

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 926 of 2012**

- Harinam Singh @ Majhila S/o Rajkumar Singh Gond Aged About 30 Years R/o Belbahra, Jaghrahpara, Ps Jhagrakhand, Distt. Korea, C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through Sho, Jhagrakhand, District. Korea, C.G. ,

---- Respondent

For Appellant	: Shri K.P.Sahu, Advocate
For Respondent	: Shri Shailendra Dubey, Addl. AG

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

Judgment on Board by Smt. Rajani Dubey, J.**10/01/2019**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 30.11.2011 passed by the Second Additional Sessions Judge, Manendragarh in Sessions Trial No. 45/2011 whereby and whereunder the appellant has been found guilty of the commission of offence as described below:

Conviction	Sentence
Section 506 Part II IPC	RI for three years and fine of Rs. 500/- with default stipulation.
Section 323 IPC	SI for one year and fine of Rs. 300/- with default stipulation

Section 302 IPC	Imprisonment for life and fine of Rs. 1,000/- with default stipulation.
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2. As per prosecution case, on 28.04.2011, FIR was lodged by one Rajkumar Singh that on 27.04.2011 at about 7.00 p.m. in the evening, when his sister Jutmun Bai, mother Phul Kunwar and a relative Sukhai Singh, were sitting in the verandah (*parchhi*) of his sister Jutmun Bai, Ram Prasad and Dayaram came there, asked for water and they also sat there. He has stated that at that point of time, his son Harinam Singh/accused carrying a club in his hand, came there and started abusing Jutmun Bai that she has owned the land which is their property and threatened her to kill and started beating her with the club. On seeing this, her mother Phul Kunwar and Sukhai Singh intervened but they were also beaten by the accused. He has stated that he got frightened and hid himself behind the mango tree whereas his mother Phul Kunwar took shelter behind the Tendu tree. Thereafter accused/appellant came towards Phulkunwar and gave club blows on her, she cried for help and after sometime she became quite and then accused dragged the deceased to his house and left there. He has stated that his sister Jutmun and Sunil took her inside, and laid her in the cot and the next morning she died. Her right temple, back, left leg were injured. Merg intimation Ex.P-1 was Idoged at Police Chowki Koda on 28.04.2011 at 11.20 am and thereafter FIR was registered against the accused/appellant under Sections 302,294, 506 Part II and 323 IPC. Inquest Ex.P-3 was prepared and body was sent for postmortem examination which was conducted by Dr. S.N.Gupta (PW-8) vide Ex.P-19A and according to him, the cause of

death was syncope due to extensive multiple injuries and death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 302, 294, 506 Part II and 323 IPC and accordingly charges were framed.

3. Prosecution in order to bring home the charges levelled against the accused, examined 12 witnesses in all. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing counsel for the parties, trial court by the impugned judgment convicted and sentenced the appellant in the manner as described above.

5. Counsel for the appellant submits that the learned trial court has erred in law as well as in facts in convicting the appellants and sentencing under Sections 506, 323 and 302 IPC. He submits that the trial court has not properly appreciated the statements of the witnesses on the basis of which the conviction has been held. There is material contradiction between the prosecution witnesses. The whole finding of the learned trial court is based on unreliable and shaky evidence and conclusion and reasoning is contrary to the settled principles of law. There are vital omissions and witnesses have contradicted each other. He submits that since the accused was drunk and under the influence of liquor, he had no intention to cause the death of Phul Kunwar (deceased) and, therefore, he may be convicted under Section 304 Part II instead of 302 IPC.

6. On the other hand, State counsel supports the impugned judgment and submits that the conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the same.

7. We have heard counsel for the parties and perused the judgment and records of the trial court.

8. Rajkumar (PW-1) has stated in his evidence that deceased Phul Kunwar was his mother and accused Harinam was his son. On the date of incident, at about 6.00 in the evening, he went to the house of his sister Jutmun Bai where, his mother Phul Kunwar, Ramprasad and Sukhai were sitting in the verandah. At that time, accused came to Phulkunwar and said that she had given the land to Jutmun Bai and started abusing and, thereafter, he assaulted Jutmun Bai with the club. After sometime, Phulkunwar stated that Jutmun Bai is also her daughter and therefore she is also having share in the said land. On hearing this, accused gave club blows on Phul Kunwar and when Dayaram, Ramprasad tried to intervene he had assaulted them also. When Sukhai tried to pacify, he was also assaulted with club on account of which, his leg got broken. He has stated that when his son/accused chased him to assault, he saved himself behind the mango tree. Jutmun Bai (PW-2), Ramprasad (PW-3) and Dayaram (PW-9) have also made similar statement as has been made by Rajkumar (PW-1). Dr. Vineet Vishwakarma (PW-6) is the doctor who has examined injured Jutmun Bai and Sukhai and after examining Jutmun Bai the injuries found were simple in nature. Dr.S.N.Gupta (PW-8) conducted postmortem examination on the body of Phul Kunwar and according to him the cause of death was syncope due to

extensive multiple injuries. On the basis of memorandum of accused/appellant the weapon of offence-club was seized. B. Rajwade, (PW-12) ASI has recorded the mere intimation Ex.P-1 and lodged FIR Ex.P-2.

9. Overall scrutiny of the evidence and the material available on record, it can safely be said without any doubt that the entire occurrence had taken place not at the spur of the moment. The witnesses have stated that on the date of incident, in the evening at about 6.00 am when they all were sitting in the verandah of Jutmun Bai, accused/appellant, who was drunk, came there carrying club and started abusing Jutmun Bai that she has owned the land which is their property and threatened her to kill and started beating her with the club and when her mother Phul Kunwar and Sukhai Singh intervened, they were also beaten by the accused. Therefore, it can be said that the appellant was having full intention to cause the death of the deceased and was not ignorant but well aware of the fact that the death of Phul Kunwar was likely to ensue from the beatings he received. After careful consideration of the facts of the case, we are of the considered opinion that the circumstances concluding the guilt of the appellant are clearly established. We are also conscious of the fact that single blow in a given case could fall under the category of culpable homicide not amounting to murder. There were multiple injuries and one injury on the head caused the death of the deceased, we could not find any other material that the accused had no intention to cause death and he could be punished under [Section 304 \(Part-II\)](#) I.P.C. In other words, from the established facts and circumstances, the only inference that could be drawn is that the trial court has not committed any error of

law in convicting and sentencing the accused for the offence under Section 302 IPC.

10. Thus, from the aforesaid discussion, circumstances and evidence brought on record conclusively point towards the guilt of the appellant. Hence, the Trial Court is correct in convicting the appellant for the offence as mentioned above and we do not find any merit in this appeal. Accordingly, it is dismissed as such.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge