

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1000 of 2013**

- Kaleshwar Uraon, aged about 35 Years, Caste-Uraon, Son of Nansai, resident of Village Dumarpani (Durgadhara), Police Station-Gourela, Civil & Rev. District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through The Station House officer, Police Station-Gourela, District Bilaspur (C.G.)

---- Respondent

For Appellant	:	Shri Jitendra Kumar Saxena, Advocate.
For Respondent/State	:	Shri Santosh Bharat, Panel Lawyer.

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Judgment On Board by Justice Shri Prashant Kumar Mishra****02/08/2019**

1. This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 28.09.2013 passed by Additional Sessions Judge, Pendraroad, District Bilaspur (C.G.) in Session Trial No. 08/2013.
2. By the judgment impugned appellant Kaleshwar Uraon stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 302 of Indian Penal Code	Life imprisonment & fine of Rs. 200/- in default of fine additional R.I. for 2 months.

3. Appellant was sent for trial on the allegation that he committed murder of the deceased- Charku Singh causing injuries by means of *Farsa* at about 09:00 pm on 15.11.2012. The FIR vide Ex. P/13 was lodged by Soniya Bai (PW-1) informing the Police that about three years back Kaleshwar Uraon had molested her due to which,

he was directed by the villagers to pay fine of Rs. 1,000/- and provide one goat. Due to this incident they were not in good term. On 15.11.2012 at about 04:00 pm, her husband, deceased- Charku Singh and her father-in-law Dhundha Baiga had gone for attending dancing and singing programme during Diwali festival to village Dumerpani (Durgadhara). At about 09:30 pm Rajesh Kumar Baiga (PW-2), Kartikram Baiga (PW-3) and Thungur Baiga(PW-4) came to her house and informed that when her husband and father-in-law were coming back after dancing and singing programme the appellant committed murder of her husband by means of a sharp edged weapon *Farsa*.

4. During investigation, memorandum statement of the accused was recorded on 16.11.2012 vide Ex. P/4 leading to recovery of *Farsi* vide Ex. P/5. The *Farsi* was sent to the Medical Officer with a query as to whether the injuries sustained by the deceased could be caused by said *Farsi*. The Medical Officer answered the query vide Ex. P/10 **in affirmative**. However, the query specifically recorded that there is no blood stain over the *Farsi*. The *Farsi* was sent for FSL examination but since it was already found by the Medical Officer vide Ex. P/10 that no blood stains were available thereon, the FSL report was not of significance.
5. In the postmortem examination conducted by Dr. B.S. Paikra (PW-7), he found the following injuries over the person of the deceased:

(i) Multiple abrasion present on right side of chest.

(ii) Lacerated wound in the size of 3x2" deep to bone.

(iii) Abrasion in the size of 4x2" present on right buttock.

(iv) Abrasion over right leg & ankle joint in the size of 3x2".

(v) Lacerated wound present on right parietal region.

(vi) Lacerated wound in the size of 3x2" right side of occipital region

(vii) Haematoma present on right occipital region, both extra antoeadural with occipital bone and private parts are healthy.

In his opinion, the cause of death is head injury & rupture of spleen, mode of death is coma, nature of death is homicidal.

6. During the course of trial, the prosecution examined as many as eight witnesses namely-Soniya Bai (PW-1), Rajesh Kumar Baiga (PW-2), Kartik Ram Baiga (PW-3), Thungur Baiga (PW-4), Dhudha Baiga (PW-5), Arvind Singh Maravi (PW-6), Dr. B. S. Paiknra (PW-7) and C. L. Singh (PW-8) to bring home the guilt of the accused. The appellant abjured his guilt but did not examine any defence witness. In his statement under Section 313 of Cr. P.C. The accused/appellant denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. However, the trial Court considering the material available on record convicted and sentenced the appellant as mentioned as above.
7. Shri J.K. Saxena, learned counsel for the appellant would submit that in this case, it is an admitted position that Thungur Baiga (PW-4) had assaulted the deceased by Chamota (an instrument made of rubber/tyre used for beating drums) and there being further evidence that Soniya Bai (PW-1) wife of deceased- Charku Singh wants to marry and reside with Thungur Baiga (PW-4), it is a case of false implication and the appellant deserves to be acquitted.
8. Learned State counsel would support the impugned judgment on the submission that there being prompt FIR and the eyewitnesses having supported the case of the prosecution the impugned judgment does not call for any interference.
9. We have heard learned counsels for the parties and perused the record.
10. The prosecution case rests on the evidence of three eye witnesses namely- Rajesh Kumar Baiga (PW-2), Kartikram Baiga (PW-3), Thungur Baiga (PW-4) and the medical evidence of Dr. B.S. Paikra

(PW-7). All eyewitnesses have narrated the same story that when they were returning after attending dancing and singing programme during Diwali festival and reached the house of Jhamni Bai, the appellant came from behind and assaulted the deceased over his head by means of *Farsa*. Rajesh Baiga (PW-2), Kartikram Baiga (PW-3) and Thungur Baiga (PW-4) all have stated that the deceased was assaulted by *Farsa* whereas the investigating officer recovered a *Farsi* from the possession of the appellant. It is admitted by all the eyewitnesses that they had gone to perform dancing and singing during Diwali festival from the morning and were consuming liquor in practically every house hold, thus, all of them including Thungur Baiga (PW-4) and deceased Charku Singh were heavily drunk. These witnesses would admit that they were earlier incarcerated in a murder case and were released on bail on present incident. All the eye witnesses including Thungur Baiga (PW-4) himself would admit that the deceased was assaulted by Thungur Baiga (PW-4) by means of *Chamota*. The witnesses have admitted that Thungur Baiga (PW-4) had given severe beating to the deceased due to which he was not able to walk, with further admission by Kartikram Baiga (PW-3) that if a person is assaulted by means of *Chamota* it causes severe internal injury. He would also admit that when the deceased was not able to walk, having suffered assault by *Chamota*, they took him to the house of his father Dhundha Baiga and made him sleep in the veranda (*Parchi*) but at this point on time Thungur Baiga (PW-4) was not there as he had ran away immediately after assaulting the deceased. The dead body was found in the house of Dhungur Baiga in the morning on 16.11.2012. Although Dhungur Baiga is father of deceased- Charku Singh but they were residing separately.

11. Dr. B.S. Paikra (PW-7) would admit that he has not found any incised wound on the person of the deceased. He says that the deceased died due to head injury and rupture of spleen. He only finds lacerated wound and abrasion and external injury. If the prosecution story is true that the deceased was assaulted by means of *Farsi* as stated in the FIR or by axe as stated by the eyewitnesses in the Court, the deceased would have suffered

incised wound and not lacerated wound. On the contrary the injury suffered by deceased can be caused by a *Chamota* (an instrument made of rubber/tyre used for beating drums).

12. In the statement of eye witnesses and Sonia Bai (PW-1) as well, there is clear indication that soon after the death of Charku Singh his wife Sonia Bai (PW-1) started residing with Thungur Baiga (PW-4). The eye witnesses would admit that after the present criminal case is over Sonia Bai (PW-1) would start residing with Dhungur Baiga as both of them want to marry. Although Sonia Bai does not admit this fact, but since other witnesses of the same village are admitting that Sonia Bai and Thungur Baiga (PW-4) have planned to stay together after their evidence in the present case is over, this fact cannot be lost sight of while appreciating the truthfulness of the prosecution case. This issue has important bearing in the light of submission made by the learned counsel for the appellant that Thungur Baiga (PW-4) who had assaulted deceased, framed the appellant in this case so that he can marry Sonia Bai (PW-1).
13. We have scrutinised the entire evidence very carefully and minutely. It appears that the kind of injuries suffered by the deceased as stated by Dr. Paikra (PW-7) can be caused by *Chamota* and not by an Axe or *Farsi*. The deceased died due to head injury which was a lacerated wound and rupture of his spleen. With one of the eye witness admitting that assault made by *Chamota* causes severe internal injury and there being no incised wound on the person of the deceased, it is possible that the deceased died due to the assault by *Chamota* for which the appellant is not responsible.
14. In view of the above, we have our own doubts as to whether Rajesh Kumar Baiga(PW-2), Kartik Ram Baiga (PW-3) & Thungur Baiga (PW-4) are speaking the truth because their version of the incident is doubtful in view of their own admission that Thungur Baiga assaulted the deceased by *Chamota*. There is also evidence that soon after the assault Thungru Baiga ran away from the place.

During their entire act of dancing and singing appellant Kaleshwar Uraon was not present with the dancing and singing team at any point of time. The alleged motive and enmity on account of appellant having molested Sonia Bai (PW-1) had also occurred about 3 years back, therefore, it is not a recent incident which would compel the appellant to commit murder all of a sudden. The prosecution has not come forward with any immediate cause or motive for the appellant to commit murder. It is also significant to note that the incident had taken place at about 09:00 PM on 15.11.2012 but neither the eyewitnesses nor any other person informed the villagers about the incident, even though, Kartik Ram Baiga (PW-3) would state in para 1 of his examination-in-chief that Charku had died on the spot.

15. For all the above stated reasons we are of the considered view that there is strong element of doubt in the prosecution case that the appellant had committed the murder, therefore, the appellant deserves benefit of doubt.
16. In the result, the appeal is allowed and conviction of the appellant under Section U/s. 302 of Indian Penal Code is hereby set aside. The appellant is in jail, he be set at liberty forthwith after his furnishing a bail bond for a sum of Rs. 25,000/- before the concerned trial Court which shall remain operative for a period of six months from today as per provisions of Section 437A of Cr.P.C.

Sd/-

Sd/-

(Prashant Kumar Mishra)
Judge

(Gautam Chourdiya)
Judge