

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1911 of 2019**

- Ram S/o Premsai @ Marai Gond Aged About 35 Years Caste Gond, Occupation Agriculture, R/o Village Dhodha Gaon, (Siharjor Para) Police Station Sitapur, District Surguja, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through District Magistrate, Surguja, District Surguja, Chhattisgarh.

---- Respondent

For Appellant	: Ms. Indira Tripathi, Advocate
For State	: Shri Lalit Jangde, Dy. Government Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board**Per Manindra Mohan Shrivastava, Judge****09.09.2021**

Though the case is listed for consideration of application for suspension of sentence and grant of bail, with the consent of counsel for the parties as the appellant remained in jail for a long time, the appeal heard finally in motion hearing stage.

This appeal is directed against impugned judgment of conviction and order of sentence dated 06.01.2007 passed by the Sessions Judge, Surguja, Ambikapur (CG) in Sessions Trial No.271/2006 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :-

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Life imprisonment and fine of Rs. 100/- in default of payment of fine amount one month additional R.I.

2. The prosecution case, as is unfolded from the impugned judgment of conviction and order of sentence as also record of the case, is that an FIR was lodged on 02.04.2006 by the brother of the deceased Chhatarpal (PW-2) at 16:05 hrs, wherein, it was stated that the deceased was assaulted by the appellant due to which, he died. After recording the FIR, the Police reached to the place of incident and prepared inquest over the dead body in Ex.P-8 in the presence of the witnesses, after notice. The dead body was sent for *post-mortem* which was conducted by Dr. M. Nikunj (PW-08) who prepared *post-mortem* report in Ex.P-12 wherein it was found that the cause of death was asphyxia due to strangulation, resulting from injury over the neck. According to the Doctor, the nature of death appeared to be homicidal. The time of death was stated to be 20 to 22 hrs since *post-mortem*.

The appellant was taken in custody, investigation was completed, charge-sheet was filed before the Judicial Magistrate, Surguja who in turn committed the case for trial and the Sessions Court, Surguja received the case for trial.

On the basis of materials contained in the charge-sheet, the learned trial Court framed charges against the appellant that the appellant murdered the deceased with the help of club. In order to prove the guilt, the prosecution examined as many as 9 witnesses in support of its case. Thereafter, the appellant was examined under Section 313 Cr.P.C., in which, the appellant having denied the incriminating circumstances appearing against him, came out with the defence that he had not committed the offence, he had gone to pluck forest produce along with his family members and returned at around 2:15 pm. Defence witness was also examined by the accused.

3. Though, the defence of the appellant was that he had gone to pluck forest produce along with his family members, so as to raise *plea of alibi* and also that the place of incident could not be witnessed from the boring where the eyewitness is said to be present at the time of incident, the trial Court relied

upon the testimony of the sole eyewitness Amrit Ram (PW-4) and convicted the appellant.

4. Assailing legality and validity of the impugned judgment of conviction, learned counsel for the appellant argues that the conviction is founded on the doubtful testimony of Amrit Ram (PW-4) who claims to have seen the incident from a far off distance which makes it highly doubtful whether this witness at all has seen the incident. The learned counsel for the appellant would argue that in the Najri Naksha (Ex.P-11) prepared by Patwari (PW-6), the location of the boring has not been indicated but this aspect was duly stated and explained by the defence witness Sushil Kumar (DW-1) from which, it is clear that the place of incident was stated to be at a distance of 225 Meters. Even in the crime details (Ex.P-3), it is reflected that there were trees and bushes around the place of incident, therefore, the evidence of Amrit Ram (PW-4) that he had seen the incident from a far off distance is highly doubtful and it requires an independent corroboration which the prosecution failed to lead in the circumstances of the case.

5. Learned counsel for the appellant also argues that the so called eyewitness has not given the details of entire incident as to how, in what manner and which part of the body of deceased was assaulted by the appellant. A simple statement of having assaulted is not enough unless the witness comes with complete and clear details of number of injuries, the manner in which the assault and part of the body when the assault was made, the evidence of the eyewitness is liable to be discarded.

6. It is also submitted by the learned counsel for the appellant that even from the evidence of the prosecution witnesses, it has come out that there were previous dispute between appellant and the deceased, that means, the appellant had intention to assault but without premeditation, the incident unfortunately happened wherein the deceased because of some assaults said

to have given by the appellant with the help of club died.

7. It is also one of the argument that the manner in which the deceased sustained injuries, may be, some assaults were given which resulted in Swelling in chest, but the injury in the neck particularly stab injury has not been explained by the prosecution because according to the prosecution, the appellant had assaulted the deceased with the help of club. All these taken together, it is vehemently contended, render prosecution case highly doubtful. Without corroboration particularly when near the spot the construction of road was going on, there were other witnesses, the conviction ought not to be based on the sole testimony. Lastly, it is also submitted that out of two witnesses in memorandum, only one witness has been examined who has not supported the memorandum. There is no FSL report in evidence.

8. On the other hand, learned State counsel supported the judgment of conviction and order of sentence and would submit that the conviction of appellant is founded on the reliable testimony of Amrit Ram (PW-4) who has remained firm even in the cross-examination regarding he having seen incident of assault by the appellant on the deceased. Learned State counsel would further contend that this witness is an independent witness who is not even a relative of the deceased. Nothing has been elicited from this witness to show why he would falsely implicate the appellant. The FIR is prompt, within 5 hrs of the incident, in which the appellant has been named, therefore, the conviction does not warrant any interference.

9. We have heard learned counsel for the parties, perused the records and also impugned judgment of conviction and order of sentence.

10. The issue arising for consideration in the present case is whether the conviction of the appellant could be based on the sole testimony of Amrit Ram (PW-4) who has been examined and has deposed in the Court as the

eyewitness of the incident?

As it is well settled, it is not the quantity but the quality of the evidence which is required to be seen. It is not a rule that the conviction cannot be founded on the basis of a single eyewitness. If the evidence of sole eyewitness is reliable, there is no legal impediment in relying upon evidence of the sole witness to hold the accused guilty of commission of offence.

In the present case, the FIR was lodged by Chhatarpal (PW-2) brother of the deceased, in the FIR itself the appellant has been named as assailant. This FIR was lodged within a short period of time from the time of incident. The incident is said to have happened around 11:00 hrs in an open place and FIR was lodged 16:05 hrs i.e. within 5 hrs the matter was reported to the police. Lodging of the prompt FIR and naming of accused in the FIR, at least, minimises possibility of false implication.

11. The prosecution case rests on the evidence of Amrit Ram (PW-4). This witness is not related to any of the parties in any close relation. He has deposed that the accused Ram is his neighbour. According to him, while he was fetching water from the boring, by that time, at the paddy store of Nathuni Gond, the appellant Ram assaulted deceased with the help of club, at that time, construction of road in the village was going on where Nagam (PW-1) was also working. He reported the incident of assaulting the deceased Dilbahal with Lathi to Nagam (PW-1) with instruction to inform brother of deceased. Thereafter, Nagam (PW-1) went to inform about the incident to Chhatrapal (PW-2), brother of deceased. Chhatrapal (PW-2) arrived at the spot and found his brother dead. This witness has been cross-examined and from his cross-examination, It has been elicited that distance of boring is about 100 meter from the paddy store of Nathuni, according to him, when he was fetching water, at that time, there were not too many persons around and most of the villagers were engaged in construction of road at different places and at the back of it, Nagam (PW-1) was

also working with other persons. He states that when he was going from boring to his house, he informed about the incident to Nagam (PW-1). He further deposes that the appellant, all of a sudden, assaulted the deceased, therefore, he could not rescue the victim. A suggestion has been given to him that while he was fetching water, all of a sudden Dilbahal was assaulted, therefore he could not see the incident but he has denied. A suggestion that he is tutored witness and deposed in the Court as tutored by Chhatarpal (PW-2) but he denied. He remained firm in his statement and has denied that he has not seen the incident. The entire evidence of this witness is that he had seen the incident of assault.

12. Learned counsel for the appellant has made efforts to convince the Court that the place of incident was far away from boring where Amrit Ram (PW-4) states that he had gone to fetch water, therefore, it is highly improbable that this witness had seen the incident from such a distance. More so, when this part has not been clearly stated in the Najri Naksha (Ex.P-11) prepared by Patwari (PW-6), not even clear in crime details (Ex.P-3) prepared by the Investigating Officer.

In the Najri Naksha (Ex.P-11) which has been prepared by Patwari (PW-6), the place where the incident happened and paddy store of Nathuni is said to be nearby each other. From the distances of other places in the map, namely house of Vishwanath Panch, appellant's house, Nathuni's house and Dilbahal's house, this Court finds that the distance of paddy store of Nathuni and place of incident is not much and they seem to be situated near each other. In this map, the exact location of the boring has not been indicated. However, for this reason no benefit can be granted to the accused because the purpose of preparing the map is to show the place of incident. However, Patwari (PW-6) in the cross-examination clearly says that the paddy store of Nathuni can be seen from boring. This should not be a matter of much concern for us because Amrit Ram

(PW-4), the eyewitness has stated that he was fetching water and then he also started returning from that place. Nothing has been elicited from his cross-examination that he was standing at such a far off distance that it was not possible for him to witness the incident. In fact, on this aspect, no question has been put to this witness regarding the location where from he has seen the incident nor any suggestion has been given to him that the place where he was standing was so far away from the place of the incident that either because of any obstruction in between or because of distance it was not possible for the witness to see the incident. In this back ground, the evidence of Patwari (PW-6) regarding visibility of the place of incident around the place of boring loses importance.

The defence has brought in the evidence of sole defence witness Sushil Kumar (DW-1) and also a document to make it plausible that the place of incident was so far away from the boring that it was not possible to witness the incident. As we have already stated hereinabove, the time of incident is during day hours when the witness had gone to fetch water from the boring. That by itself, without any other thing elicited in cross-examination, could not be made a basis to disbelieve the testimony of this witness.

13. The evidence of Amrit Ram (PW-4) inspires confidence because this witness is an independent witness. In fact, he has deposed that he is the neighbour of the appellant. Why a neighbour would falsely implicate unless there is a reason to falsely implicate, has not elicited either in the cross-examination of Amrit Ram (PW-4) nor in the examination of any other witness. The accused in his examination under Section 313 Cr.P.C., has sought to impeach the credibility of the prosecution witness while replying to the question No. 55 that witnesses are speaking against him because of dispute. But there is no evidence led by defence much less emerging from the evidence of prosecution witness which even remotely suggests that Amrit Ram (PW-4) had

a reason to falsely implicate the appellant in the incident.

14. Learned counsel for the appellant has laid much emphasis on the evidence of Nagam (PW-1) who has not supported the prosecution case except stating that he was informed by one Amrit Ram (PW-4) that Dilbahal fell on the ground. He has denied that he was informed by the eyewitness. True it is that this witness has not supported the prosecution but the evidence of Chhatrapal (PW-2) is reliable as what he stated in his evidence is also reflected in information given in the Police Station soon after the incident that he was informed by Nagam then he had gone to spot and seen the dead body and immediately reported the matter to the Police.

15. Chhatrapal (PW-2) has deposed that when, upon receipt of information, he went to the place of incident, he saw that the appellant was sitting over there and when he asked the appellant as to why he assaulted, then the appellant said that he has assaulted his brother and at that time, he was holding a club in his hand and his brother was lying injured. In the cross-examination, on this particular part of the evidence, nothing could be elicited. From the evidence of this witness, not only presence of the appellant with club at the spot is proved but also there is an extra judicial confession, though this Court would not rely upon the extra judicial confession evidence as it is said to have been given to the brother of the deceased. Nevertheless, this evidence remained uncontroverted in the cross-examination, provides corroboration to the evidence of Amrit Ram (PW-4) that the accused was found at the spot holding a club and confessed having killed deceased Dilbahal.

16. One more submission is made that Gahdul (PW-3) has also not supported the case of the prosecution regarding presence of the accused at the place of incident.

17. The argument that Gahdul (PW-3) did not support the case of the

prosecution with regard to presence of the appellant at the spot cannot be made a basis to doubt the testimony of Chhatarpal (PW-2) because this witness is FIR informant and he is proving the contents of the FIR while deposing in the report. Clearly, in this case, Nagam (PW-1) and Gahdul (PW-3) have not supported the prosecution case, however, the evidence of other witnesses have to be appreciated on their own strength. If they are found otherwise reliable, their evidence cannot be discarded only on the ground that they do not find corroboration from the evidence of other witnesses. The settled principle of appreciation of evidence is that corroboration is needed when the evidence of witness becomes doubtful. If the evidence of witness is not doubted, then only because other witnesses are not supporting the evidence of witness cannot be discarded.

18. It would thus be clear that it is the appellant who has assaulted the deceased with the help of club.

19. The homicidal death of the deceased is not substantially in dispute in view of evidence of the doctor (PW-8) and *post-mortem* report (Ex.P-12) which shows that the deceased was badly assaulted and repeated injuries were caused on his body and the doctor has clearly stated that the asphyxia was caused due to compression of the neck and the compression was so much so that rings of the neck were broken. The presence of the injuries and the manner in which the injuries were caused on the different parts of the body, it clearly shows that assault was made with hard and blunt object and finally the neck was compressed with a hard object so much so that the neck rings were broken leading to asphyxia and finally death.

20. Though, an argument has been raised by the learned counsel for appellant that the conviction is liable to be altered to that under Section 304 IPC, we do not find any material what so ever which remotely suggests that this case is covered under any of the exceptions under Section 300 of IPC, there is

no iota of evidence that fight was going on between the appellant and deceased, the evidence is only of assault by the appellant with the help of club on the deceased.

Lastly, the *plea of alibi* raised has fallen short of evidence. The appellant's defence that he had gone to forest to pluck forest produce and returned at 2:15 pm has not been supported by any evidence either from the defence or emerging from the evidence of prosecution witnesses.

21 Therefore, in the ultimate conclusion, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence.

22. Learned counsel for the appellant has also argued that appellant has undergone 15 years of jail sentence, therefore, the appellant is entitled to be considered for release upon remission.

This aspect can not be examined by us, since, it is an appeal against the judgment of conviction and order of sentence.

But, before parting with the case, we must observe that irrespective of the result in the appeal, the provisions with regard to remission as contained in Cr.P.C. and the Jail Manual are required to be scrupulously followed and acted upon in its true spirit, therefore, the appellant's case should also be considered for remission in accordance with the provisions of law at the earliest. For this purpose, we consider it appropriate that a copy of the judgment be sent to the Jail Authority concerned where appellant is serving jail sentence.

23. With the aforesaid observation, the present Criminal Appeal is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Narendra Kumar Vyas)
Judge