

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 974 of 2016

- Kosi Podiyami W/o Lamdi Podiyami Aged About 42 Years Caste Madiya, R/o Patelpara, Metapal, Police Station Katekalyan, District Dantewada, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Office, Police Station Katekalyan, District Dantewada, Chhattisgarh.

---- Respondent

For Appellant	:Ms. Sofia Khan, Advocate.
For State/Respondent	:Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

09.07.2021

1. This appeal has been preferred against the judgment dated 30.05.2016 passed in Sessions Trial No.94/2013 by the learned Additional Sessions Judge, Fast Track Court, South Baster, Dantewada (C.G.) wherein, the Appellant has been convicted for the offence punishable under Section 304 Part-II of the IPC and sentenced to undergo RI for 10 years.
2. In this case, name of deceased is Kosi Podiyami and Appellant name is also Kosi Podiyami. Both are wife of the Appellant. According to the case of prosecution Lamdi Podiyami lodged a report in concerned Police Station against the Appellant alleging therein that on 11.02.2013, when he

along with his elder wife Kosi Podiyami consuming liquor in their house at that time, the Appellant came there from jungle, some dispute taken place between the Appellant and the deceased, therefore, the Appellant assaulted the deceased with the help of club due to which the deceased died on spot. On the basis of said report, offence has been registered against the Appellant vide (Ex. P-6). Postmortem of the deceased was conducted by Dr. AD Bara (PW-12) his report is (Ex.P-12). Later on statements of the complainant and witnesses recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet was filed by the Police under Section 302 of the IPC. Trial Court framed the charges under Section 302 of the IPC against the Appellant. To robe the Appellant in the crime-in-question, the prosecution has examined as many as 13 witnesses. In the statement of the Appellant recorded under Section 313 of Cr.P.C, he has pleaded his innocence and false implication in the matter, however, no defence witness was examined by the Appellant. After completion of trial, Trial Court convicted and sentenced the Appellant as mentioned in Para 01 of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the Appellant submits that without there being any clinching and sufficient evidence available on record, the Trial Court has convicted the Appellant. She further submits that eye-witness of the case,

Lamdi Podiyami has not been examined before the Trial Court, inspite of that the Trial Court has wrongly convicted the Appellant only on the basis of presumption, therefore, conviction of the Appellant is not sustainable. Alternatively, the Counsel further submits that out of ten years of jail sentence, the Appellant has already undergone about 8 years 4 months in jail. She has no criminal antecedent and has facing the *lis* since 2013. The Counsel lastly submits that if the conviction of the Appellant may be affirmed, it is prayed that the sentence awarded to the Appellant may be reduced to the period already undergone by her.

4. On the contrary, learned State Counsel opposed the appeal and supported the impugned judgment. He submits that eye-witness of the case has not been examined before the Trial Court but, extra judicial confession of the Appellant made before witnesses, is duly proved. Therefore, the Trial Court has rightly convicted the Appellant.
5. I have heard learned counsel appearing on behalf of the parties and perused the record minutely. I have also gone through the statements of the witnesses.
6. In the examination chief, Bomda (PW-1) son of the deceased deposed that after consuming liquor, a dispute was taken place between his mother/deceased and the Appellant, therefore, the Appellant assaulted the deceased with the help

of club due to which the deceased died on spot. But, during cross-examination, this witness admitted the fact that at the time of incident neither he was present on spot nor witnessed the incident. Vijjo Podiyam (PW-2) Sarpanch of the Village and Madvi Lakhma (PW-5), both the witnesses have categorically deposed that after the incident, a village meeting was conducted wherein, the Appellant has admitted the fact that she assaulted the deceased with the help of club due to which, the deceased died on spot. The above statements of these witnesses have not been rebutted during their cross-examination. In cross-examination of Vijjo Podiyam (PW-2), in para 12 & 13, defence has admitted the fact that the Appellant assaulted the deceased with the help of club due to which, the deceased died on spot.

7. Looking to the statements of the above witnesses and evidence available on record. In my considered view, the Trial Court has rightly convicted the Appellant.
8. The conviction of the Appellant under Section 304 Part-II of the IPC is affirmed and with regard to the sentence part, considering the fact that out of 10 years of jail sentence, the Appellant has already undergone about 8 years 4 months in jail. She has no criminal antecedent and has facing the *lis* since 2013. I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the

Appellant, the jail sentence awarded to her is reduced to the period already undergone by her. The fine sentence for the aforementioned Section is also affirmed.

9. Accordingly, the appeal is partly allowed.

10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge