

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 407 of 2013**

- Gopal Kanwar S/o Dhanpet Kanwar Aged About 52 Years Occupation Cultivation, R/o Village Salka , P.S. Udaypur , At Present Phulchuhi, P.S. Premnagar ,District Surajpur C.G. , Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Premangar , Distt. Surajpur Chhattisgarh

--Respondent

For Appellant	: Shri Anurag Verma, Advocate
For respondent/State	: Shri Rajendra Tripathi, Panel Lawyer

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgment on Board**Per Prashant Kumar Mishra, J.****12/05/2018**

1. This appeal is directed against the judgment of conviction and order of sentence dated 25.02.2013, rendered by the First Additional Sessions Judge, Surajpur (CG) in Sessions Trial No.331/2011 and consequent sentence under Section 302 IPC for life imprisonment and fine of Rs.100/-, in default of payment of fine additional R.I. for 10 days, for causing murder of his wife Ramkunwar.

2. The incident occurred at about 3.00 pm on 22.5.2011. At the time of incident, the deceased had gone to work in the house of Nadiyaro Bai (PW1) for bundling Tendu leaves. While the deceased was working, the appellant reached there and abruptly

started assaulting the deceased by club. He struck 4-5 blows on the head and face of the deceased causing serious injuries on which she became unconscious and later on, succumbed to death on the next day. Seeing the appellant causing injuries to the deceased, Nadiyaro Bai (PW1) informed appellant's son Palinder (PW2) who rushed to the spot but by the time he reached the place of occurrence, the deceased was unconscious.

3. When the death of the deceased was reported to the concerned Police by District Hospital Ambikapur, mere intimation Ex.P/4 was recorded and on the said basis, FIR Ex.P/5 was registered at 20.20pm on 26.5.2011. In course of investigation, the Investigating Officer recorded appellant's memorandum statement vide Ex. P/1 pursuant to which, club was recovered from beneath the heap of straw in his house vide Ex. P/2. The positive Forensic Science Laboratory (FSL) report finding blood on the club was sent by the FSL, Raipur vide Ex. P/9.

4. During postmortem examination, Autopsy Surgeon found the following injuries on the person of the deceased:

- (i) Clotted blood on mouth, nostril and left hand;
- (ii) Lacerated wound over right ear with stitches on forehead and left side of cheek;
- (iii) Lacerated wound on right side of scalp;
- (iv) Left side temporal bone found fractured;
- (v) Cranial cavity filled with clotted blood and left side of mandible fractured.

The autopsy report Ex. P/11 was submitted by Dr. K.R. Tekam (PW8).

5. In course of trial, the prosecution produced the witnesses, Nadiyaro Bai (PW1), Palinder (PW2), Bhagwat (PW3), Vishnu Singh (PW4), Budhan Ram Paikra (PW5), Kalinder Singh (PW6), Basant Lal Gupta (PW7), Dr. K.R. Tekam (PW8). The appellant's statement under Section 313 Cr.P.C. was recorded wherein he denied having committed the offence, however, he did not examine any defence witness. At the end of trial, the appellant has been convicted as afore stated.

6. Shri Anurag Verma, learned counsel for the appellant would submit that as per prosecution evidence, the appellant has struck blows without premeditation, therefore, it would be a case falling within the fourth Exception to Section 300 IPC and conviction under Section 302 IPC deserves to be set-aside. He would further submit that Nadiyaro Bai (PW1) is not an eye-witness, therefore, the conviction on the basis of her deposition is not sustainable.

7. On the contrary, Shri Rajendra Tripathi, learned Panel Lawyer for the State, would support the impugned conviction on the submission that present is an open and shut case against the appellant in view of the statement of the eye-witnesses duly corroborated by the medical evidence rendered by Dr. K.R. Tekam (PW8).

8. Nadiyaro Bai (PW1) is the person in whose house the deceased was engaged in the work of bundling Tendu leaves. She

has fully supported the prosecution case stating that at about 3.00 pm, on the date of incident, the appellant reached her house and started assaulting the deceased by club.

9. Palinder (PW2) has deposed that he received information sent by Nadiyaro Bai (PW1) to the effect that the appellant has committed murder of his mother Ramkunwar. When this witness reached to the house of Nadiyaro Bai (PW1), the deceased was lying unconscious having blood oozing injuries over her head.

10. Bhagwat (PW3) is the witness to the memorandum statement of the appellant vide Ex. P/1 and the seizure memo Ex.P/2. He has fully supported the prosecution case and has remained firm even during cross-examination.

11. Vishnu Singh (PW4), Bhudhan Ram Paikra(PW5) and Basant Lal Gupta (PW7) have either assisted or conducted the investigation. As stated infra, Dr. K.R. Tekam (PW8) has found injuries over the person of the deceased.

12. In the state of above evidence on record, we shall now appreciate the submission put forth by learned counsel for the appellant, firstly that Nadiyaro Bai (PW1) is not an eye-witness and alternatively that it would be a case falling under the fourth Exception to Section 300 IPC.

13. To contradict or demolish the statement of Nadiyaro Bai (PW1), the defence has not put forth any evidence or could elicit any such damaging question from the witness. She has remained firm during her cross-examination that she has seen the incident. Palinder (PW2) is the son of the appellant. He reached to the

spot soon after the incident and found the unconscious body of his mother in the house of Nadiyaro Bai (PW1). Thus, Palinder (PW2) supports the statement of Nadiyaro Bai (PW1) that the incident has occurred in her house. Seizure witness Bhagwat (PW3) has also supported the case of prosecution. Thus, there is abundant corroboration to the eye-witness account rendered by Nadiyaro Bai (PW1) and the submission to the contrary that she is not an eye-witness, deserves to be and is hereby rejected.

14. Considering the alternative submission, it is to be seen that even if there is no premeditation before commission of offence, the fact remains that the appellant has brutally and mercilessly gave repeated blows with club on the vital part of the body i.e. head and face of the deceased.

15. Had it been a case of causing one single blow, the appellant's argument may have been valid. However, when repeated blows are caused and the manner of commission of culpable homicide is brutal, fourth Exception to Section 300 IPC is not attracted.

16. Likewise, absence of evidence regarding motive to commit the crime would not assist the defence in view of the statement of the eye-witnesses. The motive to commit a crime would be an important factor where the case of the prosecution is based on circumstantial evidence. But when direct evidence for commission of offence is available, motive is insignificant. In such cases, motive works within the mind of the culprit.

17. For all aforestated reasons, we do not find any substance in this appeal. The finding of guilt and sentence recorded by the trial Court is fully born out from the evidence on record. The appeal deserves to be and is hereby dismissed.

Sd/

JUDGE

(Prashant Kumar Mishra)

Sd/

JUDGE

(Ram Prasanna Sharma)