

HIGH COURT OF CHHATTISGARH, BILASPUR

**CORAM: Hon'ble Shri Rajeev Gupta, C.J. &
Hon'ble Shri Sunil Kumar Sinha, J.**

Criminal Appeal No. 309 of 1996

Deo Singh

Vs.

State of Madhya Pradesh
(Now State of Chhattisgarh)

JUDGMENT

For consideration

Sd/-
SUNIL KUMAR SINHA
Judge

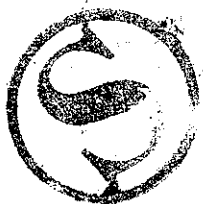
HON'BLE SHRI JUSTICE RAJEEV GUPTA

I agree.

Sd/-
Chief Justice

Post for Judgment : 30/03/2012

Sd/-
Sunil Kumar Sinha
Judge



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HIGH COURT OF CHHATTISGARH, BILASPUR

CORAM: **Hon'ble Shri Rajeev Gupta, C.J. &**
Hon'ble Shri Sunil Kumar Sinha, J.

Criminal Appeal No. 309 of 1996

APPELLANT

Deo Singh (Dave Singh- wrongly mentioned in memo of appeal) son of Madhura Gond, aged about 25 years, resident of village Bada Damali, P.S. Ambikapur, District Sarguja, M.P. (Now C.G.)

Versus

RESPONDENT

State of Madhya Pradesh
(Now State of Chhattisgarh)
Through P.S. Ambikapur, District Sarguja

(Criminal Appeal under Section 374 (2) of The Code of Criminal Procedure, 1973)

Appearance:

Mr. Abhay Tiwari, Advocate for the appellant.
Mr. Arvind Dubey, Panel Lawyer for the State.

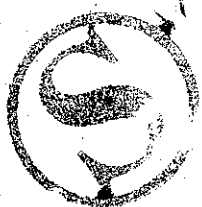
JUDGMENT
(30.03.2012)

Following judgment of the Court was delivered by
Sunil Kumar Sinha, J.

(1) This appeal is directed against the judgment dated 31st of October, 1995 passed in Session Trial No. 148/93 by the First Additional Session Judge, Ambikapur. By the impugned judgment, the appellant has been convicted u/s 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.2,000/- with default sentence of R.I. for 6 months.

(2) The facts, briefly stated, are as under:-

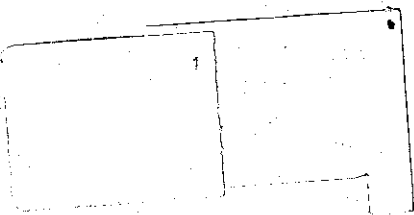
Deceased- Thakurram was father-in-law of the appellant. In the intervening night of 8th-9th of March, 1993, the deceased was

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sleeping in the verandah of his house. The other family members were sleeping inside the house. The allegations are that the appellant came in the night and assaulted the deceased by stone, due to which the deceased received injury on left temporal region. In fact, he sustained fracture on the left temporal bone. The deceased succumbed to the above injury sustained by him which was allegedly caused by the appellant. The prosecution came with the case that as the deceased was not sending his daughter (PW-5- Sumitra Bai – wife of the appellant) with the appellant, therefore, the appellant was annoyed with the deceased and he committed murder of the deceased in the above manner. The First Information Report (F.I.R. – Ex.-P/2) was lodged by Chainsai (PW-2). The Investigation Officer reached to the place of occurrence, gave notice (Ex.-P/6) to the *Panchas* and prepared inquest (Ex.-P/7) on the dead body of the deceased. The dead body of the deceased was sent for post-mortem to District Hospital, Ambikapur vide requisition Ex.-P/5. The post-mortem examination was conducted by Dr. A.K. Bansal (PW-6) who found that there was a fracture on left temporal bone and the pieces of bone were pierced in the brain. The entire skull was full of blood. He opined that the death was on account of coma as a result of head injury and it was homicidal in nature. The post-mortem report is Ex.-P/3.

In further investigation, the appellant was taken into custody and his memorandum statement (Ex.-P/11) u/s 27 of the Evidence Act was recorded and a big stone was seized at the instance of the appellant vide seizure memo Ex.-P/12. Though the seized articles were sent for their chemical examination to Forensic Science Laboratory (FSL), Raipur vide memo Ex.-P/13, but no report could be filed.

The learned Session Judge mainly relied on the testimonies of Maan Kunwar (PW-4) and Sumitra Bai (PW-5) who came as eye-witnesses before the Court, and convicted & sentenced the appellant as aforementioned.



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(3) Mr. Abhay Tiwari, learned counsel appearing on behalf of the appellant, argued that Maan Kunwar (PW-4) and Sumitra Bai (PW-5) were not reliable witnesses; they deposed about commission of murder by the appellant for the first time before the Court; the F.I.R. (Ex.-P/2) was lodged after due briefing by the eye-witnesses, but the name of the appellant was not mentioned in the F.I.R.; therefore, the conviction based on the testimonies of the above witnesses cannot be sustained.

(4) On the other hand, Mr. Arvind Dubey, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Session Court.

(5) We have heard learned counsel for the parties at length and have also perused the records of the session case.

(6) Maan Kunwar ((PW-4) is wife of the deceased. She deposed that in the fateful night, the appellant came to her house and tried to assault her and thereafter he assaulted her husband (deceased) on his head. She could not see that by which weapon, the appellant assaulted the deceased, however, her husband (deceased) has sustained injury on his temporal region.

(7) Sumitra Bai (PW-5) is the wife of the appellant. The deceased was her father. She deposed that at about 12 in the night, they were sleeping inside the house and her father was sleeping in the outer portion of the house. The appellant came to their house and assaulted her father. She woke up after hearing voice of her father. When she opened the door, she saw that the appellant was standing there and her father had

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received injury. She added that the appellant had assaulted her father. Blood was come out from ear of her father.

(8) Chainsai (PW-2) is first informant. He lodged the F.I.R. (Ex.-P/2). Chainsai deposed that when he heard cries from the house of the deceased, he went to his house and saw that the deceased was lying dead in the verandah of his house. He had sustained injury over the temporal region. Wife of the deceased, Maan Kunwar (PW-4) was present there. He returned to his house and informed the incident to his father. In the morning, they went to village *Chowkidar* and thereafter he went to lodge the report. He has proved his signature over the report (F.I.R. – Ex.-P/2). Though Chainsai (PW-2) lodged the F.I.R. (Ex.-P/2) after due discussion and briefing by Maan Kunwar (PW-4), but he did not mention the name of the appellant in the F.I.R. In fact, the F.I.R. was not against any particular person. The contents of the F.I.R. (Ex.-P/2) would show that the first informant, on the instructions of the wife of the deceased, Maan Kunwar (PW-4), has showing suspicion against the appellant because the deceased was not allowing her daughter to go with the appellant.

(9) Maan Kunwar (PW-4) is wife of the deceased and Sumitra Bai (PW-5) is daughter of the deceased. We gather from the records that their case-diary statements (Ex.-D/1 & D/2) were recorded on 9.3.93. In their case-diary statements, recorded u/s 161 Cr.P.C., they never disclosed that they had seen the appellant assaulting the deceased. However, when they came before the Court, they claimed themselves to be the eye-witnesses and deposed that they had seen the appellant

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assaulting the deceased in the above manner. Both witnesses were faced with their case-diary statements (Ex.-D/1 & D/2) relating to the above omissions. They gave explanation that they have told all this to the police and if the above facts are not mentioned in their case-diary statements, they cannot tell reason for that. In fact, they had denied to give specific portion of their 161 Cr.P.C. statements and claimed that they had stated before the police that they had seen the appellant assaulting the deceased. The said omissions in the 161 Cr.P.C. statements of the above 2 eye-witnesses was a material omission. If they, in fact, had seen the appellant assaulting the deceased, they would have stated this fact before the police when their 161 Cr.P.C. statements were recorded on 9.3.93. Not only this, if the fact of giving assault by the appellant was witnessed by Maan Kunwar (PW-4) & Sumitra Bai (PW-5) and the F.I.R. (Ex.-P/2) was lodged after due discussion with these witnesses, as stated by Chainsai (PW-2), this must have been mentioned in the F.I.R. (Ex.-P/2) and the F.I.R. would not have been lodged showing suspicion against the appellant. We are of the view that the learned Session Judge completely lost sight of all these facts while placing reliance on the testimonies of the above 2 witnesses namely – Maan Kunwar (PW-4) and Sumitra Bai (PW-5) who were none than wife and daughter of the deceased.

(10) For the foregoing reasons, we are unable to sustain the finding recorded by the learned Session Judge that it was proved on the evidence of Maan Kunwar (PW-4) and Sumitra Bai (PW-5) that the appellant assaulted the deceased in the above manner and he was liable for conviction u/s 302 IPC. We are of the view that the testimonies of

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Maan Kunwar (PW-4) and Sumitra Bai (PW-5) were wholly unreliable and the conviction of the appellant based on their testimonies cannot be sustained.

(11) In the result, the appeal is allowed. The conviction and sentences awarded to the appellant u/s 302 IPC are set-aside. The appellant is acquitted of the charges framed against him.

Sd/-
Chief Justice

Sd/-
SUNIL KUMAR SINHA
Judge