

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 24 of 2015**

- Lachindhar Kashyap S/o Chandi Kashyap, age 40 years, Caste - Muriya, permanent address Taandpal, Dengpara, P.S. Parpa, present address Kumhaarpa Bade Dharaur, P.S. Lohandiguda District - Bastar (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Aarakshi Kendra Lohandiguda Distt. Bastar (C.G.). Crime No.17/14 P.S. - Lohandiguda, Jagdalpur, District Bastar.

---- Respondent

For Appellant.	:	Shri Vikash Shrivastava, Advocate.
For Respondent.	:	Shri Anil Pillai, Dy. A.G.

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

Judgment on Board**By Pritinker Diwaker, J****02/08/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 07.08.2014 passed by Sessions Judge, Bastar at Jagdalpur (C.G.), in S.T. No.48/2014 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.1,000/- plus default stipulation.

02. As per the prosecution case, the accused/appellant was relative of deceased Sakru Kashyap and was permitted to reside in his house adjacent to another house in which the deceased was living along with his family. It is said that on 28.03.2014 when the accused/appellant and the deceased were sleeping, at about 11-12.00 in night Mitki (PW/1), after hearing the sound, saw the accused/appellant throwing

big stone of about 30 kg on the head of the deceased and committing his murder. After the incident, merger intimation (Ex.P/11) was lodged on 29.03.2014 by Mitki (PW/1) followed by FIR (Ex.P/1) under Section 302 IPC against the accused/appellant. Inquest on the body of deceased was conducted on 29.03.2014 vide Ex.P/4 and dead body was sent for postmortem examination to Community Health Center, Lohandiguda which was conducted by Dr. N.S. Nag (PW/7) who gave his report (Ex.P/13) noticing following injuries:-

- (i) Lacerated wound of 2 x 2 x 1 inch over the left temporal region touching left ear with blood stained.
- (ii) Lacerated wound of 2 x 3 x 1 inch on the left maxillary region which was stained with blood.
- (iii) On internal examination, fracture was found on left side of skull and left maxillary bone of face.

The autopsy surgeon opined the cause of death of deceased to be internal and external hemorrhagic shock due to head injury and the death was homicidal in nature.

03. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellant under Section 302 IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 08 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.

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 above. Hence, this appeal.

06. Learned counsel for the appellant submits :

- (i) That the accused/appellant has been falsely implicated in the crime in question.
- (ii) That the statement of Mitki (PW/1) is not reliable and trustworthy.
- (iii) Even if the entire prosecution case is taken as it is, the accused/appellant cannot be convicted under Section 302 IPC and at best he is liable to be convicted under Section 304 Part-I.

07. 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 in accordance with law and there is no infirmity in the same.

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

09. Smt. Mitki (PW/1) is wife of the deceased. She has stated that the accused/appellant is her nephew in relation, she and her husband had permitted him to live in their another house adjacent to her house and he had been living in the said house for last ten years. On the date of incident, at about 3.00 AM the accused/appellant came to her house and committed murder of the deceased by throwing a big stone on his head and she saw the entire incident. In cross-examination, she remained firm. Ramdinu (PW/2) is the witness to inquest made under Ex.P/4. Bhimram (PW/3) and Tullu Ram Kashyap (PW/4), witnesses to inquest (Ex.P/4), have stated that they were informed by PW/1 that the accused/appellant had killed the deceased and immediately after the

incident when they reached the place of occurrence, they noticed injuries on the head of the deceased, blood was oozing from head and that stone was lying there on the ground. Trinath Tripathi (PW/5) is the Investigating Officer who has duly supported the prosecution case. Pawan Kumar Netam (PW/6) is the Patwari who prepared spot map vide Ex.P/12. Dr. N.S. Nag (PW/7) conducted postmortem examination on the body of deceased and gave his report Ex.P/13 opining the cause of death to be internal and external hemorrhagic shock due to head injury and death was homicidal in nature. Damodar Lonhare (PW/8) is a formal witness.

10. Close scrutiny of the evidence available on record, makes it clear that on 28.03.2014 when the deceased was sleeping in his house, at about 11-12.00 in the night the accused/appellant came there and killed the deceased by throwing big stone on his head. The entire incident was witnessed by Mitki (PW/1), wife of the deceased, who has categorically stated that it is the accused/appellant who threw a big stone on his head resulting in his death. PW/1 immediately informed the incident to PW/3 and PW/4 who have also stated that when they reached the place of occurrence, they saw the body of deceased in pool of blood and that the big stone was lying there. 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 committed murder of the deceased. Evidence of these witnesses gets corroboration from medical evidence according to which injuries including fracture on vital part head of the deceased were noticed. The

Autopsy Surgeon, in para 7 of his cross-examination, has stated that the injuries sustained by the deceased have been caused by one object. Considering the statement of the eye-witness (PW/1) coupled with PW/3, PW/4 and the medical evidence, the complicity of accused/appellant in the crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements 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. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Gautam Chourdiya)
JUDGE