

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1622 of 2000

Judgment reserved on 12.02.2020

Judgment delivered on 16.03.2020

Sitaram @ Nano S/o Baliram aged 30 years R/o Village Kewra
Harrapur Police Station Pratappur, District
Sarguja, MP. (Now CG) **---- Appellant**

Versus

State of MP through Station House Officer Police Station Pratappur
District Sarguja, MP (Now CG). **---- Respondent**

For Appellant	-	Shri Gajendra Kumar Sahu, Advocate
For State	-	Ms. Shriya Mishra, PL

Hon'ble (Smt.) Justice Vimla Singh Kapoor

CAV Judgment

In this case the accused/appellant herein and the deceased namely Premdas are the real brothers. Facts of the case in brief are that on 24.04.1999 at about 4 pm when the deceased was putting the door of the house of his mother Katwaro Bai on latches, the accused/appellant herein objected to it, which resulted in the exchange of hot words coupled with scuffle between them. During scuffle between the two, the accused/appellant herein is alleged to have picked up a wooden log lying nearby and dealt a blow on the head of the deceased. The head injury started bleeding, the deceased became unconscious and fell down on the ground. Thereafter, the accused/appellant lifted the deceased and put him on a cot. Wife of the deceased namely Hirmen (PW-7) who was present on the spot called her parents-in-law and brothers-in-law. After sometime Premdas is said to have succumbed to the injuries suffered by him.

On the same night at about 8.20 pm Hirmen (PW-7) went to the police station and lodged the report (Ex. P-11), on the basis of which offence under Section 302 IPC was registered against the accused/appellant. After completion of investigation, charge-sheet was laid against him under the same section followed by framing of charge accordingly.

2. Learned Court below by its judgment dated 26.05.2000 passed in Sessions Trial No. 213/99 held the accused/appellant guilty under Section 304 (Part-II) IPC and sentenced him to undergo RI for five years and pay fine of Rs. 500/-, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Section 304 (Part-II) IPC. He submits that all the important witnesses including wife of the deceased (PW-7) have not supported the case of the prosecution and, therefore also, the judgment impugned is bad in law and liable to be set aside.

4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below holding the accused/appellant guilty and imposing the sentence described above are fully based on the evidence adduced by the prosecution and therefore, the judgment impugned cannot be interfered with in this appeal.

5. Heard counsel for the parties and perused the record.

6. Phool Kumar (PW-3), Mahesiya (PW-4) and Hirmen (PW-7) have been cited by the prosecution as the eye witnesses to the incident whereas Ramdhani (PW-5) and Baliram (PW-6) are said to have

reached the spot after the occurrence was over. If the evidence of the eye witnesses being PW-3, PW-4 and PW-7 is seen carefully, it does not emerge therefrom that the accused/appellant assaulted the deceased with a wooden log. They all have categorically stated that due to scuffle between the deceased and the accused which erupted on account of some trivial property related verbal feud, the deceased fell down into a petrified pit and suffered injury on his head which eventually proved fatal to his life. They have further stated that at the relevant time both, the accused and the deceased were under the influence of liquor. They have further clarified that the accused did not cause any wooden log injury to the deceased. Doctor Narayan Singh Pekra (PW-1) who conducted the postmortem examination on the body of the deceased and gave his report (Ex. P-1) stating therein that there was depressed fracture on his right frontal bone just above lateral to right eye-brow. According to him, the cause of death of the deceased was shock due to extra and intracranial haemorrhage caused by hard and blunt object leading to cardio respiratory arrest, and that the death was homicidal in nature. He has further stated that the head injury on the head of the deceased can be caused by a club, but at the same time he has also stated that possibility of the same being caused on account of fall on a stone can also not be rolled out. Though prosecution has effected seizure of clubs yet since almost all the important prosecution witnesses have denied the use of club by the accused on the deceased, the seizure cannot be attached much importance. Though PW-3 and PW-6 have stated in their police statement about the deceased being inflicted wooden log injury by the accused/appellant yet in their Court statement they both have resiled from the said version and have

deposed specifically that death of the deceased was on account of fall in a pit full of stones.

7. Thus in view of the aforesaid factual discussion made in the light of the evidence of the witnesses there is not even an iota of evidence to show that the accused/appellant at the relevant time had any knowledge much less the intention of causing the death of the deceased. Even the wife of the deceased has not supported the case of the prosecution. The doctor, as already said, has also expressed the possibility of death of the deceased on account of fall on a stone. None of the witnesses has said anything about the wooden log being used by the accused on the deceased. Record also shows that when the deceased became unconscious and fell down on the ground, it is the accused who put him on a cot. Thus the judgment impugned being not based on the evidence of the witnesses cannot be allowed to hold the ground and therefore, is liable to be set aside.

8. Appeal is thus allowed, the judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. As he is already enjoying bail, no order as to his release etc. from jail is necessary.

Sd/-

(Vimla Singh Kapoor)
Judge