

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 683 of 2001

Rajman, aged about 32 years S/o Soma R/o. Jaitpuri PS Kondagaon,
District Bastar, CG. **---- Appellant**

Versus

The State of Chhattisgarh.

--- Respondent

For Appellant : Shri Sudhir Kumar, Advocate

For State/Respondent : Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

19/06/2020

On 20.02.2000, according to the case of the prosecution, deceased namely Gandaram, had gone to the house of his brother Buddhu Gond to attend ceremony, locally called as “*Chhatti*” along with his daughter Sunita (PW-2). It is alleged that while taking meals by sitting together, there was an exchange of some hot words between the deceased and his another brother Rajman (the appellant herein) who was already present there, as a result of which the deceased got up in between without taking meals and moved out of the house with Sunita. This made the accused follow the deceased carrying a club in his hands and open an assault on the deceased causing as many as four injuries on and around his left temple. The injuries suffered by the deceased pushed him to a semi-unconscious state. He was then shifted to hospital at Kondagaon, received treatment being hospitalized for about eight days but eventually breathed his last on 28.02.2000. The information of deceased before death was given to the police by Dr. O.P Paras (PW-1), and the one (Ex.P-5) after death was given by another doctor (not examined), on the basis of which *merg* (Ex.P-6) came to be recorded, leading to registration of FIR (Ex.P-8). After postmortem examination being conducted on the body of the deceased, and the investigation being completed by the IO,

charge-sheet was laid against the accused under Section 302 IPC and *challan* so filed.

2. Learned Court below by the judgment impugned dated 13.06.2001 passed in ST No. 425/2000 acquitted the accused of the charge under Section 302 but found him guilty u/s 304-II IPC with imposition of sentence of eight years RI. Hence this appeal.

3. Counsel for the accused/appellant submits that almost all the independent witnesses have not supported the case of the prosecution and turned hostile, but even then the accused/appellant has been convicted under Section 304-II IPC, which is not sustainable in the eye of law. According to him, even the so called eye witness namely Sunita (PW-2) who happened to be the daughter of the deceased and is stated to have seen the entire incident of assault with her own eyes, has for the reason best known to her, has also been declared hostile. He further submits that even the witness Upasin Bai (PW-3) in whose house the deceased had gone to attend the ceremony, has not supported the case of the prosecution. According to the counsel for the accused/appellant, it is a case of no evidence, but yet the trial Court has erroneously held the accused/appellant guilty, which is illegal and liable to be set aside.

4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are strictly based on the due appreciation of the evidence of the witnesses and therefore, the findings recorded by it convicting and sentencing the accused/appellant as described above require no interference by this Court.

5. From the evidence of the witnesses it is apparent that on the date of incident the deceased along with his daughter (PW-2) had gone to the village where the accused and his another brother namely Buddhu Gond resided. The evidence further shows that a day before the incident, a locally known "*Chhatti*" ceremony was held in the house of Buddhu where deceased had also marked his presence on that day along with his daughter (PW-2). It is revealed that while taking meals in the house of Buddhu, there was some altercation between the deceased and the accused which made the deceased leave the place without taking meals. The accused/appellant did not like this act of leaving the place by the deceased and therefore, he followed him up carrying a club with him. On the way, the accused/appellant opened an assault on the deceased with club and caused as many as four injuries (lacerated wounds) on and around left temple with the help of club, which is evident from the deposition of Dr. O.P. Paras (PW-1) who examined the deceased during his lifetime, and Dr. S. Loharey (PW-8) who conducted the postmortem examination on the dead body. Though all the independent witnesses being PW-2, PW-3 and PW-7 have not supported the case of the prosecution and declared hostile yet Sunita (PW-2) has stated in her lengthy cross-examination that while taking meals there was an exchange of hot words which made her father leave the house of Buddhu in between without taking meals and the accused/appellant also followed them. On the way near *Fanasbadi*, according to PW-2, the accused/appellant opened the assault with the club which was hidden behind a tree, but she did not disclose the incident to anyone. She has further stated that there was a previous land related dispute between the accused and the

deceased. This version of PW-2 also gets corroborated by her statement recorded under Section 161 Cr.PC. She has further stated that after causing injuries, the accused/appellant got back whereas her father fell unconscious, and that seizure of the club used in commission of offence was also made in her presence under Ex.P-3. The doctor conducting postmortem examination has also stated that the injuries suffered by the deceased could have been caused by the club produced before him for examination. Postmortem report Ex.P-14 also opines the cause of death to be shock and intra-dural hemorrhage and the death was homicidal in nature. The doctor (PW-1) has stated that injury No. 1 caused by hard and blunt object being grievous in nature was sufficient to cause death in the ordinary course of nature. This apart, the village Kotwaar (PW-4) while supporting the case of the prosecution has stated that during life time the deceased had informed him about being assaulted by the accused/appellant. All this clearly substantiates the involvement of the accused/appellant in assaulting the deceased which led to his death in the hospital about a week after his admission therein during the medical treatment. Since the prior preparation and pre-meditation on the part of the accused to cause the injuries to the deceased are missing and the incident took place on the spur of moment, the trial Court was fully justified in convicting the accused u/s 304-II in place of 302 IPC.

6. Aforesaid being the position, conviction of the accused/appellant under Section 304-II IPC cannot be said to be at fault and therefore, this Court does not find any reason to interfere with the same. The view taken by the Court below convicting the

accused/appellant under Section 304-II IPC is fully justified and therefore, it is hereby affirmed.

7. As regards sentence, the report received from the Superintendent, Central Jail, Jagdalpur (Bastar) dated 07.12.2017 shows that after getting the benefit of remission the accused/appellant has already been released from jail on 15.08.2004, therefore, no observation regarding the sentence part is required to be made by this Court.

8. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan