

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR.A. No. 1007 of 2014**

Dhaneshwar Toppo, S/o. Duhan Ram, aged about 30 years (now 37 years),  
Occupation – Cultivator, resident of Village-Kaliya, Police Station –  
Narayanpur, Civil and Revenue District – Jashpur (C.G.)

**---- Appellant**

**Versus**

State Of Chhattisgarh, Through – the Station House Officer, Police Station –  
Narayanpur, District – Jashpur (C.G.)

**-----Respondent**

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| For Appellant        | : Mr. J.K. Saxena, Advocate            |
| For Respondent/State | : Mr. Anupam Dubey, Dy. Govt. Advocate |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant &  
Hon'ble Shri Justice Gautam Chouradiya**

**Judgment on Board by Hon'ble Shri Justice  
Rajendra Chandra Singh Samant**

**14/07/2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Sessions Judge, Jashpur, District – Jashpur (C.G.) in S.T. No.141/2005 on 03.02.2007, convicting the appellant for the offence under Section 302 of the Indian Penal Code and sentencing him to under go R.I. for life along with fine of Rs.250/- and in default of payment of fine, the appellant was required to further under go R.I. for 15 days separately.

2. Facts of the case in brief is this that Alima (P.W.-3) was informed by the children that her father-in-law was lying injured. The deceased – Shivgovind was admitted to the hospital on 22.11.2005 and he died on 23.11.2005 in hospital. Morgue intimation (Ex.P-9) was recorded by the Prakash Toppo (P.W.-1), son of the deceased. In morgue enquiry, according to postmortem report (Ex.P-18), the death was found to be homicidal in nature on account of the head injuries caused by the hard and blunt object resulting subdural and extradural hemorrhage. FIR (Ex.P-12) was lodged on the basis of the morgue enquiry. The investigation was completed in which on the basis of the evidence found against this appellant, he was charge-sheeted.
3. Appellant was charged with offence under Section 302 of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 13 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witnesses was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The witness Alima (P.W.-3) and Sakuntala Beck (P.W.-5) have given improved statement before the

Court, which should not have been relied upon at all. On the evidence of other witnesses of whom, the trial Court has placed reliance have not given statement beyond reasonable doubt. There is no eye-witness of this incident, hence, under these circumstances, the appellant was entitled for benefit of doubt, hence, it is prayed that the appeal be allowed and the appellant be acquitted of the charges.

5. Counsel for the State opposes the grounds in appeal and the submissions made in this respect. It is submitted that according to the statement given by the Bhuneshwar Ram (P.W.-04), the deceased had made oral dying declaration in presence of this witnesses and at that time Alima (P.W.-3) and others were present on the spot. Apart from that because of some property dispute, the appellant had motive to cause death of the deceased. Postmortem report also clearly established that the deceased was done to death by causing fatal injuries on his head by sharp and blunt object. Hence, the prosecution has proved its case beyond all reasonable doubts and there is no room for interference in the impugned judgment of conviction and order of sentence.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The deceased has died homicidal death is not disputed. Dr. Neeraj Sendey (P.W.-12) has stated that Shivgovind Toppo was admitted for treatment in CIMS, Bilaspur on 22.11.2005, where he died on 23.11.2005 at about 1.30 AM. Dr. Ashutosh Tiwari (P.W.-13) has

examined the dead body and found one injury on head coupled with internal hemorrhage caused by some hard and blunt object. He has opined in his report (Ex.P-13) that because of hemorrhage and injuries caused on the head of the deceased, the death has occurred and the death was homicidal in nature, which has not been challenged by the defence.

8. The question that whether the fatal injuries was caused by the appellant has been answered in positive by the trial Court regarding which the statement of the witnesses are being examined in this appeal.
9. Alima (P.W.-3) has been examined as witness of oral dying declaration. This witness has stated that when she went to the spot and saw her father-in-law, the deceased Shivgovind in injured condition having injuries on head, The deceased talking a little and he told her that it was the appellant, who had caused injuries on his head by using Axe. In cross-examination, the witnesses was confronted with her previous statement (Ex.D-1). No question has been put to this witness in cross-examination to rebut the statement made by her regarding the oral dying declaration made by the deceased. Similarly Bhuneshwar (P.W.-4) has also made statement that when he arrived on the spot, the deceased was in talking condition and he told that appellant had assaulted him with an Axe. In cross-examination, his statement has not rebutted neither he was confronted with his previous statement and according to the statement given by this witness, the presence of Alima at the time of

oral dying declaration was also corroborated.

10. Shakuntala Beck (P.W.-5) has stated that she has witnessed this incident, when appellant assaulted Shivgovind with an Axe on the back side of his head. In the cross-examination, this witness was confronted with her previous statement (Ex.D-2), in which she has admitted that she has not given this statement to police earlier that she saw the appellant carrying an axe and assaulting the deceased. Hence, her statement before the Court can be regarded as improved statement. But the statement of Shakuntala Beck (P.W.-5) to this extent that she saw the appellant carrying an Axe is not rebutted and this statement made by her is in support of the statement given by other witnesses regarding the oral dying declaration and the statement given by this witness that she saw the deceased in injured condition soon after the incident is also not rebutted, which also corroborates the statement of other witnesses i.e. present on record.
11. After due consideration on the case in totality, we are of the considered opinion that circumstantial evidence regarding the appellant being seen carrying an Axe and also the evidence of oral dying declaration given by the witnesses, which has remained unchallenged and further the result, in which the deceased was done to death by causing head injuries to him stands corroborated with each other.
12. Considering, analyzing and scrutinizing all the relevant evidence with respect to the questions of determination, we are of the

considered opinion that conviction of appellant is based on reliable evidence of the prosecution, which is well corroborated and supported by the circumstantial evidence. Hence on the basis of the finding and the reasons mentioned herein above, no substance is found in appeal against conviction. In the result the appeal is dismissed accordingly.

Sd/-  
**(R.C.S. Samant)**  
Judge

Sd/-  
**(Gautam Chourdiya)**  
Judge