

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1149 of 2014**

- Prem Sai Cherwa, S/o Ghanaram Cherwa, aged about 61 Years, Occupation- Agriculture, R/o Village Sonwahi, Police Station-Jainagar, District Surajpur C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Station Jainagarh, District Surajpur, C.G.

---- Respondent

For Appellant	Shri J.K. Shastri, Advocate.
For Respondent/State	Shri Sameer Sharma, Deputy G.A.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****14/10/2020**

1. The appeal is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 09.10.2014 passed by the Sessions Judge, Surajpur, District Surajpur, C.G. in Sessions Trial No.23/2013, whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 304 Part-I of Indian Penal Code	Rigorous Imprisonment for seven years and fine of Rs.1,000/-, in default of payment of fine amount to undergo further rigorous imprisonment for three months.

3. Case of the prosecution, in brief, is that on 27.09.2013 at about 09:30 am merged intimation Ex.P-1 was lodged by PW-6 Shyamdev Rajwade informing the police that on the same day at about 05:30 am PW-3 Mano Bai, wife of the deceased, informed him that accused/appellant at about 10:00 pm on 26.09.2013 assaulted upon her husband i.e. Beer Sai (deceased) by means of wooden log and fled away from there, as a result of which her husband sustained injury on his head and blood was oozing from his head. Hearing his(deceased) screaming voice, people came there and laid him on the cot and on the same day at about 05:00 am he (deceased) died. Thereafter, on the basis of merged intimation Ex.P-1, FIR Ex.P-2 was lodged against the accused/appellant at police station Surajpur under Section 302 of Indian Penal Code. Inquest on the dead body was conducted vide Ex.P-7 and the body was sent for postmortem. The postmortem examination was conducted on 27.09.2013 by PW-2 Dr. Deep Kumar who gave his report vide Ex.P-3 and noticed following injuries on the body of the deceased:-

1. Body cold, rigor mortis present, abrasion 3 cm x 1 cm on right foot 6cm below knee joint. Anterior surface- lacerated wound 3cm x 3 cm on head occipital area, lacerated wound 3cm x 2 cm on head occipito-right parietal bone junction area, lacerated wound 4cm x 2 cm on left parietal bone area.

The Doctor has opined that the cause of death was shock due to head injury and the death was homicidal in nature and the death caused within 24 hours.

4. During Investigation, appellant's memorandum statement was recorded vide Ex.P-10, consequent to which one wooden piece was recovered from his possession vide Ex.P-11. Blood stained clothes of the deceased were seized vide Ex.P-12. Spot Map Ex.P-5A was prepared by PW-8 Awdesh Kumar Mishra, Investigating Officer. Plain soil and blood stained soil were seized from the place of occurrence vide Ex.P-6. Accused/appellant was arrested on 27.09.2013 vide Ex.P-13. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Section 302 of IPC.
5. The trial Court framed charge under Section 302 of IPC against the accused/appellant which was denied by him and he prayed for trial. The prosecution examined 8 witnesses in support of its case i.e. PW-1 Kamal Das, PW-2 Dr. Deep Kumar, PW-3 Mano Bai, PW-4 Nanho Ram, PW-5 Ram Kumar, PW-6 Shyam Dev, PW-7 Basant Cherwa and PW-8 Awdesh Kumar Mishra. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.
6. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
7. Learned counsel for the appellant submits that in this case no eye witness has supported the prosecution case. He also submits that

there are material contradictions and omissions in the statements of prosecution witnesses. No cogent, clinching and reliable evidence was adduced by the prosecution against the appellant for sustaining his conviction. He further submits that only on the basis of memorandum of appellant, he has been falsely implicated in this case. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the charge.

8. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
9. I have heard learned counsel for the parties and perused the material available on record.
10. As per inquest (Ex.P-7) on the dead body of the deceased and the postmortem report (Ex.P-3), number of injuries were found on the body of the deceased, his death was due to head injury suffered by him and the death was homicidal in nature. The above fact has not been disputed by the counsel for the parties. Thus, homicidal death of the deceased stands proved from the evidence on record.
11. PW-3 Mano Bai is the wife of the deceased. She stated in her deposition that on the date of incident she was sleeping at her home. Her husband (deceased) told her that *he is going to his sister's house (wife of the appellant) to eat tobacco*. Then, after one hour

one Basant came to her home and informed her that accused/appellant had assaulted upon her husband and fled away from there. Thereafter, she went there and saw the deceased lying in the house of appellant in injured condition. Then, she shook her husband but he could not say anything and became unconscious and in the night she stayed at appellant's house. In the next morning, her husband (deceased) told her that accused/appellant had assaulted upon him. Thereafter, she arranged the vehicle for his treatment but after some time her husband (deceased) died.

12. PW-5 Ram Kumar is the son of accused/appellant. He has turned hostile and not supported the prosecution case. But he admitted in his deposition that on the date of incident in his home some dispute had arisen between accused/appellant and deceased and at that time deceased was in drunken condition.

13. PW-6 Shyam Dev lodged the merg intimation Ex.P-1 and FIR Ex.P-2. He stated in his deposition that on the date of incident at about 7:00 am deceased's brother came to his house and informed him about the incident that accused/appellant assaulted upon his brother by means of wooden log. Then, he went to the house of appellant and saw the deceased lying on the cot, blood was oozing from his head and he was dead.

14. PW-7 Basant Cherwa stated in his deposition that on the date of incident he was at home and after hearing the hue and cry, he came out of his home and PW-5 Ram Kumar called him, at that time accused/appellant came out of his home saying that *dekh lunga*.

Then, wife of the appellant- Sukhmen told him that there was a scuffle/dispute between appellant and deceased and when he (this witness) entered in the room, he saw the deceased lying in injured condition and blood was oozing from his head. Thereafter, with the help of Samaylal, Ram Kumar and Shivmangal, they laid the deceased on the cot and after some time he died. He also stated that son of the appellant i.e. PW-5 Ram Kumar had told him that when accused/appellant and deceased were scuffling, at that time deceased himself fell down.

15. PW-8 Awdesh Kumar Mishra, Station Incharge, who investigated the case, has supported the prosecution case.

16. PW-1 Kamal Das, Assistant Sub-Inspector, lodged the merger intimation Ex.P-1 and registered the FIR Ex.P-2 and duly proved the same.

17. PW-2 Dr. Deep Kumar conducted the postmortem of deceased vide Ex.P-3 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report. He has also examined the seized articles i.e. clothes of deceased and wooden log and opined that the injuries suffered by the deceased could be caused by seized wooden log.

18. PW-4 Nanho Ram has turned hostile and not supported the prosecution case.

19. Looking to the statement of the PW-3 Mano Bai, wife of the deceased, which is duly supported by the evidence of prosecution

witnesses i.e. PW-6 Shyam Dev and PW-7 Basant Cherwa and the medical evidence, the prompt FIR, it is clear that on the date of incident, appellant and deceased were scuffling with each other and after that accused/appellant got angry and assaulted upon him/deceased by wooden log, as a result of which deceased died. It is an admitted position that the dead body of the deceased was found in the house of the appellant. Thus, it appears that there was no premeditation on the part of the appellant to cause death of the deceased. It so happened on the spur of moment, upon a sudden quarrel and in the heat of passion when appellant scuffled with the deceased. The accused/appellant was not armed with any weapon and looking to the manner in which the incident took place coupled with the evidence available on record, it appears that the appellant assaulted upon the deceased with a wooden log lying in his house in the heat of passion. As per oral as well as medical evidence, it is clear that the appellant assaulted only with wooden log on the head of the deceased and did not repeat the assault or act in a cruel or unusual manner.

20. It is not in dispute that the appellant assaulted by means of wooden log on head of the deceased which ultimately proved to be his cause of death. Though the assault was made on 26.09.2013 at about 10:00 pm whereas the death took place on 27.09.2013 at about 05:00 am and admittedly, no medical aid was provided to the deceased in between by his family members but the fact remains that the death was the direct result of the injury caused by the appellant. In the given facts and circumstances of the case, the manner in which the assault was made, the weapon used for assault

and the part of the body chosen for assault, it can safely be inferred that while making such assault he was having intention of causing such bodily injury to the deceased which would result in his death. This being the position, the act committed by the appellant makes him liable for conviction under Section 304 Part-I of IPC. In the totality of facts and circumstances of the case, this Court is of the opinion that the trial Court was fully justified in convicting and sentencing the appellant by the impugned judgment and as such no interference is called for by this Court.

21. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 29.06.2020 submitted by Jail Superintendent, Central Jail Ambikapur, Surguja, C.G., the appellant has been released from jail on 25.09.2018 after remission and completion of the sentence including the fine sentence. Therefore, there is no need to pass any further order regarding his arrest/surrender etc.

Sd/-
Gautam Chourdiya
Judge