

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 531 of 2012**

1. Ramhau Ram son of Devnu Ram Sinha, aged about 49 years, Occupation - Agriculturist, R/o Village Chicha, Police Station Arjunda, District Durg, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Arjunda, District Durg, CG

---- Respondent

For Appellant	:	Shri Dharmesh Shrivastava, Advocate
For State	:	Shri Avinash K. Mishra, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board by Pritinker Diwaker, J**23/08/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 26.04.2012 passed by Additional Sessions Judge, Durg in Sessions Trial No. 166/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 5000/-, plus default stipulation.

2. Name of the deceased in the present case is Khubiram Sinha. Case of the prosecution is that as the accused/appellant was suspecting the deceased to be the one at whose instance his wife had filed a maintenance case against him, he started nurturing enmity with him and eventually on 9.8.2009 at 6 AM killed him by inflicting number

of club injuries on his head. Incident is said to have been witnessed by Chandrahas Sahu (PW-10) and Jhagendra Sahu (PW-11). On the same day at 11 AM FIR (Ex.P-7) was registered against the accused/appellant at the instnce of Nutan Kumar Sinha (PW-3) - the nephew of the deceased. However, as the deceased was brought dead to the hospital, un-numbered *merg* Ex. P-1 was recorded on the same day at 10.15 AM followed by numbered *merg* Ex. P-2 recorded on the same day 9.40 PM. After drawing inquest vide Ex. P-4, the dead-body was sent for postmortem examination which was conducted by Dr. S.S. Rajput (PW-14) who gave his report Ex. P-25. On the memorandum of accused/appellant Ex. P-10, seizure of soil, blood stained club, blood stained vest and a bicycle, was made under Ex. P-11, P-12 and P-13. Court below framed the charge against the accused/appellant herein under Sections 120-B and 302 IPC whereas against the co-accused namely Tikaram it was under Section 120-B and 302/34 IPC.

3. In order to prove the complicity of the accused persons in the crime in question, the prosecution has examined 14 witnesses. Statements of the accused persons under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below acquitted accused Tikaram of the charges levelled against him but has convicted and sentenced the accused/appellant herein as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That the eyewitnesses to the incident being (PW-10 and PW-11) are not reliable who, in fact, had not seen the actual occurrence.

(ii) That from the *merc* intimations (Ex.P-1 and P-2) it is apparent that the deceased died an accidental death but later it has un-necessarily been converted into the that of the murder at the behest of PW-10 and PW-11.

(iii) That though on the memorandum of accused/appellant blood stained club and blood stained clothes were seized and FSL report is also positive yet in the absence of serological report, the FSL report is not of any significance.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellant as described above are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that two eyewitnesses (PW-10 and PW-11) have categorically stated that they saw the accused/appellant repeatedly inflicting the club injuries to the deceased and also narrated as to in what manner the incident occurred. As regards the argument of the counsel for the accused/appellant that the death was accidental, State counsel submits that body of the deceased was found near the road and the person who hospitalised the deceased *prima facie* may have thought it to be a case of accident and that is why it was reported as such.

He submits that till recording of *merg*, diary statements of these two eyewitnesses were not recorded otherwise the situation would have been different.

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

8. Chandrahas Sahu (PW-10) - an eyewitness to the incident has stated that on the date of incident when he along with his younger brother Jhagendra Kumar Sahu (PW-11) was returning after the morning walk, he saw the accused/appellant herein riding the bicycle, on the career of which acquitted accused Tikaram was sitting. Thereafter, according to this witness, accused/appellant got down the bicycle, went to the deceased who was standing near his field and inflicted club blows on his head and at that time the acquitted accused was standing at some distance. Accused/appellant is stated to have continuously inflicted the club blows even after the deceased had fallen down on the ground. This witness has further stated that when he along with his brother (PW-11) went near the deceased, he was lying unconscious with the injuries on head profusely bleeding. Taking it to be a police case he and PW-11 went away thinking that on arrival of the police disclosure of the occurrence would be made. But for the minor contradictions in the cross-examination, this witness stood firm to what he has stated in the examination-in-chief. In paragraphs 18 and 20 of his deposition, this witness has again categorically stated that the

accused/appellant was seen by him assaulting the deceased with the help of club. He has specifically denied the fact that in order to ensure false implication of the accused/appellant, he has deposed the things against him. Jhagendra Sahu (PW-11) - another eyewitness to the incident and younger brother of PW-10 has stated that on the date of incident while returning after his morning exercise along with his elder brother (PW-10), he saw the accused/appellant assaulting the deceased with club. He has further stated that on account of the injuries inflicted on head, the deceased had fallen down and become unconscious. Acquitted accused, according to this witness, was however standing at some distance and he did not take part in the assault. According to this witness, on account of fear, he did not disclose the incident to anyone and after some time came to know about the death of the deceased. In cross-examination also this witness stood firm in stating that it is the accused/appellant who was seen by him assaulting the deceased with club. Dr. S.S. Rajput (PW-14) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-25 stating that he noticed abrasions on great toe and second toe - both in the size of 1/2 x 1/2 cm; lacerated wound on right occipital region in the size of 5 x 3 x 8 cm; and fracture of right occipital and temporal bone. Cause of death has been opined as shock due to haemorrhage as a result of extensive injury on head. S.N. Shukla (PW-12) is the investigating officer who has duly supported the case of the prosecution. Bodhanlal Sahu (PW-1)

and Pradeep Kumar Mishra (PW-2) are the witnesses who assisted in the investigation. Nutan Kumar Sinha (PW-3) is the witness who lodged FIR (Ex.P-7). He is stated to have been informed by PW-10 that it is the accused/appellant herein who assaulted the deceased with club. Beniram (PW-4) has not supported the case of the prosecution and has been declared hostile. Romlal Sinha (PW-5) is the witness to inquest Ex. P-4. Bednath Sinha (PW-6) is the brother of the deceased who took him to the hospital. PW-5 and PW-6 have also proved the motive on the part of the accused/appellant. Mahesh Kumar Thakur (PW-7) is the *Patwari* who prepared spot map Ex.P-9. Bhisham (PW-8) - the witness to memorandum and seizure has duly supported the case of the prosecution. Shivdayal Sahu (PW-9) is the witness who informed PW-6 that his brother was lying in an unconscious condition. R.G.S. Gautam (PW-13) is the witness who did part of the investigation.

9. We have heard counsel for the parties and gone through the evidence of the witnesses and other material available on record at considerable length. PW-10 and PW-11 are the eyewitnesses to the incident who have categorically supported the case of the prosecution stating that on the date of incident when they were returning after morning walk, accused/appellant along with acquitted accused came there on bicycle, got down, went to the field where the deceased was working and dealt number of club blows on his head. Their evidence further shows that the accused/appellant did not stop the assault even after the deceased fell down, and

when all this was going on, acquitted accused kept standing on the road. As per the postmortem report Ex. P-25 deceased had suffered multiple injuries including fracture of right occipital and temporal bone which led to his instantaneous death. While answering the query vide Ex. P-18-A, this witness has clarified that the head injury suffered by the deceased could have been caused with the club produced before him for examination. True it is that in the un-numbered *merg* (Ex.P-1), RTA (Road Traffic Accident) is mentioned as the cause of death but it is simply because by that time the eyewitnesses (PW-10 and PW-11) were not examined, and as the body of the deceased was seen lying near the road, such a thing could have been recorded. Multiple injuries present on the body of the deceased including fracture and query report Ex. P-18-A to the effect that the head injury could be caused with the club seized by the prosecution, rule out every possibility of it being a case of Road Traffic Accident. Moreover, as per the un-exhibited FSL report blood has been found on the club so seized which looking to the evidence on record and in the absence of any explanation from the accused/appellant in this respect, it becomes an additional link against him even in the absence of serological report. PW-5 and PW-6 have also proved the motive which could have prompted the accused to commit the murder of the deceased as according to them the deceased stood a witness in some matrimonial case against the accused/appellant. Having thus seen the evidence on record as a whole, it can safely be said that the prosecution

has proved its case beyond reasonable doubt. So also the Court below has assessed the evidence in the right perspective while arriving at the conclusion of guilt of the accused/appellant for committing the murder of the deceased, and there is no illegality or infirmity in the same.

10. Accordingly, the appeal being without substance is liable to be and is hereby dismissed. Judgment under challenge is affirmed. As the accused/appellant is already in jail, there is no need of any direction in this regard.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Rajani Dubey)

Judge