

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 276 of 2012**

1. Sukhu Khes, S/o Dulmul Khes, R/o Village Bada Damali ,(Mahua Bhawna) P.S. Darima, Distt. Surguja C.G.

---- Appellant

Versus

1. State of C.G.

---- Respondent

For Appellant	:	Mr. Kalyan Singh Kurre, Advocate
For Respondent/State:		Mr. Roshan Dubey, Panel Lawyer.

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

Judgement on Board by T.P.Sharma, J.

08/04/2015

Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.11.2011 passed by the Sessions Judge, Surguja (Ambikapur), in Sessions Trial No. 229/2009 whereby and whereunder the Court below, after holding the appellant guilty for causing homicidal death amounting to murder of Chhote Uraon, convicted the appellant under Section 302 of the I.P.C. and sentenced him to life imprisonment with fine of Rs.2000/- and in default of payment of fine, to undergo additional RI for six months.

2. Conviction is impugned on the ground that without there being any iota of evidence against the appellant, the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, there was land dispute between the appellant and deceased. On 05.04.2009, the appellant – Sukhu Khes, his wife and mother-in-

law came to the house of deceased. After sometime at 4.00 pm Sukhu Khes left the house of deceased leaving his wife and mother-in-law. On the request of wife of the appellant and his mother-in-law, P.W.2 Sampati Bai, wife of deceased, along with deceased and P.W.5 Sukhram went to the house of the appellant. While deceased, P.W.2 Sampati Bai and P.W.5 Sukhram were coming back from the house of the appellant, appellant came out and caused fatal injury by battle axe upon the neck of deceased – Chhote Uraon, who fell down on the spot and died. It was objected by P.W.2 Sampati Bai, wife of deceased. Thereafter, the incident was informed to the villagers. Some person sent message by telephone to investigating officer P.W.6 N. Xalxo, who is posted as S.D.O. Darima. On receiving telephonic message, he rushed to the incident spot, i.e., Mahua Bhawana where dead body of deceased was lying. P.W.1 Bahadur Panna lodged Dehati Nalishi vide Ex.P.1 and merg was recorded vide Ex.P.2. F.I.R. was registered at Police Station Darima vide Ex.P.1A. Dehati merg was recorded vide Ex.P.2A.

4. After summoning the witnesses vide Ex.P.4, inquest over the dead body of deceased was prepared vide Ex.P.5 by the investigating officer. Spot map was prepared vide Ex.P. 3. Bloodstained and Plain soils were recovered from the spot vide Ex.P.6. Dead body was sent for autopsy to Primary Health Center, Darima vide Ex.P.11. P.W. 4 Dr. B.L.Kaushal conducted autopsy vide Ex.P.11A and found following injuries:

- i. Incised wound of 10" x 4 ½" x 4" over the neck.
- ii. Chop wound of 3/4th on the neck.
- iii. Internal organ of neck was found cut.

Mode of death was shock and death was homicidal in nature.

5. During the course investigation, appellant was taken into custody. He made disclosure statement of battle axe vide Ex.P.7 and the same was recovered at the

instance of the appellant vide Ex.P.8. Bloodstained cloths of the appellant was seized vide Ex.P.9. Seized articles were sent for chemical examination vide Ex.P.13 and the presence of blood upon battle axe was found vide Ex.P.15.

6. Statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code') were recorded.

7. After completion of investigation, charge sheet was filed before the Court of J.M.F.C. Ambikapur, who in turn committed the case to the Court of Sessions, Surguja (Ambikapur).

8. In order to prove the guilt of the appellant, prosecution examined as many as six witnesses. Accused was examined under Section 313 of the Code, in which, he denied the circumstances appearing against him and innocence and false implication of the crime in question was claimed.

9. After providing an opportunity of hearing, learned Sessions Judge has convicted and sentenced the appellant as aforementioned.

10. We have heard learned counsel for the parties and perused the judgment impugned and record of trial Court.

11. Mr. Kalyan Singh Kurre, learned counsel for the appellant, vehemently argued that conviction of the appellant is based on the evidence of P.W.2 Sampati Bai and P.W.5 Sukhram, but, their evidence does not inspire confidence and trustworthy. As per their evidence, the appellant along with his wife and mother-in-law came to the house of P.W.2 Sampati Bai at 6.00 pm, but, as per record, incident took place at 6.00 pm, that too, in front of the house of the appellant, two kilometers away from the house of deceased, which evidence by itself is not sufficient and falsifies the prosecution evidence. He further submitted that as per Ex.D.2, which is the statement of P.W.2 Sampati Bai recorded under Section 161 of the Code, there was enmity between the appellant and deceased, appellant did not visit the house of

deceased and there was no occasion for the appellant to cause such injury. Both P.W.2 Sampati and P.W.5 Sukhram were telling lies on account of previous enmity. Therefore, their evidence does not confidence and trustworthy and is not sufficient for conviction of the appellant.

12. On the other hand, Mr. Roshan Dubey, learned counsel for the State, opposed the appeal while submitting that evidence of P.W.2 Sampati Bai and P.W.5 Sukhram is sufficient to prove the guilt of the appellant.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, homicidal death as a result of fatal injury found over the neck of deceased has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Bahadur Panna, P.W.2 Sampati Bai, P.W.5 Sukhram, Dehati Nalishi Ex.P.1, F.I.R. P.1A , merg intimations Ex.P.2 and P.2A, P.W.4 Dr. B.L. Kaushal and his autopsy report Ex.P.11A. Death of deceased was homicidal in nature.

14. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of P.W.2 Sampati Bai and P.W.5 Sukhram. As per the evidence of P.W.2 Sampati Bai, on the date of incident at about 6.00 pm, appellant along with his wife and mother-in-law came to her house, after sometime the appellant left her house after leaving his wife and mother-in-law. Thereafter, wife and mother-in-law of the appellant also requested her to accompany them till their house, then this witness and deceased accompanied them till their house. At that time appellant was present in his house. While they were coming back to their house, the appellant came out with battle axe and caused fatal injury over the neck of deceased, resulting into, he fell down and died. P.W.2 Sampati Bai objected the incident, whereupon appellant also threatened to kill her. P.W.5 Sukhram P.W.5 has substantially corroborated the evidence of P.W.2 Sampati Bai. Defence has cross-examined these witnesses at length but has not been able to elicit

anything in their cross-examination to discredit their testimony to the extent that the appellant has not caused fatal injury to deceased. There was enmity but P.W.2 Sampati Bai has admitted in para 9 that on the date of incident there was no enmity. She has admitted that prior to the incident there were no such terms of visiting the house of each other. She has denied the suggestion in para 10 that she had not accompanied the wife and mother-in-law of the appellant.

15. Evidence of P.W.2 Sampati Bai and P.W.5 Sukhram shows difference of time of incident. P.W.2 Sampati Bai and P.W.5 Sukhram are illiterate persons and on the date of incident, they were residing in a remote forest area, therefore, it could not be expected from them to tell correct time. Only on the ground of some discrepancy in showing 'time', their evidence cannot be discarded. Their evidence further reveals that there was no serious enmity, therefore, visiting the house of deceased by the appellant and his family members was not unnatural. Both the witnesses clearly deposed that while they were coming back from the house of the appellant, appellant assaulted deceased by battle axe and caused fatal injury to deceased, resulting into death of deceased on the spot. Their evidence inspires confidence and trustworthy and is sufficient to draw an inference that the appellant has caused homicidal death amounting to murder of deceased.

16. As regards question of motive, in case of direct evidence, motive loses its importance. Even otherwise, it is aid in criminality and can be inferred from the kind of weapon used, part of body hit, nature of injury and other circumstances. In the present case, as per evidence of P.W.2 Sampati Bai and P.W.5 Sukhram, appellant came out from his house and caused injury upon neck of deceased by battle axe, resulting into, deceased fell down and died on spot. Appellant chopped his neck. Thus, considering the gravity of evidence and nature of offence, it can be safely inferred that appellant assaulted deceased by battle axe over his neck and caused his instantaneous death.

17. After appreciating the evidence available evidence on record, learned Sessions

Judge has rightly convicted and sentenced the appellant. On close scrutiny of the evidence, we also do not find any infirmity and illegality in the judgment impugned.

18. Consequently, appeal, being devoid of merit and substance, is liable to be and is hereby dismissed.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE