

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 430 of 2013**

1. Ramsharan Yadav son of Shri Vishram Yadav, aged 45 years, resident of Madku, Thana Hirri, District Bilaspur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Hirri, District Bilaspur, CG

---- Respondent

For Appellant	:	Shri Ashish Shrivastava and Shri Afroj Khan, Advocates
For State	:	Shri Vivek Sharma, GA

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

Judgment On Board by Pritinker Diwaker, J

24/08/2018

This appeal has been filed against the judgment of conviction and order of sentence dated 22.12.2012 passed by Additional Sessions Judge, Mungeli, District Bilaspur in Sessions Trial No. 47/2011 convicting the accused/appellant under Sections 302 and 323 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 2000/- u/s 302 and RI for one month u/s 323 IPC, plus default stipulation.

2. Case of the prosecution in short is that on 29.07.2011 at 4.30 PM when deceased Pitamber Yadav and injured Baisakhia Bai (PW-7) - his daughter-in-law were in their house, the accused/appellant came there carrying club with him and threw Shatrughan Yadav (PW-8) down. When PW-7 tried to

intervene in the matter, the accused/appellant caused number of club injuries to her also. On seeing this, Pitamber Yadav came in between and intervened in the matter but he too was assaulted by the accused/appellant causing club injury on his head which ultimately proved fatal to his life. On that day itself at about 9 PM *Dehati Nalisi* (Ex.P-12) was lodged by Baisakhia Bai (PW-7) and soon thereafter at 9.20 PM un-numbered *merg* Ex. P-15 was recored followed by numbered one being Ex. P-16. After drawing inquest vide Ex. P-2, the dead-body was sent for postmortem examination which was conducted by Dr. A.K. Kaushik (PW-2) who gave his report Ex. P-10. On the memorandum of the accused/appellant Ex. P-04, seizure of blood stained club and clothes of the deceased was made under Ex. P-05 and P-06, however, FSL report Ex. C-1 is not positive in respect of these two articles. Court below framed the charge against the accused/appellant herein under Sections 302 and 323 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 10 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below 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-7 and PW-8) are not reliable as being the relatives of the deceased they are interested witnesses.

(ii) That prosecution has utterly failed to prove the motive on the part of the accused/appellant to commit murder of the deceased.

(iii) That though on the memorandum of accused/appellant blood stained club and blood stained clothes were seized by the prosecution but the FSL report in respect of these articles is not positive.

(iv) That even if the entire case of the prosecution is taken as it is, act of the accused/appellant does not make him liable for conviction u/s 302 and at best his act would fall under Section 304 (Part-I) or 304 (Part-II) IPC and therefore, considering the fact that has already remained in jail for more than 7 years, he may be sentenced to the period already undergone by him after convicting under Section 304-I or 304-II IPC.

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 as many as eight injuries have been caused to the deceased including fracture of left and right parietal bone and therefore, the Court below was justified in convicting him under Section

302 IPC. State counsel further submits that looking to the fact that the accused/appellant caused injuries to PW-7 also with club, his conviction under Section 323 IPC is also justified and there is no infirmity in the same. According to the State counsel, statements of eyewitnesses (PW-7 and PW-8) are fully consistent and trustworthy and there is no reason to discard the same.

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

8. Baisakhia Bai (PW-7) - an injured eyewitness to the incident has stated that on the date of incident the accused/appellant had gained entry into her house from the side of backyard of her house, threw PW-8 down and then also caused injuries on her head with the help of club. She has stated that the accused/appellant dragged Pitamber out of the house, took him towards the temple and subjected him to beating on account of which he died. She has then clarified that the accused/appellant inflicted 4-5 club blows to her father-in-law (the deceased herein) on various parts of his body including head as a result of which he had fallen down on the ground. Except certain minor contradictions in the cross examination, this witness remained firm to what she stated in the examination-in-chief. Shatrughan Yadav (PW-8) - son of PW-7 has stated that on the date of incident at about 4 PM when he was playing in his house, accused/appellant came there from the backside of his house and threw him

down and that when his mother came to his rescue, she too was inflicted injuries by him with the help of club. According to this witness, when his grandfather (deceased herein) intervened in the matter, the accused/appellant dragged him to the Mahamaya temple and assaulted him also with the help of club which led to his instantenous death. Though this witness has stated that his family and that of the accused were not on inimical terms yet he has reiterated as to in what manner the incident had taken place. Cross-examination of this witness carries almost the same version as in the examination-in-chief and there is variation at both the places. Dr. A.K. Kaushik (PW-2) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-10 stating that he noticed lacerated wound on the right fronto parietal region, bruise on chest extending from shoulder to right nipple and that the cause of death was coma due to head injury (intra cranial haemorrhage). Ishak Xalxo (PW-9) is the investigating officer who has duly supported the case of the prosecution. Chait Singh (PW-1) is the witness to inquest, memorandum of the accused and seizure made thereunder. Ku. Pushpa (PW-3) and Itwari (PW-4) have not supported the case of the prosecution and have been declared hostile. Raghu Yadav (PW-5) is a hearsay witness who was told by Itwari (PW-4) that the accused/appellant had assaulted his father with the help of club. Ramphal Kori (PW-6) is the Patwari who prepared spot map Ex. P-9. S.R. Kosopi (PW-10) is the witness who did part of

the investigation.

9. On hearing counsel for the parties and going through the evidence available on record it becomes apparent that on 29.07.2011 at 4.30 PM when deceased Pitamber Yadav and injured Baisakhia Bai (PW-7) – his daughter-in-law were in their house, the accused/appellant came there carrying club with him and threw Shatrughan Yadav (PW-8) down. Record also reveals that when PW-7 tried to intervene in the matter, the accused/appellant caused number of club injuries to her also. Evidence on record also goes to show that on seeing the accused/appellant causing injuries to PW-7, Pitamber Yadav (the deceased herein) came in between and intervened in the matter but he too was assaulted by the accused/appellant causing number of club injuries on his body including the head which ultimately proved fatal to his life. PW-7 and PW-8 are thus the eyewitnesses to the incident who have categorically stated as to in what manner the accused/appellant first attacked them and then turned towards the deceased, dragged him to some distance and caused several injuries with club leading to his death. That apart, the postmortem report Ex. P-10 also supports the case of the prosecution where it is mentioned that lacerated wound on the right fronto parietal region, bruise on chest extending from shoulder to right nipple were present including fracture of left and right parietal bone, and the cause of death was coma due to head injury (intra cranial haemorrhage). Taking thus evidence of the eyewitnesses (PW-7 and PW-8) as also the postmortem report

(Ex.P-10) showing multiple injuries on the body of the deceased including fracture of skull bones, into consideration this Court is of the opinion that the accused/appellant had come fully prepared to finish the deceased, and being so the argument of the defence counsel that the act of the accused would fall either under Section 304 (Part-I) or 304 (Part-II) IPC has no force at all and it is, therefore, rejected. On the contrary, what the evidence shows is that the act of the accused/appellant in causing the fatal injuries to the deceased entails his conviction under Section 302 IPC and for causing injuries to PW-7 under Section 323 IPC. Court below, therefore, has been justified in appreciating the evidence on record while arriving at the conclusion of holding the accused/appellant guilty accordingly.

10. In aforesaid view of the matter, this Court does not find any substance in the appeal and it is accordingly dismissed with affirmation of the judgment impugned. As the appellant is already in jail, no order regarding his surrender etc. is needed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Rajani Dubey)
Judge