

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 634 of 2013****Reserved on 05.03.2018**
Pronounced on 23.03.2018

[Arising out of judgment/order dated 17.04.2013 in Sessions Trial No.452/2011 of the Addl. Sessions Judge, Ramanujganj, Distt. Balrampur-Ramanujganj (C.G.)]

Biphal Ram, S/o Shri Dhurlotan Ram Agaria, aged about 40 years, Village Navadihkala, Police Station Chando, Revenue District Balrampur-Ramanujganj, Civil District Surguja (C.G.)

---- Appellant

Versus

State Of C.G. Through : P.S. Chando, District Balrampur-Ramanujganj (C.G.)

---- Respondent

For Appellant	:Shri Manoj Mishra, Advocate
For Respondent/State	:Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ

C.A. V. Judgment

Per Sanjay Agrawal, J.

1. This criminal appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C. in short) against the judgment dated 17.04.2013 passed by the Additional Sessions Judge, Ramanujganj, District Balrampur-Ramanujganj in Sessions Trial No. 452/2011 whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code (for brevity, IPC) and sentenced him to undergo rigorous imprisonment for life with fine amount of Rs.500/- and in default of payment of fine amount, he has to undergo additional RI

for three months.

2. Briefly stated, the case of the prosecution is that on 23.06.2011 at about 4.00 PM, the deceased Gendwa Ram went to the Chando bazaar and on account of sunlight, when he was sitting under the roof of a small hut of one Bali Prasad Gupta, the accused/appellant Biphal Ram of village Navadihkala came and because of previous land dispute assaulted him on his head with a hard cement stone. As a result of which, he fell down on the ground and became unconscious and died during the course of his treatment at about 09.30 PM at Government Hospital, Balrampur.
3. Based upon the aforesaid incident, First Information Report (Ex.P.1) was lodged by one Ashok Gupta on 23.06.2011 at 16:30 hours (04.30 PM) before the Station House Officer, Chando, District Balrampur where offence punishable under Section 307 IPC was registered against the appellant. The deceased Gendwa Ram being unconscious owing to the alleged assault was taken to the Government Hospital, Balrampur where he expired at 09.30 PM during the course of his treatment. Merg intimation (Ex.P.8) was, therefore, lodged by the deceased's son Kamal Sai on 23.06.2011 at 23:30 hours (11.30 PM). Inquest on the dead body was conducted on 24.06.2011 vide Ex.P.7. After inquest, the dead body was sent for autopsy to Government Hospital, Balrampur where Dr. R.S. Markarm (P.W.18) conducted post-mortem examination on the dead body of Gendwa Ram and submitted its report vide Ex.P.15 by opining that the cause of death was due to shock and haemorrhage owing to fracture on parietal bone and, was homicidal in nature.

4. Investigating Officer has seized the used weapon of offence, hard cement stone weighing 4.50 kilograms along with other articles, such as, soil with blood stained from the spot vide its seizure memo (Ex.P.2) on 23.06.2011 at 17:30 hours (05.30 PM).
5. After usual investigation of the matter as such, the offence punishable under Section 302 IPC was registered against the appellant by the Station House Officer, Chando, District Balrampur, who submitted its final report before the Judicial Magistrate First Class, Ramanujganj and, the matter was thereafter committed to the Additional Sessions Judge, Ramanujganj for its trial.
6. After considering the prima facie materials available on record, the trial Court has framed charge under Section 302 IPC against the appellant on 21.08.2012. The appellant pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to be tried. In order to bring home the guilt of the appellant, the prosecution examined as many as 18 witnesses, while none was examined by the appellant in his defence.
7. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellant and sentenced him as aforesaid.
8. Being aggrieved, the appellant has preferred this appeal. Shri Manoj Mishra, learned counsel for the appellant submits that the judgment under appeal as passed by the trial Court is apparently contrary to law as the same has been passed without considering the evidence in its proper perspective. He submits further that even if the entire prosecution story is taken as it is, at the most, the

appellant would be liable to be convicted either under Part II or Part I of Section 304 IPC.

9. On the other hand, Shri Rahul Tamaskar, learned Panel Lawyer for the State supported the impugned judgment by submitting, inter alia, that it has been passed upon due and proper appreciation of the evidence of the prosecution witnesses, and therefore, does not require to be interfered.
10. We have heard learned counsel for the parties and perused the entire record carefully.
11. Navin Badaik (P.W.3) is the eye-witness and is stated to have accompanied with deceased's son Kamal Sai, who lodged the merg intimation vide Ex.P.8 on 23.06.2011. He has stated in his evidence that on the fateful day, he went to the said bazaar where the accused Biphul Ram has thrown the huge stone upon the head of the deceased Gendwa Ram from his back side. According to him, the deceased was taken to the Government Hospital, Balrampur as he became unconscious at that time due to alleged assault and died thereafter in the Hospital. Inquest of the dead body was conducted in his presence vide Ex.P.7. He was firm in his cross-examination.
12. Ashok Gupta (P.W.1) is stated to have lodged F.I.R. (Ex.P.1) but has turned hostile without supporting the prosecution. Likewise, Kuldeep Kumar (P.W.2) has also turned hostile. Kamal Sai (P.W.4) is the son of deceased Gendwa Ram and is stated to have lodged the merg intimation vide Ex.P.8 on 23.06.2011. He has stated in his evidence that he came to know about the alleged assault by the

accused/appellant with a heavy stone on his father from one Navin Badaik (P.W.3). This witness is, thus, the hearsay one and has not supported the prosecution case. Ashok Gupta (P.W.13) is the witness of seizure memo (Ex.P.2) but has turned hostile without supporting the prosecution case. Smt. Sundari (P.W.5), Surya Dev (P.W.6), Santosh Ram (P.W.8), Akhtar Hussain (P.W.9) and Dinesh Kujur (P.W.14) are the formal witnesses.

13. Dhan Sai Nagesh (P.W.7) is the village Patwari, who has prepared the Najri Naksha (spot map) vide Ex.P.11. Muneshwar Nagesh (P.W.10) is a Constable, who has brought the alleged stone for its chemical examination to the Laboratory at Raipur. T.R.Bhagat (P.W.11) and Ravi Prasad Kushwaha (P.W.12) are the Assistant Sub-Inspectors and have assisted the prosecution case. Pankaj Yadav (P.W.15), Gorakhnath Yadav (P.W.17) are the Constables and, N. Khess (P.W.17) is the Investigating Officer and have assisted the prosecution case.
14. Dr. R.S. Markam (P.W.18), who has conducted post-mortem examination on the dead body of Gendwa Ram, has submitted its report vide Ex.P.15 noticing the following injuries:-
 1. Rigor mortis present all over the body. Blood clots and stains present all over the body, especially over the head and scalp hair.
 2. Lacerated wound of 3 ½ x ½ x ½” over occipital area, 3 x ½ x ½ “ over left side of occipito-parietal region, 3 x ½ x ½ “ over right side of parietal area and right side of eyelids having abrasion which is blackish in colour.
 3. A chip of bone of right parietal having fractured and depressed into the scalp area.

After examining the dead body of deceased, it was opined by him that the cause of death was due to shock and haemorrhage as a result of fracture on parietal bone and, was homicidal in nature.

15. On perusal of the aforesaid statements coupled with the medical evidence and, particularly, the statement of Navin Badaik (P.W.3), an eye-witness to the incident, it is evident that on the fateful day, i.e., 23.06.2011, the appellant, with an intention to kill the deceased Gendwa Ram owing to previous land dispute, had thrown a heavy and hard cement stone on back side of his head, as a result of which, he became unconscious and died at 09.30 PM on the same day in the Government Hospital, Balrampur. His evidence inspires confidence and an inference can easily be drawn against the appellant that owing to assault made by the appellant with a heavy and huge cement stone on the backside of the head, Gendwa Ram sustained injury on his head and died. We, therefore, do not find any infirmity in the findings recorded by the trial Court convicting the appellant in connection with the alleged offence punishable under Section 302 IPC. Thus, we affirm the same.
16. Consequently, we do not find any substance in this appeal, which is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE