

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1165 of 2014**

- Manoj Kumar Sagarwanshi S/o Nandu Sagarwanshi Aged About 28 Years R/o Nayapara, Durg, PS Mohan Nagar, Distt. Durg C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through SHO, Police Of PS Mohan Nagar, Distt. Durg C.G.

---- Respondent

For Appellant	: Shri B.P.Singh, Advocate
For Respondent/State	: Shri Subash Yadav, Dy.GA

Hon'ble Shri Justice Hon'ble Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Rajani Dubey J.**21/06/2019**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 13.11.2014 passed by the Sessions Judge, Durg in S.T. No. 122/2013 whereby the appellant has been convicted and sentenced as described below:

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life and fine of Rs. 5,000/- with default stipulation

2. As per prosecution case, FIR was lodged by one Tillu Yadav @ Nand Kishore alleging that at night, when he was taking his meals,

there was some noise outside. His wife came out and saw that his brother Soni Yadav was being beaten up by accused Manoj Sagarwanshi with Hockey stick. On being informed by his wife, he came out and by that time, the accused ran away. He asked one of the villager about the incident and was informed that the accused had asked for a glass of water for consuming liquor from the injured which was refused by him, on account of which, the accused with an intention to kill him, assaulted with hockey stick on his head. Injured Soni Yadav fell on the ground and became unconscious. Blood was oozing out from the injury. Soni Yadav was taken to Government Hospital, Durg and during treatment he succumbed to the injuries sustained by him. Merg intimation Ex.P-16 was recorded at Police Station Mohan Nagar. Inquest Ex. P-8 was prepared and body was sent for postmortem examination which was conducted by Dr. Nalin Chandra (PW-12) vide Ex.P-19 and according to him, cause of death was due to injury on the head. Spot map Ex.P-2 was prepared by the patwari vide Ex.P-10. On the basis of memorandum of accused/appellant Ex.P-3, seizure of hockey stick (Ex.P-4) and blood stained clothes vide Ex.P-5 was made. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charges were framed.

3. Prosecution, in order to bring home the charges levelled against the accused, examined 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C. in which, he denied the charges levelled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant in the manner as described in paragraph 1 of the judgment. Hence, the present appeal.

5. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, counsel for the appellant submits as under :

i) that the impugned judgment dated 13.11.2014 is perverse, erroneous and contrary to law, facts and circumstances of the case therefore, it is liable to be set aside.

ii) that accused/appellant had no intention to commit murder of the deceased.

iii) that when the appellant asked the deceased to get a glass of water for consuming liquor, which was refused by him and some altercation took place between them and it appears that on a spur of moment in a heat of passion, the appellant assaulted the deceased with a hockey stick on his head as a result of which he died.

iv) that the doctor who conducted autopsy has found only two injuries over the head and even if the entire prosecution case is taken as it is, at best his case would fall under Section 304-II IPC and not under Section 302 IPC.

v) that there are several material contradictions and omissions present in the statement of Nand Kishore @ Tillu Yadav (PW-1)

and the learned court below has not considered this aspect in a legal manner.

vi) that the appellant has already remained in jail for about 6 1/2 years and therefore his sentence be reduced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

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

8. Nand Kishore @ Tillu Yadav (PW-1) is the brother of the deceased. On the date of incident, after coming from the work place, when he was taking his meals, his wife informed him that some altercation is going on between the accused appellant and the deceased. He has stated that when he came out, he saw the accused/appellant assaulting his brother Soni Yadav with a hockey stick with an intention to cause death. On seeing him, the accused ran away from the spot. Thereafter, they went to the police station Mohan Nagar and then to the hospital where during treatment, at about 12.00 midnight, his brother Soni Yadav died. Kamlesh Sakye (PW-2) has stated that deceased used to work in his shop and on receiving information from Nand Kishore, he reached the place of incident and saw the deceased lying in a pool of blood and Satish Yadav along with 1-2 persons were tying cloth over the injury and, thereafter, they took

him in a vehicle to the police station from where he was shifted to the hospital. He has stated that, later on, at about 12.00 midnight he came to know that Soni Yadav succumbed to the injuries sustained by him. Mohan Yadav (PW-3) is the brother of the deceased. He has stated that he was living in another village with his sister and on receiving telephonic information from his brother, he came to know about the incident. Satish Yadav (PW-4) is neighbour of the deceased. He has stated that on the date of incident, when he was taking his meals, he heard some noise outside, he came out and saw Soni Yadav lying in a pool of blood. Thereafter, he went to inform Tillu @ Nand Kishore and his wife also came there, he asked for a piece of cloth which was tied over the injury, whereafter, Soni Yadav was taken to police station and then to district hospital, where, during treatment he died. Dr. Badri Narayan Dewangan (PW-5) did M.L.C. of the deceased when he was first brought to the hospital vide Ex. P-12 and noticed following injuries :

- (i) there were lacerated wounds on the head in the size 2.5x0.5x0.5x1.5x1 cm. present on the right parietal and occipital region.
- (ii) one contusion in the size 6 x 6 cm on the left side of the face
- (iii) two scratch marks 0.5x0.5 cm and 1.5 x 0.5 cm. On the lower lip
- (iv) one abrasion 2x2 cm. on the left thumb
- (v) one abrasion 2 x 1 cm on the left forehead

Dr. Nalin Chandra Rai (PW-12) conducted postmortem examination on the body of deceased and opined that the cause of

death was due to injury on the head.

9. Overall scrutiny of the evidence makes it clear that there was some quarrel between the appellant and deceased over bringing of glass of water for consuming liquor, which was refused by the deceased and some altercation took place between them and the deceased was assaulted with a hockey stick on his head, resulting to death. Though there is FSL report and that the weapon of offence contained human blood, but the confirmation of origin of blood has not been proved. Thus, the complicity of the appellant in the crime in question has been duly proved by the prosecution. The sudden quarrel started in a heat of passion, assault with hockey stick on the deceased was given by the appellant resulting his unfortunate death.

10. Considering the entire evidence as adduced by the prosecution, it is apparent that the appellant had no prior intention to kill the deceased and it appears that on a spur of moment in the heat of passion, upon sudden quarrel, the incident had taken place in which accused/appellant gave a blow of hockey stick on the head of the deceased and during treatment in the hospital, he died. Thus, looking to the facts and circumstances of the case, in particular the nature of injuries sustained by the deceased, the weapon used by the accused/appellant, we are of the view that the accused/appellant is liable to be convicted under Section 304 Part II IPC and not under Section 302 IPC as has been done by the Court below.

11. As the appellant has already remained in jail for about 6 ½ years, ends of justice would serve if the appellant is sentenced to the period already undergone by him. As the accused/appellant is reported

to be in jail, he be set free forthwith if not required in any other case.

12. In the result, the appeal is partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge