

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1620 of 2015**

- Maan Singh Baiga S/o Shri Madhu Prasad Baiga Aged About 30 Years R/o Amanala (Thandpathra) P.S. Gaurela, Distt. Bilaspur, Chhattisgarh, Civil And Rev. Distt. Bilaspur, Chhattisgarh.

---- Appellant

**Versus**

- State Of Chhattisgarh Through Police Station Gaurela, Distt. Bilaspur, Chhattisgarh.

---- Respondent

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For Appellant : Shri Ajay Mishra, Advocate.

For Respondent : Shri Aditya Sharma, Panel Lawyer.

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**Hon'ble Shri Prashant Kumar Mishra &**  
**Hon'ble Shri Gautam Chourdiya, JJ**

**28/01/2020 :**

1. The appellant stands convicted for committing offence under Section 302 of the IPC for committing murder of deceased Chen Singh Baiga and under Section 324 of the IPC for voluntarily causing hurt to injured Kali Bai (PW-1) and has been sentenced to undergo RI for life & fine of Rs.500/- and RI for 2 years & fine of Rs.200/- respectively with default stipulations, vide judgment dated 16<sup>th</sup> April, 2015 passed in ST No.29/2014 by the Additional Sessions Judge, Pendraroad, District Bilaspur.

2. Briefly stated, the prosecution story is that on 26.4.2014 when informant deceased Chen Singh was returning with his wife Kali Bai from Village Hari Nala and reached near Village Bandha at about 8.30-9 pm, accused Maan Singh Baiga came over there with axe in his hand, abused them filthily and assaulted over his head and face and has threatened them of dire consequences if the incident is disclosed. Deceased Chen Singh was admitted to CIMS, Bilaspur and Mekahara Hospital, Raipur where he succumbed to the injuries on 3.6.2014. The offence was initially registered under Sections 294, 323, 506 and 326 of the IPC but after the death of Chen Singh, the offence was converted into one under Section 302 of the IPC amongst others.
3. In course of investigation, axe was recovered from accused vide Ex-P/1 on 30.4.2014. MLC report of injured Kali Bai was submitted by Dr. Manmohan Singh Marco (PW-5) vide Ex.-P/3 finding the following injuries:-
  - “(1) Swelling in right side of face present, right side cut and swelling in periorbital region. Right side redish discolourization of skin in lower eyelid right side. Tenderness present.
  - (2) Swelling present in left eye in peri-orbital region.
  - (3) Pain & tenderness in occipital region.
4. Similarly, MLC report of Chen Singh was submitted vide Ex.-P/4 finding the following injuries:-

“(1) Lacerated wound present in right eyebrow region of size 6 cm x 3 cm x bone fractured seen in that area, depression present (7 cm x 6 cm)

(2) Lacerated wound present in mid fronto-parietal region of size 5 cm x 1 cm x bond deep

(3) Right eye periorbital swelling & Echymosis present.

(4) Left eyelid blackening present.”

5. Merg intimation was recorded on 4.6.2014 vide Ex.-P/6 and the FIR was registered on 27.4.2014 vide Ex.-P/7. Postmortem was conducted by Dr. Abhimanyu Singh (PW-10), who submitted his report (Ex.-P/12) opining that the death is due to head injury, septicemia and intracerebral haemorrhage due to old injury; homicidal in nature.
6. In course of trial, the prosecution examined 12 witnesses to bring home the charges. The appellant abjured the guilt, pleaded false implication but did not examine any defence witness. On the basis of evidence available on record, the trial Judge has convicted the appellant as mentioned supra.
7. Kali Bai (PW-1) is an eyewitness and was accompanying her husband Chen Singh at the time of occurrence. She speaks about the assault made on her and her husband but fails to name the assailant. She has been declared hostile. She admits during cross-examination by the prosecution that it was Maan Singh who assaulted them, but again admits that at the time of occurrence

only 3 persons namely, she, her husband and appellant Maan Singh were present at the place of occurrence.

8. Jethiya Bai (PW-2) supports the prosecution to the extent that Kali Bai and Chen Singh had come to her residence. However, she denies that Kali Bai had informed her that Maan Singh has assaulted them. Bhanwar Singh (PW-3) has also turned hostile and has not supported the prosecution at any stage of his examination. Anil Kumar Baghel (PW-4) supports the prosecution by proving seizure memo (Ex.-P/1) by which axe was recovered from the appellant. Dr. Manmohan Singh Marco (PW-5) has proved the injury report Ex.-P/3 & Ex.-P/4. However, he admits that the injuries sustained by Chen Singh around his left eye cannot be caused by axe but in respect of injuries sustained over his head can be caused by the axe.
9. Budhram Baiga (PW-6) has proved merg intimation (Ex.-P/6). Nan Singh (PW-7) is the brother of deceased Chen Singh. He is not eyewitness and has heard that it was Maan Singh who caused injuries to Chen Singh. Y.N. Shukla (PW-8) and K.K. Koshle (PW-9) are the police officers who have conducted investigation. Dr. Abhimanyu Singh (PW-10) has proved the postmortem report. He admits that except for single head injury, there was no injury on the person of the deceased. According to him, the death occurred

because of blood clotting and septicemia over head due to old injuries.

10. V.R. Sahu (PW-11) is the police constable whereas Sukhlal Baiga (PW-12) is a witness to whom Kali Bai informed that the appellant has caused injuries to deceased Chen Singh. The evidence of this witness would reveal that after Chen Singh sustained injuries, he stayed in the forest and was brought to the house by this witness in the morning and thereafter deceased Chen Singh was taken to hospital at Gaurela and from there to Bilaspur and lastly, to Medical College Hospital, Raipur. He also says that Chen Singh was brought back from Raipur and he died in his house.
11. The prosecution has not filed treatment papers of the CIMS, Bilaspur or the Medical College Hospital, Raipur so that it can be known as to on what date he was discharged from the hospital. However, it is clear from the evidence of Sukhlal Baiga (PW-12) that he did not die in hospital but he died in his village.
12. From the evidence available on record, it is clearly proved that it was Maan Singh who caused injuries to the deceased and Kali Bai. The FIR has been proved by the I.O. (PW-8) who recorded the same vide Ex.-P/7 on 27.4.2014. Thus the FIR lodged by Chen Singh is proved. It is settled law that once lodger of FIR

dies pursuant to the injuries sustained by him in the same incident, the FIR can be treated as dying declaration. {See : **Dharam Pal & Ors. Vs. State of UP**, AIR 2008 SUPREME COURT 920). Moreover, Kali Bai admits in her cross-examination that it was Maan Singh, who caused injuries and she is fully supported by Sukhlal Baiga (PW-12) who received information about the incident from Kali Bai and thereafter brought the deceased from forest to his house.

13. Considering the evidence, the finding recorded by the trial Court that it was the appellant who caused injuries to deceased Chen Singh and Kali Bai is fully proved. However, it is required to be considered as to what offence the appellant has committed in the facts and circumstances of the case.
14. Admittedly, the deceased had sustained only one injury by axe over his head due to which he developed septicemia and clotting of blood over head. There being no papers of his treatment at CIMS, Bilaspur or Mekahara, Raipur, it is not known as to where he was operated at these hospitals. In any case, it is proved that he died pursuant to the injuries but death occurred after more than 5 weeks of the incident. His death therefore was not by direct result of the assault but there were intervening factors also which contributed to his death. It appears, the appellant had no

intention to commit murder of the deceased although he had knowledge that the death may occur if the injuries are caused over head by means of axe. Therefore, the act committed by the appellant would fall within IV exception to Section 300 IPC and punishable under Section 304 Part-II of the IPC for culpable homicide not amounting to murder of deceased Chen Singh. The injuries sustained by Kali Bai have also been proved from her statement, which is supported by Dr. Manmohan Singh Marco (PW-5). Thus conviction under Section 324 of the IPC for causing injuries to Kali Bai deserves to be affirmed.

15. The appellant has already remained in jail from 30.4.2014 till date i.e. for nearly 6 years. Considering the facts and circumstances of the case, we are of the view that the jail sentence already suffered by the appellant is adequate for offence under Section 304 Part-II of the IPC.
16. In the result, the Appeal is allowed in part. Conviction and sentence imposed upon the appellant under Section 302 of the IPC are set aside. Instead thereof, the appellant is convicted under Section 304 Part-II of the IPC and sentenced to the period already undergone by him. However, conviction and sentence imposed upon the appellant under Section 324 of the IPC are affirmed. The appellant be released forthwith unless required to

be detained in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of the CrPC. The appellant shall appear before the higher Court as and when directed.

Sd/-  
(Prashant Kumar Mishra)  
**Judge**

Sd/-  
(Gautam Chourdiya)  
**Judge**

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