

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 940 of 2012**

- Kailash Dhobi S/o Vanka Aged About 40 Years R/o Village Dipapara Bandlimal, P.S. And Post Saraipali, Distt. Mahasamund, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through - Station In Charge , P.S. And Post Saraipali, Distt. Mahasamund C.G.

---- Respondent

For Appellant	:	Smt. Smita Jha, Advocate
For Respondent/State	:	Shri Anand Verma, Dy.GA

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board By Manindra Mohan Shrivastava, J.****19/06/2019**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 28.08.2012 passed by the Sessions Judge, Mahasamund in S.T. No. 76/2011 whereby and whereunder the appellant has been held guilty for commission of the offence and sentenced as described below :

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life with fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for six months.

2. Prosecution story, as is revealed from the impugned judgment and from the records of the case is that one Trilochan (the deceased), was brought to the hospital in injured condition on 06.09.2011 and on receiving information, the police of police station Saraipali, reached the hospital and *dehati nalishi* (spot FIR) was recorded at the instance of Mohit Yadav (PW-1), son of injured Trilochan, vide Ex.P-1 wherein, it was disclosed that Trilochan was found in the house of the appellant. Trilochan was badly injured and the appellant was seen with axe in his hand. It was further recorded therein that Kailash confessed that he had assaulted Trilochan and Trilochan was seen with number of injuries on his head, cheeks and chin, appear to have been caused by axe like weapon. After recording of this spot FIR on 07.09.2011, Trilochan unfortunately succumbed to the injuries and died which led to merg intimation, followed by an FIR. As right from the beginning, Kailash was suspected to have been involved in the commission of offence, police filed charge sheet alleging murder of Trilochan by the appellant. Accordingly, charges were framed. Appellant having abjured guilt, was put to trial. Though there was no eyewitness, the prosecution led circumstantial evidence that the appellant and the deceased were seen together near a dam and thereafter, when sons of Trilochan Mohit

Yadav (PW-1) and Sanju Yadav (PW-2) and many other villagers were searching out missing Trilochan, he was found in injured condition in the house of the appellant and the appellant was holding an axe. The prosecution also came out with the evidence of extra judicial confession given by the appellant to prosecution witnesses Parimal Kumar Bhoi PW-5 and Devendra Pradhan PW-8 that it is he who assaulted Trilochan. The prosecution also led evidence of seizure of axe and *Bahinga* (long bamboo stick with sharp ends and iron capping) seized from the house of the appellant. The evidence of the doctor proved homicidal death of Trilochan due to multiple injuries. The appellant's explanation in his examination under Section 313 Cr.P.C. was that deceased was drunk and sustained injuries because of fall.

3. Learned trial court, however, disbelieved the defence version and relying upon the chain of circumstantial evidence held that it is the appellant and the appellant alone who must have murdered Trilochan and sentenced him.

4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, counsel for the appellant argued that as the prosecution has only come out with the circumstantial evidence, it was its burden to prove all the incriminating circumstances so as to form complete chain that it is the appellant, who killed the deceased but the prosecution case at best, leads to strong suspicion. It is further argued that merely because Trilochan was found in injured condition in the house of the appellant, everyone presumed that appellant must have killed the deceased whereas the appellant has given plausible explanation as to how deceased sustained injury which cannot be said

to be wholly improbable. According to the counsel for the appellant, prior to the incident, both the appellant and deceased were found together on the banks of a dam, rearing fish which shows that their relations were cordial. Therefore, in the absence of proof of motive by the prosecution, the prosecution story of appellant having killed the deceased, becomes doubtful.

5. On the other hand, State counsel opposes and submits that even though there is no direct evidence, circumstantial evidence point only towards the guilt of the appellant because Trilochan was found lying on the ground inside the house of appellant and he was badly injured. The appellant was found standing with an axe in his hand. The appellant also confessed before two independent witnesses that he killed the deceased. The explanation offered by the appellant is false because the doctor (PW-9) has clearly stated that the injury found on the body of the deceased cannot be caused due to simple fall that means, the explanation was false. This provides an additional link to the incriminating circumstances pointing towards the guilt of the appellant.

6. We have heard counsel for the parties and perused the records.

7. Learned trial court, in order to hold the appellant guilty of commission of the offence, has relied upon circumstantial evidence led by the prosecution which are, that the appellant was last seen with the deceased, deceased was found in badly injured condition in the house of the appellant, appellant was holding an axe, appellant confessed that he killed, homicidal death due to multiple injuries and offering of false explanation.

8. We find that all the aforesaid circumstances have proved by the prosecution by overwhelming evidence.

As far as presence of Trilochan in an injured condition in the house of the appellant is concerned, PW-1 Mohit Yadav, PW-2 Sanju Yadav, PW-3 Vinod Kumar, PW-5 Parimal and PW-8 Devendra, all have clearly stated in their evidence that when they went to the house of the appellant, suspecting presence of Trilochan, they found that Trilochan was lying on the ground and he was badly injured and bleeding. Not only this, the witnesses have also spoken that they saw the appellant standing over the body of the deceased with an axe in his hand. PW-5 and 8 both are independent witnesses. They have stated that the appellant in presence of these witnesses and many others openly declared that he had assaulted the deceased Trilochan and he was planning to assault some other persons.

9. The evidence of these witnesses also proves that appellant and deceased both were found sitting on the banks of a canal and thereafter both of them were seen in the house of appellant and Trilochan lying injured in his house.

10. The appellant has not come out with the defence that deceased was not found in his house. We have gone through 313 Cr.P.C. statement of the appellant. Instead, the defence of the appellant is that deceased was drunk and due to that he sustained injuries. However, this explanation completely turns to be false in view of what has been stated by Dr. Vijay Anand Kosariya PW-9 who has clearly come out with the version that the nature and extent of injury caused to the

deceased is not due to fall but appears to be result of an assault.

11. Thus, the falsity of the explanation provides additional link to circumstantial evidence leading towards the guilt of the present appellant.

Recovery of two weapons – axe and *bahinga* has been proved from the evidence of Investigating Officer, supported by independent prosecution witness PW-4, who had stated that from the house of appellant, one axe and one *bahinga* were seized. These two articles were sent for examination of the doctor PW-9 who, vide his report Ex.P-10 stated that injury sustained by the deceased could be caused by these weapons.

12. True it is, that there was no background of previous enmity between the appellant and the deceased because just before the incident, the appellant and the deceased were found sitting together near a canal and engaged in rearing fish and even in the memorandum, the appellant has stated to have disclosed that both the appellant and the deceased were sitting together and consumed liquor. It however, appears that while both of them were consuming liquor a dispute arose and in that dispute, the appellant picked up certain weapon and gave repeated assault on the deceased which ultimately lead to the death of the deceased next day in the hospital. The evidence of Dr. Vijay Anand Kosariya PW-9 is absolutely clear and leaves no manner of doubt that deceased died because of internal injuries on account of multiple assault on his head and face. Undoubtedly, it is a case of homicidal death and not an accidental

death. All the circumstances of the case form complete chain and point only towards the guilt of the appellant. The evidence of extra judicial confession before Parimal Kumar Bhoi (PW-5) and Devendra Pradhan (PW-8) assumes importance because they are independent witnesses and nothing has come out in their cross examination as to why they would falsely implicate the appellant in the alleged incident.

13. At the last, learned counsel for the appellant strenuously urged before us that even if it is accepted that there was an assault given by the appellant, in the circumstances, there was no intention to cause death and may be because of certain dispute all of a sudden, appellant might have given assault which, at the most, would amount to commission of offence of culpable homicide not amounting to murder. We have considered the aforesaid submission in the light of medical evidence, nature of weapon used and the circumstances emerging from the evidence of the prosecution. What appears to be probable is that while the appellant and the deceased were consuming liquor in the house of the appellant, some dispute arose and then the appellant picked up the weapon and gave repeated assault. It is not a case that a single assault was given by the appellant to the deceased. There were multiple injuries caused by a sharp edged weapon and that too, on a very vital parts of the body and i.e. head, cheek, chin and neck. Even though, dispute may have arisen at the spot, nothing is there to show that the deceased had also picked up any weapon and caused injury to the appellant and in free fight, deceased sustained injury. It was a one sided affair where no injury was found on the body of the appellant but the deceased had sustained multiple injuries on vital parts of the body

caused by axe. The conduct of the appellant as stated by the prosecution witnesses is that he was standing on the chest of the deceased, wielding axe in his hand which also shows that the appellant acted quite cruelly in giving thunderous assault on the face and head of the deceased. Therefore, we are not inclined to accept this submission that this is a case of culpable homicide not amounting to murder. We do not find any ground to interfere with the impugned judgment. Appeal is accordingly, dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge