

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 47 of 2011**

- Johan Singh S/o Chamru Baiga, aged about 45 years, R/o village Salheghori, Police Station Gaurela, District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Police Station - Gaurella, District Bilaspur (C.G.)

---- Respondent

For Appellant	:	Shri Ashok Soni, Advocate
For Respondent.	:	Shri Avinash Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board**Per Pritinker Diwaker, J****03/05/2018**

1. This appeal arises out of the judgment of conviction and order of sentence dated 29.12.2010 passed by the Additional Sessions Judge (F.T.C.), Pendra Road, District Bilaspur (C.G.), in S.T. No.23/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.100/- plus default stipulation.

2. As per the prosecution case, on 07.03.2010 accused/appellant Johan Singh and his elder brother Tingu @ Charhu (deceased) had gone to the house of Samar Singh Baiga (PW/4) where they had some quarrel and it is alleged that the accused/appellant gave single blow on the head of the deceased by half burnt wooden piece having length of about two feet. On that night, injured Tingu @ Charhu slept in the

house of Samar Singh (PW/4) and next morning injured returned to his house. It is alleged that after three days i.e. on 10.03.2010 injured Tingu @ Charhu collapsed in his house and died. On 10.03.2010, FIR (Ex.P/1) was lodged by Arjun Singh (PW/1) under Section 302 IPC against the accused/appellant. On the same day, inquest on the body of deceased was conducted vide Ex.P/5-A and body was sent for postmortem examination to Block Medical Officer, Gaurela where Dr. Kamal Kumar Soni (PW/7) conducted postmortem examination on the body of deceased and gave his report (Ex.P/5) noticing following injuries:-

- (i) Two bruises in the size of 3 cm x 0.5 x epidermic and 2cm x 0.5 in middle frontal region.

The Autopsy Surgeon opined the cause of death to be coma and shock due to injury in occipital region of head and death was homicidal in nature.

3. On 10.03.2010, memorandum of the accused/appellant was recorded vide Ex.P/2, based on which, one piece of half burnt wood was seized vide Ex.P/3, however, there is no FSL report on record to confirm presence of blood thereon. After filing of the charge sheet, the trial Court has framed the charge against the accused/appellant under Section 302 IPC.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 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.

5. 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.

6. Learned counsel for the appellant submits :

(i) That in a heat of passion and in sudden quarrel the accused/appellant gave single blow to the deceased by a piece of half burnt wood resulting unfortunate death of the deceased after three days. It has been argued that after the incident, the deceased of his own returned to his house but unfortunately succumbed to his injury.

(ii) That even if the entire prosecution case is taken as it is, at best the accused/appellant is liable to be convicted under Section 304 Part-II IPC.

(iii) That the accused/appellant was granted bail but still he is in jail and considering his detention period, his sentenced may be reduced to the period already undergone by him.

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

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

10. Arjun Singh Baiga (PW/1) is lodger of First Information Report (Ex.P/1). He is also witness to memorandum of the accused/appellant (Ex.P/2) and seizure of half burnt wood made under Ex.P/3. This witness, in para 9 of his cross-examination, has stated that the quarrel

between the accused/appellant and the deceased was normal.

11. Mohan Singh Baiga (PW/2) is the hearsay witness. He is also witness to memorandum of the accused/appellant (Ex.P/2) and seizure Ex.P/3.

12. Kunwariya Bai Baiga (PW/3) - mother of the accused/appellant and deceased, has stated that the deceased died in the house and that she noticed blood oozing from his mouth and nose. She has also stated that the accused/appellant informed her that he (appellant) assaulted the deceased.

13. Samar Singh Baiga (PW/4) is a witness in whose house the quarrel between the accused/appellant and the deceased had taken place. He has stated that after quarrel the accused/appellant gave single blow to the deceased by small piece of half burnt wood of about one feet as a result of which he sustained injury on the back of his neck.

14. Koushilya Bai (PW/5), wife of Samhar Singh Baiga (PW/4), has made almost similar statement as has been made by PW/4.

15. Lalli Bai Baiga (PW/6) - wife of the deceased, has stated that after coming to know about the incident, she had gone to her in-laws' house to see her husband. She has also stated that blood was oozing from nose and ear.

16. Dr. Kamal Kumar Soni (PW/7) conducted postmortem examination on the body of deceased and gave his report (Ex.P/5) opining the cause of death to be coma and shock due to injury in occipital region of head and death was homicidal in nature.

17. Close scrutiny of the evidence makes it clear that on 07.03.2010 in the house of PW/4 some quarrel took place between the

accused/appellant and the deceased in which the accused/appellant gave solitary blow on back side of neck of the deceased by half burnt wooden piece having length of about 1-2 feet. On the said night, after sustaining the injury to the deceased, he and the accused/appellant slept in the house of PW/4, and on the next morning, he (deceased) returned to his house where on 10.03.2010 he succumbed to his injury. The entire incident has been witnessed by PW/4 who has categorically stated as to the manner in which the quarrel took place and deceased died after three days of the quarrel. The version of this witness is well corroborated by the evidence of Dr. Kamal Kumar Soni (PW/7) and postmortem report (Ex.P/5) wherein only two injuries on his body (back side of neck) were noticed and Autopsy Surgeon opined the cause of death to be coma and shock due to injury in occipital region of head and death was homicidal in nature. Considering the statement of PW/4 coupled with the medical evidence, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

18. The next question which arises for consideration before this Court is as to whether the act of the accused/appellant would fall under any of the Exceptions to Section 300 IPC.

19. From the evidence it appears that on a spur of moment without premeditation a quarrel took place between the deceased and the appellant in which the accused/appellant gave single blow by piece of half burnt wood and he died after three days of the incident. Thus, considering the facts and circumstances of the case, nature of injury and the fact that deceased died after three days of the quarrel, 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 injury inflicted by him on the deceased, which led to his death, it can safely be inferred that the appellant had knowledge that the injury being inflicted by him on the deceased would result in his death. Being so, his act would be covered 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.

20. In the result, the appeal is partly allowed. Conviction of the appellant under Section 302 IPC is altered to Section 304 Part-II IPC and he is sentenced to undergo R.I. for seven years.

21. Appeal thus allowed in part.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Sanjay Agrawal)
JUDGE