

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 918 of 2011

- Nandu @ Dev Kumar Satnami, Aged about 33 years, S/o Khursheed Satnami, R/o Jyotiba Nagar, Michi-para, Gudhiyari, Raipur, Thana-Gudhiyari, District-Raipur (CG)

---- Appellant

In Jail

Versus

- State of Chhattisgarh, through District Magistrate, Raipur, Distt. Raipur (CG)

---- Respondent

For Appellant	:	Shri Yogesh Pandey, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

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

Judgment On Board By Justice Pritinker Diwaker

10/01/2018

This appeal arises out of the judgment of conviction and order of sentence dated 29.8.2011 passed by the Sessions Judge, Raipur in ST No.236/2010, convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- with default stipulation.

02. As per prosecution case, on 23.8.2010 in the afternoon when the deceased Kumar Yadav was carrying gas cylinder in his rickshaw, on the way he was stopped by the accused appellant and without any rhyme or reason assaulted by him with hands and fists and then the

appellant lifted a gas cylinder from his rickshaw and threw it on his face resulting in his instantaneous death. The said incident was witnessed by PW-2 Puneet Banjare, PW-3 Karan Janghel, PW-4 Smt. Meena Patel and PW-5 Santosh Jangade. At the instance of PW-4 Meena Patel, FIR (Ex.P/4) was registered against the appellant on 23.8.2010 at 4 pm under Section 302 of IPC. Soon thereafter mereg intimation Ex.P/7 was recorded. Inquest over the dead body was conducted vide Ex.P/8 on 24.8.2010. Postmortem on the dead body was performed on the same day vide Ex.P/6 by PW-7 Dr. SK Bagh. According to the autopsy surgeon, there were contused lacerated wound over right eyebrow region, on right cheek, right ear, right shoulder; fracture of mandible into two parts at mental region, dislocation of right temporomandibular joint; fracture of nasal bone and right orbital bone; fracture of upper jaw (maxilla bone) into three pieces and upper incisor teeth missing and contusion on both lips; fracture of anterior cranial fossa extending from left orbital bone to right orbital bone; fracture of frontal bone; depressed fracture on right maxillary and right orbital bone; right eye ball shifted backward into anterior cranial fossa; echymosis present on frontal region and also in occipital region. All the injuries were fresh, caused by hard and blunt object, and were sufficient in the ordinary course of nature to cause death. Viscera was also preserved for chemical analysis. In his opinion, the cause of death was hemorrhage and shock as a result of head injuries and their complications. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution

examined 10 witnesses in all. Statement of the accused 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

- (i) that the prosecution has failed to prove that there was any motive with the appellant to commit the crime in question.
- (ii) that as per evidence available on record, the appellant was suffering from insanity and unsoundness of mind, he was not aware of the consequences of his act and therefore, is entitled for the protection under Section 84 of IPC.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

- (i) that PW-2, PW-3, PW-4 & PW-5 are eyewitnesses to the incident who had seen the appellant killing the deceased and their evidence is sufficient enough to hold the appellant guilty of the offence.
- (ii) that the appellant cannot take the defence that at the time of commission of offence he was of unsound mind. The burden of proving the existence of circumstances bringing the case within the purview of Section 84 IPC lies on the accused under Section 105 of Evidence Act but he has failed to discharge the said burden as required under the law. She submits that in the Court also no abnormal behaviour was

shown by the appellant, he answered all the questions put to him in his statement under Section 313 of CrPC in such a manner which is suggestive of the fact that he was not a person of unsound mind.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 Punit Banjare, eyewitness to the incident, has stated that when he was standing near the place of occurrence, he saw the deceased carrying gas cylinder in his rickshaw. When the deceased was sitting in his rickshaw, the appellant came there and started assaulting him with stone, thereafter he threw the deceased on the ground and after lifting the gas cylinder from the rickshaw, threw it on the head of the deceased resulting in his death. In cross-examination he has denied the suggestion that the appellant was a person of unsound mind and stated that in fact, the appellant was habituated to ganja and liquor and under the influence of it, he used to behave abnormally and commit marpeet. In the past, on the report of people of the locality, the appellant was caught by the police, however, after some time he was released by the police.

Almost similar statements have been made by PW-3 Karan Janghel, PW-4 Smt. Meena Patel & PW-5 Santosh Jangade, the other eyewitnesses to the incident.

09. PW-1 Santosh Agrawal has stated that he had asked the deceased to get the gas cylinder from Bharat Gas Agency and after the incident he came to know that the appellant killed the deceased by hitting him with gas cylinder. PW-6 Narendra Pandey, prepared the

spot map Ex.P/5. PW-7 Dr. SK Bagh conducted postmortem on the body of the deceased on 24.8.2010 vide Ex.P/6. According to the autopsy surgeon, there were contused lacerated wound over right eyebrow region, on right cheek, right ear, right shoulder; fracture of mandible into two parts at mental region, dislocation of right temporomandibular joint; fracture of nasal bone and right orbital bone; fracture of upper jaw (maxilla bone) into three pieces and upper incisor teeth missing and contusion on both lips; fracture of anterior cranial fossa extending from left orbital bone to right orbital bone; fracture of frontal bone; depressed fracture on right maxillary and right orbital bone; right eye ball shifted backward into anterior cranial fossa; echymosis present on frontal region and also in occipital region. All the injuries were fresh, caused by hard and blunt object, and were sufficient in the ordinary course of nature to cause death. Viscera was also preserved for chemical analysis. In his opinion, the cause of death was hemorrhage and shock as a result of head injuries and their complications. PW-10 BK Tiwari, investigating officer, has duly supported the prosecution case.

10. As regards the involvement of the appellant in the crime in question, from the unrebutted evidence of eyewitnesses PW-2 Puneet Banjare, PW-3 Karan Janghel, PW-4 Smt. Meena Patel and PW-5 Santosh Jangade, it stands proved beyond all reasonable doubt that it is the appellant who killed the deceased by assaulting him with stone and throwing gas cylinder on his head. As per postmortem report of the deceased, the cause of death was hemorrhage and shock as a result of head injuries and their complications.

11. As regards the argument of the counsel for the appellant that at the time of incident, the appellant was suffering from insanity or unsoundness of mind, this Court could not lay its hand even on a single substantive piece of evidence which is suggestive of the same. Though the defence has given suggestions to the eyewitnesses in their cross-examination to substantiate its plea of insanity but except PW-3 Karan Janghel, the other eyewitnesses (PW-2, PW-4 & PW-5) have denied the said suggestion and stated that in fact, the appellant used to take *ganja* and liquor and behave abnormally under the influence thereof. PW-3 has though stated that on the date of incident the appellant was behaving like a mad and was beating the persons randomly but he has not stated specifically as to who were the victims of such abnormal behaviour of the appellant. No medical papers to show that the appellant was suffering from any such mental ailment or the opinion of the medical expert has been brought on record.

While dealing with the point of insanity or unsoundness of mind the Apex Court has in many cases - some of them being - ***Surendra Mishra Vs. State of Jharkhand, (2011) 11 SCC 495; Mariappan Vs. State of Tamil Nadu, (2013) 12 SCC 270; Sheralli Wali Mohammed Vs. State of Maharashtra, (1973) 4 SCC 79; Oyami Ayatu Vs. State of M.P., (1974) 3 SCC 299*** and ***Bhikari Vs. State of Uttar Pradesh, AIR 1966 SC 1***, has unequivocally held that unless pleaded and proved during trial, the accused/appellant is not entitled to derive the protection of Section 84 of IPC simply by raising the issue at a belated stage. Here also, though this plea was taken before the trial Court but no evidence, oral or medical, could be adduced by the defence from which it could safely be inferred that the cognitive faculties of the

accused were so impaired that he was not in a position to see the repercussions of his act and since it has not been done, the accused/appellant cannot disown his guilt of murdering the deceased. Further, the act of the accused/appellant in denying the charges, pleading trial and innocence in his statement under Section 313 Cr.P.C. makes this Court to draw an inference that his mental faculties were not so impaired to provide him the strength to wriggle out of the rigor of law. Thus, in these circumstances and keeping in mind the aforesaid legal position, the appellant is held to be dis-entitled to have the protection of Section 84 of IPC.

12. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/

**(Pritinker Diwaker)
Judge**

Sd/

**(Sanjay Agrawal)
Judge**