

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 85 of 2010

1. Mohan Lal S/o Gophelal Jangde, Caste-Satnami, aged about 33 years, R/o Village- Bhusandi, Police Station - Khamharia, Distt. Durg (Chhattisgarh)

---- Appellant

In custody

Versus

1. State Of Chhattisgarh, Through Station House Officer, Police Station Khamharia Distt. Durg (Chhattisgarh)

---- Respondent

For appellant : Shri R.S. Marhas, Advocate.
For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board

29/06/2015

Per P. Diwaker, J

This appeal arises out of the judgment of conviction and order of sentence dated 30.11.2009 passed by the Additional Sessions Judge, Bemetara Distt. Durg in S.T.No.34/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.300/-, in default thereof to undergo additional RI for one month.

02. In the present case, name of the deceased is Banshilal who was elder brother of the accused/appellant. As per prosecution case, the appellant and the deceased were total six brothers, the agricultural

land was already partitioned among them and after partition, they decided to have a common bore for irrigation of their respective fields. It is alleged that on 3.6.2009 at about 10 am when the appellant was taking water from that common bore for his field, his brother deceased Banshilal objected to it saying that it is he who will first take water to his field. It is further alleged that out of anger the appellant picked up the axe lying there and caused two injuries with it on the neck of the deceased as a result of which he died on the spot itself. Merg intimation Ex.P/5 was recorded at the instance of PW-2 Banwali, other brother of the appellant and the deceased, and based on that merg intimation, FIR (Ex.P/3) was registered on 3.6.2009 against the appellant under Section 302 of IPC. Postmortem on the body of the deceased was conducted by PW-11 Dr. RP Sharma vide Ex.P/14 wherein he noticed two incised wounds on the neck of the deceased and opined that the cause of death was cutting of throat resulting in asphyxia and the death was homicidal in nature. After filing of charge sheet, charge under Section 302 of IPC was framed against the accused/appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as

mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the sole eyewitness PW-2 Banwali has not supported the prosecution case and has been declared hostile.

(ii) though axe has been seized at the instance of the accused/appellant but there is no FSL report and therefore, no adverse inference can be drawn against the appellant on that basis.

(iii) that the investigating officer has not been examined.

(iv) even if the entire prosecution case is taken as it is, it is apparent that the accused/appellant had no intention to cause death of the deceased and therefore, at best he can be convicted under Section 304 Part-I or II of IPC and not under Section 302 of IPC as has been done by the trial Court.

(v) that after converting the offence into Section 304 Part-I or II of IPC, the sentence of the appellant may be reduced to the period already undergone by him as he is in jail since 3.6.2009.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Noharpal, Sarpanch of the village, has stated that on the date of incident while he was sitting in the police station, the accused/appellant after committing murder of his brother came and

informed that he has committed murder of his brother by cutting his throat. Then the police took the appellant to the place of occurrence and found dead body of the deceased there. After recording memorandum Ex.P/1 of the appellant, at his instance axe was seized vide Ex.P/2. PW-2 Banwali, brother of the appellant and the deceased and an eyewitness to the incident, in the examination-in-chief has stated that he was informed that his brother has been murdered and therefore, he was declared hostile. However, in the cross-examination he has stated that before he could intervene between the appellant and the deceased, the appellant had caused injury on the neck of the deceased. He has further stated that he did not witness the incident. He has stated that the incident was witnessed by Bhuvan Lodhi, Harishchandra and Gangaram Satnami. He has stated that the appellant is his brother and likewise, the deceased was also his brother, he is in dilemma and in a state of indecision as to what he has to say in the Court. He has further stated that relations between all the six brothers were very cordial. PW-3 Parsuram, a witness of inquest and certain seizures made by the police, has supported the prosecution case. PW-4 Prem Sagar is also a witness of inquest and spot map. PW-5 Gangaram, brother of the appellant and the deceased, has been declared hostile. He has stated that he came to know about the incident subsequently when it had already taken place. However, he has admitted the fact that after partition of the land, they were living happily and were using water from the common bore. PW-6 Bhuwan has stated that he was informed by Banwali that it is the accused/appellant who had murdered his brother. He has stated that relations between all the brothers were cordial. PW-7 Harishchand also

came to know about the incident from Banwali. He is also a witness of seizure memo Ex.P/4. PW-8 Bharat has been declared hostile. PW-9 Santosh has stated that he was informed by Banwali that the accused/appellant had killed the deceased. PW-10 Pardesi Das, Village Kotwar, is a witness of inquest and was present at the time of initial investigation. PW-11 Dr. RP Sharma conducted postmortem on the body of the deceased and noticed the following injuries:

- (i) incised wound 7 cm x 3 cm x 4 cm. on the front side of neck below larynx deep up to windpipe, windpipe fully cut, clotted blood present.
- (ii) incised wound 8 cm x 3 x 2 cm below the chin on the neck.

Both the injuries were caused by hard and sharp edged weapon and were antemortem in nature. In his opinion the cause of death was cutting of throat resulting in asphyxia and the death was homicidal in nature.

09. Though the sole eyewitness PW-2 Banwali has been declared hostile but on reading of his statement as a whole and the statements of other witnesses, it is clear that on 3.6.2009 it is the accused/appellant who caused injuries on the neck of the deceased as a result of which he died. In the evidence it has also come that relations between the accused/appellant, the deceased and their other brothers were very cordial, after partition of the land they had a common bore for sharing water, on the date of incident some dispute cropped up between the appellant and the deceased over use of water, the appellant out of anger picked up the axe lying there and assaulted with it on the neck of the deceased twice resulting in his death. It is thus apparent that the incident had taken place without any

premeditation, in a sudden fight in the heat of passion upon a sudden quarrel. However, considering the nature of injury and the weapon of offence, it is also clear that the appellant assaulted the deceased with intention of causing such bodily injury as was likely to cause his death and as such, he is liable to be convicted under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years.

10. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 302 of IPC, he is held guilty under Section 304 Part-I of IPC and sentenced to undergo RI for 10 years. He is reported to be in jail since 3.6.2009, therefore no further order is required.

Sd/

(Pritinker Diwaker)
JUDGE

Sd/

(I.S. Uboweja)
JUDGE