

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 688 of 2002**

- Rajendra Kumar @ Rajju S/o Pyarelal Kurre aged about 36 years, R/o Village Sarangpur, P.S. Kunda, District-Kawardha, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh.

---- Respondent

For Appellant	: Mr. Yogeshwar Sharma, Adv.
For Respondent/State	: Ms. Ishwari Ghritlahre, PL.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****06/09/2021**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 30.04.2002 passed by the IInd Additional Sessions Judge (Fast Track Court), Mungeli, District-Bilaspur, in S.T. No. 368/2000 whereby, the learned Additional Sessions, Judge convicted the appellant and sentenced him as under :-

Conviction	Sentence
U/s 304 part-II of IPC	R.I. for 7 years and fine of Rs. 3000/- in default of fine additional R.I. for 6 months.

2. Brief facts of the case are that deceased Gaurishankar, along with his family members, lived in village Sarangpur and used to take a contract to do farming along with the farmers' wages for the crops. The accused is also residents of this village, the accused Rajendra Kumar was a teacher in the primary school of village Rajpur, who lived at a rented house in village Fasterpur. The father of complainant Omkar (PW-2), Gaurishankar had taken the contract to weed the Kodo

crop sown in the land situated in Sarangpur village of accused Rajendra. In this sequence, Gaurishankar had collected 22 labourers and got them to do the work of weeding crop. This excavation work was completed a day before the date 02.09.2000. To complete the weeding, 2 khadi Kodo wage transactions were settled between Gaurishankar and accused Rajendra Kumar. It is alleged that when the deceased went to the accused's house to take wages, the accused was not there, he went to the pond where the accused was present and the accused was asked to pay wages, on which the accused was refusing to pay wages, on which a debate started between deceased Gaurishankar and the accused. It is also alleged that while they were arguing, they reached the spot where the incident took place, Gaurishankar fell to the ground after the accused pulled the napkin hanging around the neck of the deceased, after which Gaurishankar's neck was pressed, due to which Gaurishankar died on the spot.

3. Merg intimation registered by Police authority vide Ex.P/15, on the basis of merg intimation, FIR was lodged against accused persons vide Ex.P/2. The map of Panchayatnama was made before the witnesses vide Ex.P-13, application for postmortem report prepared vide Ex.P/4. Dr. Vibha Sindoor (PW-6) conducted the postmortem of the deceased and gave her report vide Ex.P/4(A), opined that cause of death is smothering (asphyxia), and nature of death - homicidal. After completion of investigation charge-sheet was filed and charges were framed against the accused persons under Section 302 read with Section 34 of IPC.

4. So as to hold the accused/appellant guilty, the prosecution has examined as many as 15 witnesses. Accused persons also examined two defence witnesses in their defence. Statement of the accused

persons were also recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them and pleaded innocence and false implication in the case.

5. Upon consideration of oral and documentary evidence, the trial Court acquitted all the accused persons under Section 302 of IPC and convicted them under Section 304 Part-II of IPC and sentenced them as mentioned above. Hence, this appeal filed by the appellant.

6. Learned counsel for the appellant submits that impugned judgment of conviction and sentence is contrary to law and facts available on record. He further submits that the learned trial Court has mis-appreciated the evidence on record. The judgment is based upon conjunctures and surmises. He also submits that the learned trial Court did not appreciate this fact that there were contradictions and omissions in the statement of witnesses, therefore, the same ought not to have been relied upon. He lastly submits that medical evidence does not support the statement of witnesses, cause of death as revealed by the postmortem report is due to suffocation, whereas the ocular evidence is to the effect that this case is a case of strangulation (throttling), therefore, reasoning of the trial Court is not based on proper appreciation of oral and documentary evidence, at the most offence of this nature fall under Section 323 of IPC, therefore, judgment of conviction and order of sentence is liable to be set aside.

7. On the other hand State counsel supporting the impugned judgment of conviction and order of sentence submitted that the trial Court has not committed any error of law. It is in strictly in accordance with law and no inference is called for.

8. In this case complainant Omprakash (PW-2) is son of deceased

Gourishankar, he was present at the time of incident who stated in his statement that Jhaman and Rajendra pulled the napkin around his father's neck, Dhansingh and Shivkumar choked his father's throat with their hands. At that time he started shouting, then Bhikham, Holiram and Kanshiram reached there. Rohit (PW-1), Bhikham Das (PW-3), Ramdas (PW-4) and Holiram (PW-5) have supported the statement of the complainant. Dr. Vibha Sindoor (PW-6) opined that cause of death is smothering (asphyxia).

9. Learned trial Court also relied upon the statement of the witnesses and found that accused persons are guilty of Section 304 Part-II of IPC and acquitted them of the charge under Section 302 and convicted them under Section 304 Part-II of IPC. This finding is based on oral and documentary evidence, therefore, this Court find no error. The appeal being devoid of merits is liable to be and is hereby dismissed.

10. As per the report dated 07.08.2021 received from 1st Additional Sessions Judge, Mungeli along with report of Jail Authority, the appellant has suffered the full jail term and released from jail, therefore no further order for his arrest, etc. is required.

**Sd/-
(Rajani Dubey)
udge**