

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE D.B. HON'BLE MR. JUSTICE S.C. SHARMA & HON.MR.**  
**JUSTICE ALOK VERMA, JUDGE**

**Criminal Appeal No.311/2007**

Santosh S/o Nana Kahar . . . Appellant

Versus

State of Madhya Pradesh . . . Respondent

---

**CORAM**

Hon'ble Shri Justice S.C. Sharma

Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

---

Shri Yashpal Rathore, learned counsel for the appellant.

Smt. Archana Kher, learned counsel for the respondent/State.

---

**Judgment**

**14.11.2017**

**Per : Alok Verma, Justice:**

This Criminal Appeal is directed against the judgment of conviction and sentence passed in Session Trial No. 28/2006 by the learned Sessions Judge, Maheswar, West Nimar dated 19.01.2007, wherein the learned Sessions Judge convicted the present appellant under Section 302 of IPC and sentenced him to life imprisonment

and under Section 323 (2 counts) of IPC for causing injury to Mukesh and Bittu and sentenced him to six months rigorous imprisonment

2. According to prosecution story, the deceased Bama was working as Choukidar of the village and he was petrolling the village along with Sheru Pinjara, Bhatore etc. At 1:30 AM in the night, a person came towards them and when that person reached in front of the house of Chhogalal, the deceased Bama stopped him and asked him to disclose his identity. He told the deceased Bama that he was a Policeman. Not believing him, the deceased tried to lift his shirt to check whether he was wearing a police badge to ensure that he was a Policeman. However, on that occasion he slapped him and to defend himself he tried to take an iron pipe from the complainant Chhogalal. But before he could hand over the pipe to the deceased Bama, that person snatched the pipe and gave two blows on the head of the deceased, due to which, he suffered fatal injuries and died. After the incident, that person, who came there ran away. The person who were with the deceased tried to chase him but they could not catch him. Subsequently, it was stated that after sometime, the accused came back in the village along with the pipe in his hand and there, he was seen by other prosecution witnesses, and thereafter, they caught hold of him.

3. After recording evidence of both the sides, and also the

statement of the accused, the trial Court found him guilty under the sections as aforesaid and sentenced him.

4. Aggrieved by the judgment of conviction and sentence, this appeal is filed on the ground *inter-alia* that the appellant was not known to the prosecution witnesses and there was no proper identification of the appellant, and therefore, he should be given benefit of doubt, which the trial Court failed to extend. There was also a contradiction about time of death as per the oral evidence and medical evidence. The main ground in this appeal appears to be identity of the accused. It is undisputed that he was not known to the prosecution witnesses prior to the incident and it appears that the first time he entered into the village.

6. The complainant Chhogalal (P.W-1) said that on the date of incident, he along with Sheru, Bhatore and deceased Bama petrolling in the village. They were sitting in front of house of Anokchand. At that time, a person came from the side of culvert, and thereafter, the incident took place as stated in the prosecution story. He also said that the deceased asked him to give him pipe as the appellant slapped him. He also identified the appellant before the Court and said that he was the same person, who came in their village in the night.

7. Sheru was the another person who was also petrolling along with complainant Chhogalal (P.W-1). He also identified the

accused in the Court, then he said that he could see the assailant only from behind.

8. Ram Krishna Bhatore (P.W-3) is also one of the person who was petrolling in the night. He said that he went behind the appellant till river but taking advantage of darkness, he fled away.

9. The prosecution witnesses identified the present appellant before the trial Court. There was no cross-examination of the prosecution witnesses on the point that there was no source of light on the spot and they were not familiar with the appellant, and therefore, he cannot identified him before the Court.

10. Mitthu (P.W-10) is the person who saw him when second time, he entered the village. This witness was amongst the person who chased the appellant, however, when they could not catch him, he came back and he was sitting in front of the house and when he re-entered the village, seeing him, he shouted and call other persons and then they tried to catch hold of him, however, this time also he fled away.

11. All these witnesses were cross-examined by the defence counsel, however, no such fact came in cross-examination of these witnesses, which would indicate that the witnesses were not in the position to identify him before the Court. No doubt created could be regarding identity of the present appellant. Their oral evidence were supported by the medical evidence, and therefore, it was proved

that the present appellant caused injuries, due to which, the deceased Bama died.

12. Coming to the point of conviction, it is apparent that as per the prosecution story itself, there was no enmity between the deceased and the present appellant. He was first time seen in the village, and therefore, being Chokidar of the village and as it was time of midnight, the deceased was asked to disclose his identity, on which, two injuries were caused on his head, due to which, he died. As such, from the story itself, which is accordingly the facts stated in the prosecution story, which are also proved before the Court, the present appellant had no motive to kill the deceased. There appears to be no intention as well and as such, the case falls under the provision of Section 304 part-II of IPC. Accordingly, in considered opinion of this Court, the conviction of the appellant under Section 302 of IPC should be converted into the conviction under Section 304 Part-II of IPC.

13. Accordingly, this appeal is partly allowed. The conviction of the present appellant under Section 302 of IPC is set aside, however, he is convicted under Section 304 Part-II of IPC. His conviction under Section 323 of IPC is hereby affirmed. His sentence of life imprisonment imposed under Section 302 of IPC is set aside instead, he is convicted for 10 years rigorous imprisonment under Section 304 Part-II of IPC. As due to his poor economic conditions, the trial Court did not find it proper to impose any sentence of fine on

him. This view is affirmed and no fine is imposed.

The sentence would run concurrently and if he has already completed period of 10 years under custody, he shall be released forthwith if his presence is not required in any other case.

**(S.C. Sharma)**  
**Judge**

**(Alok Verma)**  
**Judge**