

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 221 of 2012**

- Rajkumar Tandon, S/o Fandi Tandon, By Caste Satnami, aged about 45 years, R/o Talam, Police Chawki-Fasterpur, Police Station Mungeli, District Bilaspur, C.G.

---Appellant

Versus

- State of Chhattisgarh, Through Police Chowki Fasterpur, Police Station Mungeli, District Bilaspur, C.G.

---- Respondent

For Appellant	Shri Suresh Tandon and Shri Dharendra Pandey, Advocates.
For Respondent/State	Shri S.K. Mishra, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Prashant Kumar Mishra****09/07/2019**

1. No one appeared for the appellant when the matter was called out twice yesterday as also in both the rounds before lunch today.
2. Shri Suresh Tandon, Advocate in the panel prepared by the High Court Legal Services Committee is present in the Court. We appointed Mr. Tandon to argue the matter on behalf of the appellant and allowed him one hour time to prepare the case.
3. The matter was taken up in the post lunch session.
4. The appellant stands convicted under Section 302 of IPC for committing murder of his younger brother Panchu Ram and sentenced to undergo life imprisonment and fine of

Rs.2,000/- with default stipulation vide judgment of conviction and order of sentence dated 28.12.2011 passed in ST No.25/11 by Additional Sessions Judge, Mungeli, District Bilaspur, C.G.

5. As per prosecution case, the incident happened at about 11:30 pm on 04.03.2011. At this time, deceased Panchu Ram and appellant Raj Kumar raised altercation in front of house of Rajkumar whereupon the appellant inflicted repeated blows by means of club causing multiple injuries including fracture over the person of the deceased, as a result of which the deceased died instantly.
6. Merg intimation Ex.P-8 was lodged by PW-1 Smt. Parvati Bai at 12:45 am on 05.03.2011 i.e. within 1 ½ hours of the incident. The FIR Ex.P-9 was registered soon thereafter. In the postmortem examination conducted by PW-6 Dr. Sudhesh Ratre, the deceased was found to have sustained the following injuries:-
 1. Lacerated wound on the left side parietal region size 8 cm x 2 cm upto bone deep.
 2. Lacerated wound on the occipital region size 6 cm x 1 cm.
 3. Lacerated wound on the just below the 2nd no. injury size 5 cm x 1 cm.
 4. Parietal bone was fractured.

5. Occipital bone was fractured.
6. Contusion on the left leg below the knee joint size 4 cm x 2 cm.
7. Brain material comes out from the parietal region.

All injuries are antemortem in nature & caused by hard and blunt object.

The autopsy surgeon opined that the cause of death is head injury leading to coma and death, and that the nature of death is homicidal.

7. Memorandum statement of the accused was recorded vide Ex.P-13 consequent to which club was recovered vide Ex.P-14. Further, vide Ex.P-15 blood stained shirt of the appellant was also seized. The club and the shirt of the appellant were sent to FSL for examination and as per FSL report Ex.P-23 both these articles were found to be having blood stains. After recording case diary statements, charge sheet was filed against the appellant under Section 302 of IPC for committing murder of deceased Panchu Ram.
8. In course of trial, the prosecution examined PW-1 Smt. Parvati, PW-2 Pramod Kumar, PW-3 Chameli, PW-4 Punam Sahu, PW-5 Devesh Agnihotri, PW-6 Dr. Sudesh Ratre, PW-7 Rajendra Kumar, PW-8 Dilip Prabhakar, PW-9 Shashibhushan and PW-10 Sushil Banchhor to bring home the charge. However, no witness was examined by the appellant in defence. Based on evidence on record, the Trial

Court has convicted and sentenced the appellant as mentioned above.

9. Shri Tandon, learned counsel for the appellant would submit that PW-1 Smt. Parvati and PW-3 Chameli have not seen the incident, however, they have been brought forth artificially to lend support to the prosecution case. He would submit that in any case the offence would fall under Section 304 Part II of IPC and not under Section 302.

10. Learned State Counsel would support the impugned judgment.

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

12. PW-1 Smt. Parvati is the widow of the deceased. She rushed back to the place of occurrence immediately when she heard the sound of beating by *Lathi*. At that time, the appellant was available on the spot where the deceased Panchu Ram was lying dead. The appellant threatened this witness that she would also be killed. As per Spot Map (Ex.P-3) the dead body was at a distance of 37 steps from the house of the appellant Raj Kumar. Similarly, distance between the place where the dead body was lying and the house of the deceased is shown to be 111 steps. Thus, the place of occurrence is very close to the house of the appellant and

likewise, it is not so far away from the house of the deceased that witness PW-1 Smt. Parvati could not have reached there instantly. Mere fact that this witness could hear the sound of beating by *Lathi* and rush back immediately demonstrates the proximity of the place of occurrence from her house. Thus, PW-1 Parvati appears to have reached the spot within 2-3 minutes after the incident and seen the appellant present on the place of occurrence where dead body of Panchu Ram was lying on the ground. There is nothing to suggest as to why evidence of this witness should be discarded.

13. PW-3 Chameli is the other eyewitness produced by the prosecution to bring home the guilt. This witness is the daughter of the deceased. She was also present in the house when appellant called the deceased outside the house and started giving *Lathi* blows to him. She would state she had seen the appellant giving blows to the deceased. The appellant also criminally intimidated this witness due to which she ran away. Once again there is no reason as to why evidence of this witness should be disbelieved.

14. The memorandum statement of the appellant was recorded vide Ex.P-13 consequent to which club and his blood stained shirt were recovered from his possession vide Ex.P-14 and Ex.P15 respectively. Both these articles were found to have traces of blood during FSL examination vide Ex.P-23. Thus,

the evidence of PW-1 Smt. Parvati and PW-3 Chameli is duly corroborated by the memorandum statement, seizure and FSL report. Moreover, the merger intimation and FIR have been lodged within 1½ hours of the incident and thus, there was no possibility of manipulation and concoction of a story for falsely implicating the appellant.

15. When the dictation was about to finish, Shri Dharendra Pandey, Advocate entered appearance and requested for providing an opportunity of hearing.

16. Considering the request, we also heard Shri Dharendra Pandey, Advocate for the appellant. Shri Pandey would reiterate the same argument which has been advanced by Shri Tandon, learned counsel appointed by us to defend the appellant. Since the arguments have already been dealt with in the preceding paras of our judgment, we are not dealing with the same again.

17. On the basis of aforesaid discussions, we are of the considered opinion that the prosecution has proved the guilt of the appellant by placing cogent and reliable evidence in the form of eye witness account rendered by PW-1 Smt. Parvati and PW-3 Chameli duly corroborated by the evidence of memorandum, seizure and FSL as well as medical report in the form of postmortem report Ex.P-11 duly proved by PW-6 Dr. Sudhesh Ratre. Thus, the Trial Court has not committed

any illegality in convicting the appellant under Section 302 of IPC for committing murder of Panchu Ram.

18. We shall now consider the second limb of argument raised by learned counsel for the appellant that offence would fall under Section 304 Part II of the IPC. The appellant has not only caused repeated blow on the deceased as stated in para 6 of our judgment mentioning that due to severe assault the brain matter had come out, but the appellant had also threatened PW-1 Smt Parvati, wife of the deceased that she would also be killed. Thus, the appellant has acted in cruel and unusual manner, in premeditated state of mind, therefore, offence would fall under Section 302 of the IPC and not under Section 304 Part II of IPC.

19. In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge