi* and kept in her house and accused gone from there. When father (Lasan – PW-3) of the complainant (PW-1) returned in the house after the labour work, she (PW-1) told about the incident to her father.

3. On receiving information from PW-1 – Faudi, wife of the deceased, morgue intimation (Ex.-P/1) was recorded by M.L. Shukla (PW-6), Investigating Officer, on the next day of incident i.e. on 23.06.2013 at 10:15 AM and also on the same day, the FIR (Ex.-P/2) was lodged by PW-1 – Faudi, at about 10.30 AM against the accused/appellant under Section 302 IPC. The Investigating officer left for the scene of occurrence on 23.06.2013 and after giving notice to the *Panchas* (Ex.-P/3), prepared inquest on the body of the deceased under Ex.-P/6. The body was sent for postmortem examination to Community Health Centre, Shankargarh under Ex.-P/9. From the place of occurrence, one club (*sarai*-wood) and white coloured *gamchha* were seized under Ex.-P/7 and the club was sent for examination to B.M.O., Community Health Centre, Shankargarh, Balrampur.

4. The postmortem examination was conducted Dr. Joseph Lakra, but during trial, he died. In place of Dr. Joseph Lakra, the prosecution has examined Dr. Shashikala Toppo. Postmortem report is Ex.-P/9A, in which, following injuries were noticed on the body of the deceased:-

- i) Black coloured contusion with swelling was present on

the right cheek in size of 6 inch x 5 inch:

- ii) Blue and black coloured swelling and contusion was present on the left side of cheek in size of 7 inch x 5 inch, blood clot was also present on both side of cheek;
- iii) Black and blue coloured contusion were present on the left lower limb below the knee and blood clot was also present;
- iv) Black and blue coloured contusion was present in size of 2½ inch x 1½ inch on the left hand, blood clot was also present;
- v) Blood clot was present in frontal region of head.

As per postmortem report (Ex.-P/9A), the cause of death was shock due to head injury with excessive subdural hemorrhage and death was homicidal in nature. The death had occurred within 15-24 hours.

5. In further investigation, seized article- club (*sarai-danda*) was sent for examination to B.M.O., Community Health Centre, Shankargarh, Balrampur, from where the report (Ex.-P/10A) was received. According to the said report, examined by Dr. Joseph Lakra, injury can occurs by the said *sarai-danda* and death can also occur by the same.

6. After completion of the usual investigation, charge-sheet was filed against the accused/appellant under Section 302 IPC and while framing the charges, the trial Judge framed the charge against the accused/appellant under Section 302 IPC.

7. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses in all. Statement of the accused was also recorded under Section 313 of the Criminal Code of Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. There was no witness examined on behalf of the defence.

8. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in Para-1 of this judgment, hence this appeal.

9. Prosecution case is based on the eye-witnesses- PW-1 -Faudi, wife of the deceased and PW-2 – Dali, mother-in-law of the deceased and postmortem report (Ex.P/9A). Prosecution witness No. 3 -Lasan, father-in-law of the deceased, knew about the incident when he came back in the house after labour work which was told by her daughter-PW-1.

10. Learned counsel for the appellant has not disputed the homicidal death of the deceased and argued that PW-1 – Faudi is wife of the deceased and PW-2 – Daali is mother-in-law of the deceased, therefore, they are a relative and interested witness and their testimonies cannot be accepted. He submitted that there are major contradictions and omissions in the prosecution witnesses i.e. PW-1 and PW-2 and the dead body of the deceased was found inside the house of the complainant (PW-1) and there is no explanation. He also submitted that the appellant is an innocent person, there was no previous enmity between deceased-Bindeshwar and accused-Paddu and the appellant has been falsely implicated in this case. He further submitted that if the evidence and case of the prosecution is taken as it is, even then the offence under Section 302 of IPC was not made out against the accused/appellant for the reason that the accused and deceased both after consuming liquor, quarrel took place between them and in a sudden quarrel, appellant assaulted the deceased by club, therefore, the case of the accused/appellant is covered under Exception IV of Section 300 of IPC. He also submitted that the accused/appellant has no intention to cause death of the deceased, therefore, he may be convicted under Section 304 Part-II IPC.

11. On the other hand, learned Panel Lawyer appearing on behalf of the State opposed these arguments and supported the judgment of the trial Court. It has

argued by the State counsel that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

12. We have heard the counsel for the respective parties and perused the evidence on record.

13. PW-1- Faudi, wife of the deceased, stated that at about 5:00 PM, accused and deceased both was drinking liquor in her *baadi* and that time accused assaulted the deceased by club. She (PW-1) and her mother (PW-2) both were trying to intervene and protect the deceased, but accused did not leave the deceased. Thereafter, the accused brought the deceased in the house of PW-1. This incident was informed by PW-1 to her father, when her father came back to the house in the evening. She stated that the deceased sustained injuries on the head, face, leg, waist and the blood was oozing out from nose.

14. PW-2- Daali, mother-in-law of the deceased, stated that near her house of her *baadi*, quarrel was going on between the accused and deceased at about 5:00 PM and the accused was assaulting her son-in-law (deceased) by club. When she (PW-2) and her daughter (PW-1) were trying to intervene and protect the deceased, then the accused chasing her and her daughter for assaulting them and because of fear, they (PW-1 and PW-2) came back inside the house. Thereafter, the accused killed the deceased and brought the dead body of deceased in her house. She also stated that the deceased sustained injuries on the head, face, leg, waist and the blood was oozing out from nose.

15. PW-3- Lasan is the father-in-law of the deceased. He stated that in the evening, when he came back in the house after labour work, her daughter (PW-1) and her wife (PW-2) both told that the accused assaulted the deceased by club. PW-4 – Baijnath is a formal witness. PW-5- Jerman has proved inquest (Ex.-P/6) and seizure of club and white *gamchha* (Ex.P/7). PW-6- M.L. Shukla, Investigating Officer prepared inquest (Ex.-P/6).

16. In view of the above discussion, we have scrutinized the evidence of prosecution witnesses (PW-1 and PW-2) and material available on record. Their evidence are sufficient to establish that they have seen the incident that at about 5:00 PM some quarrel took place between the accused/appellant and deceased in the *baadi* of their house and they (PW-1 and PW-2) intervened to protect the deceased, the accused was chasing them for assaulting. There is no reason to disbelieve the eye-witnesses (PW-1 and PW-2) of the incident because in their presence, accused assaulted the deceased by club. The evidence of above witnesses stands corroborated by the medical evidence. As per postmortem report (Ex.-P/9A), the deceased sustained injuries as mentioned in Para-4 of this judgment and Doctor opined that the cause of death was shock due to head injury with excessive subdural hemorrhage and death was homicidal in nature. Doctor also examined club (*sarai-danda*). As per report (Ex.-P/10A), injury can occurs by the said *sarai-danda* and death can also occur by the same. In this case, there was no pre-meditation or preparation. The accused/appellant assaulted the deceased in a sudden quarrel, all of a sudden, in a heat of passion and upon sudden quarrel, without taking undue advantage or acted in a cruel or unusual manner, as such, the case of the accused/appellant is covered under Exception IV of Section 300 IPC, therefore, finding of the trial Court convicting the accused/appellant under Section 302 IPC cannot be sustained. PW-2- Daali is an eye-witness of this case clearly admitted in para-3 of her evidence that accused/appellant and deceased both had consumed excessive liquor and PW-1- Faudi is clearly admitted in para-5 of her evidence that accused and deceased both were quarreling and assaulting each other. In these circumstances, on the spot, both were drinking excessive liquor and all of a sudden both assaulting each other. It is proved by prosecution witnesses (PW-1 and PW-2) and in the instant case, no intention of the accused/appellant to cause death of the deceased. As per postmortem report (Ex.-P/9A), cause of death was shock due to head injury with excessive subdural hemorrhage and death was

homicidal in nature. The injuries found on the body of the deceased, only one injury on the head.

17. In the result, the appeal is partly allowed. The conviction and sentence imposed upon the accused/appellant under Section 302 IPC are set aside, instead thereof, he is convicted under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge