

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 796 of 2012**

- Sudhram Barley S/o Tilakram Barley Aged About 55 Years R/o Village Kushgarh, Thana Bilaigarh, Distt. - Raipur C.G. , Chhattisgarh

**---- Appellant**

**Versus**

- State Of Chhattisgarh Through Sho Bilaigarh, Distt. Raipur C.G. , Chhattisgarh

**---- Respondent**

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| For appellant         | : Shri Veerendra Verma, Advcate |
| For Respondent /State | : Shri Adil Minhaj, P.L.        |

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

**Judgement on Board by Pritinker Diwaker J.**

**04/04/2018**

This appeal arises out of judgment and order dated 29.08.2012 passed by the Second Additional Sessions Judge, Baloda Bazar, District Raipur in S.T. No. 45/2012 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- plus default stipulation.

2. As per prosecution case, deceased Maniram had applied for grant of Rs. 45,000/- towards Indira Awaas Yojana at Gram Panchayat and on the date of incident i.e. 01.06.11 he demanded for first installment of the said amount from Secretary of Gram Panchayat. Secretary, Gram Panchayat informed the deceased that his application has already been rejected and upon hearing this deceased told him

that his application has wrongly been rejected and that he is going to make a complaint to the superior officers. On coming to know that the deceased is going to complain the superior officers against the Secretary, Gram Panchayat, it is alleged that the appellant beat the deceased with club. Injured Maniram was treated in the village itself by one Kalapram (PW-14) however on 3.6.11 i.e. two days after the incident he succumbed to his injuries. Merg intimation Ex.P-17 was recorded on 3.6.11 at the instance of Kripa Ram (PW-22) brother of the deceased. Inquest Ex.P-3 was prepared and body was sent for postmortem examination which was conducted by Dr. C. S. Paikra (PW-17) vide Ex.,P-16 and according to him, cause of death was peritonitis due to internal injuries. On the basis of merg enquiry FIR Ex.P-20 was lodged against the appellant under Section 302 IPC. On 10.06.11 memorandum of accused/appellant Ex.P-12 was recorded and seizure of club was given effect to but there is no FSL report. After filing of charge sheet, the trial judge has framed charge against the appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 22 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is as under :

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

ii) Referring to the postmortem report of the deceased and the statement of the doctor it has been argued that only two injuries have been found on the body of the deceased which have been caused by club and considering the facts and circumstances of the case in which the incident occurred and the nature of injury, case of the appellant would fall under Exception 4 of Section 300 IPC.

iii) It has been further argued that the deceased was a drunkard and died because of peritonitis due to internal injuries.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law.

7. Heard counsel for the parties and perused the material available on record.

8. Ashok Kumar (PW-1) has not stated anything against the appellant and has turned hostile. Dulourin Bai (PW-2) is the wife of deceased and eyewitness to the incident has stated that when the deceased raised his demand for installment he was beaten by the accused/appellant with club. She has stated that he was immediately taken to his house where he was treated by the village doctor. Gulabram Ghrtilahre (PW-3), Hem Bai (PW-4) and Dhan Singh (PW-5) are formal witnesses. Pusotri Bai (PW-6), Jai Kumar (PW-7), Lakshmi

Bai (PW-8) and Shreelal Khosale (PW-9) have not stated anything against the appellant and have turned hostile. Sonalal Khosale (PW-10) has stated that when the deceased came to him he was intoxicated. Cheeniram (PW-11) father of the deceased and eyewitness to the incident has stated that when the deceased raised his demand before the Secretary which was refused and then he was beaten by the appellant. He has stated that when the doctor attended the deceased he disclosed that the deceased suffered minor injuries however after injection being given by the doctor, he expired. Dhansai (PW-12) is a formal witness. Premlal (PW-13) is a witness to memorandum (Ex.P-12) and seizure Ex.P-13) by which club was seized. Kalapram (PW-14) is the village doctor who treated the deceased at his house has stated that he was vomiting and that he was drunk. Hariram Patel (PW-15) is the patwari who prepared spot map. Pratap Singh Thakur (PW-16) is a formal witness. Dr. C.S. Paikara (PW-17) is the doctor who conducted postmortem examination on the body of the deceased vide Ex.P-16 and stated that the injuries sustained by the deceased could not be on account of assault with cub and the injury sustained by him on the back could be on account of fall. He has also stated that the injuries sustained on the intestine could have been because of fall. According to him, cause of death was peritonitis due to internal injuries. Loknath (PW-18) is the brother of the deceased has not stated anything specific against the appellant. Chain bai (PW-19) is the village Kotwar. Bhagirathi (PW-20) is a witness to memorandum (Ex.P-12) and seizure Ex.P-13 by which one club was given effect to. M.L.Tiwari (PW-21) is the Investigating Officer who has done the investigation. Kriparam (PW-22) is the brother of the

deceased who lodged the merg.

9. Close scrutiny of the evidence makes it clear that deceased Maniram had applied for grant of Rs. 45,000/- towards Indira Awaas Yojana and on the date of incident he demanded first installment of the said amount from Secretary of Gram Panchayat which was refused by the Secretary and threat was given by the deceased for making complaint against him to the superior officers. Upon coming to know about the said fact deceased was beaten by the appellant. The complicity of the appellant in the commission of the offence has been duly proved. The eyewitnesses to the incident have duly supported the prosecution case. Even the autopsy surgeon has not stated that the death was homicidal in nature. However, the important aspect is that deceased died after two days of the incident.

10. Next question which arises for consideration before this Court is as to what offence has been committed by the appellant. It is apparent that the injuries sustained by the victim were caused by the accused/appellant and considering the medical report of the deceased and the statement of the doctor, we are of the view that the act of the accused/appellant would fall under Exception 4 of Section 300. Thus, we are of the view that instead of convicting the appellant under Section 302 IPC, he is liable to be convicted under Section 304(Part-II) IPC.

11. Accordingly, conviction and sentence awarded to the accused/appellant u/s. 302 IPC is set aside. Instead thereof, the appellant is convicted under Section 304 (Part-II) IPC. Appellant is reported to be in jail since six years and nine months. Considering the

detention period of the accused/appellant, we are of the view that ends of justice would be served if his sentence is reduced to the period already undergone by him. Order accordingly.

12. Appellant is in jail. He be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)  
Judge

Sd/-

(Sanjay Agrawal)  
Judge