

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 89 of 2010**

- Kanak Lal Halba S/o Daryab Halba, aged about 40 years, R/o Village Pendodi, P.S.Aoundhi, District-Rajnandgaon (C.G.)

**---- Appellant**

**Versus**

- State Of Chhattisgarh Through: P.S.Aoundhi, District-Rajnandgaon (C.G.)

**---- Respondent**

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| For Appellant        | : | Mrs.Kiran Jain, Advocate         |
| For Respondent/State | : | Mr.Ramakant Pandey, Panel Lawyer |

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**Hon'ble Shri Justice T. P. Sharma**  
**Hon'ble Shri Justice Inder Singh Uboweja**

**Judgment on Board by T.P.Sharma, J.**

**28/04/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22.10.2009 passed by the Sessions Judge, Rajnandgaon, in S.T.No.131/2008 whereby & whereunder the trial Court after holding the appellant guilty for causing homicidal death amounting to murder of his brother Jhumuk Lal convicted him under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.500/-, in default of payment of fine to further undergo S.I. for six months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, in the intervening night of 10/11.9.2008 unfortunate deceased Jhumuk Lal, brother of the present appellant, was sleeping in his verandah, the appellant went to his house at about 2 a.m. and caused fatal injuries resulting into his death by axe. Injured shouted, then Abir Das Mankar (PW-1) and Smt.Daran Bai (PW-9), son and wife of the deceased rushed to the spot where they saw the injured dead body and the appellant

running from the spot. Abir Das Mankar (PW-1) informed the villagers and went to Police Station Aoundhi and lodged the F.I.R. vide Ex.P/1. Investigating officer left for scene of occurrence and after summoning the witnesses vide Ex.P/3 prepared inquest over the body of the deceased vide Ex.P/4. Spot map was prepared by investigating officer vide Exs.P/2 and P/13. Bloodstained and plain soil were recovered from the spot vide Ex.P/14. One mosquito net with cut part and bloodstained were seized from the spot vide Ex.P/15. Dead body of the deceased was sent for autopsy to Community Health Centre, Manpur vide Ex.P/18A. Dr.Mohan Tikam (PW-10) conducted autopsy vide Ex.P/1 and found following injuries/symptoms:-

- In right forearm 11cmx6cmx6cm chop wound and ulna bone is cut down complete, ulnar artery & vein also cut down & clotted.
- Abrasion of 7cmx2cmx1/4cm over chest and abdomen
- Chop wound of 15cmx5cmx10cm in left temporal region. Left pinna & temporal bone, left frontal bone cut down, frontal & temporal part of brain also cut down. Excessive clotted blood cut.
- Irregular abrasion of 5cmx3x1/4cm over left frontal region just above left eye brow.

Cause of death was shock. During the course of investigation, the appellant was taken into custody, he made disclosure statement of axe vide Ex.P/9 and same was recovered at his instance vide Ex.P/10. Cycle and clothes were seized from the appellant vide Ex.P/11. Axe was sent for examination to doctor and after examination, axe, clothes of the deceased and mosquito net were seized vide Ex.P/16. Other clothes were examined by the doctor and seized vide Ex.P/22.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Ambagarh Chowki, who in turn, committed the case to the Court of Sessions, Rajnandgaon for trial.
5. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as thirteen witnesses. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and claimed innocence and false implication in crime in question. He has also examined defence witness Smt.Parmila Bai (DW-1) and has taken the defence of *alibi*.

6. After providing opportunity of hearing to the parties, the trial Court has convicted and sentenced the appellant as aforementioned.
7. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
8. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Abir Das Mankar (PW-1) and Smt.Daran Bai (PW-9), who are relatives and interested witnesses, they have proved the fact of enmity between the appellant and the deceased. Incident took place at night, they have not deposed about the availability of light and in absence of availability of light it was not possible for them to see the incident and even the appellant, therefore, their evidence do not inspire confidence and trustworthy, they are not truthful witnesses and their evidence are not sufficient for conviction of the appellant.
9. On the other hand, learned Panel Lawyer for the respondent/State opposed the appeal and argued that evidence of Abir Das Mankar (PW-1) and Smt.Daran Bai (PW-9) are sufficient to prove the guilt of the appellant.
10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
11. In the present case, homicidal death of deceased Jhumuk Lal as a result of fatal injuries found over his body has not been substantially disputed on behalf of the appellant, on the other hand, same is also established by the evidence of Abir Das Mankar (PW-1), Smt.Daran Bai (PW-9), F.I.R. Ex.P/1, evidence of Dr.Mohan Tikam (PW-10) and autopsy report Ex.P/18.
12. As regards the complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of Abir Das Mankar (PW-1) and Smt.Daran Bai (PW-9). As per evidence of Abir Das Mankar (PW-1), son of the deceased, he was sleeping in his room, the deceased was sleeping in verandah, he heard the sound बचाओ-बचाओ, then he came out along with his mother Smt.Daran Bai (PW-9) where they saw the appellant running from the spot with axe and injured body of the deceased, they informed the villagers, thereafter he went to the Police Station and lodged the F.I.R. Smt.Daran Bai (PW-9) has substantially corroborated the evidence of Abir Das Mankar (PW-1).

13. Defence has cross-examined these witnesses at length, but has not been able to elicit anything in their cross-examinations to discredit their testimonies. They have specifically admitted that there was dispute between the appellant and the deceased relating to property, but they have denied that on account of enmity they are telling lie. They are son and wife of the deceased. Their presence in the house at night was not unnatural. They have not shown themselves as eyewitnesses. They have deposed that when they rushed to the spot they saw the appellant running from the spot with axe.
14. Much stress has been given by the defence that Abir Das Mankar (PW-1) and Smt.Daran Bai (PW-9) have not admitted the availability of light. They have specifically denied that there was dark.
15. Defence has taken the defence by examining Smt.Parmila Bai (DW-1) that on the date of incident the appellant was present in her house and he has gone for treatment of his eyes. Weakness of visibility of eyes of the appellant has been admitted by the prosecution witnesses. As per evidence of this witness, the appellant is not in a position to see the things at night, but he is in a position to see the things at day time. As per para 1 of her evidence, the appellant visited her house between 5 to 6 a.m. at morning. As per para 6 of her evidence, her village from the village of the appellant requires 2-3 hours journey by cycle, which shows that the appellant left his house at about 3 a.m. at night. It shows that movement of the appellant at night was very much possible and only to defend the appellant this witness has deposed the aforesaid fact of *alibi*, which has been rightly rejected by the trial Court.
16. Evidence of Abir Das Mankar (PW-1) and Smt.Daran Bai (PW-9) are unambiguous and inspire confidence and trustworthy and are sufficient for proving the fact that the appellant has caused homicidal death of the deceased.
17. As regards the question of motive, in case of direct evidence, question of motive loses its importance. Even otherwise, motive is aid in criminality and it can be inferred from the kind of weapon used, part of body effected and nature of injury and other circumstances.
18. In the present case, the appellant has travelled the house of the deceased from his house and has caused injuries resulting into his instantaneous death. Aforesaid facts clearly reveal that the appellant was having grave intention to kill his brother and in furtherance of his motive, he has visited the house of the

deceased and has killed the deceased, which is homicidal death with intent to commit murder of the deceased.

19. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned.
20. On close scrutiny of the evidence, we do not find any illegality in the judgment of conviction and order of sentence.
21. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

**JUDGE**

**JUDGE**

B/-