

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 309 of 2010

- Jethu Ram Yadav S/o Shanhar Yadav aged about 56 R/o Subhas Market Khursipar, Distt. Durg (Chhattisgarh)

---- Appellant

(In Jail)

Versus

- State Of Chhattisgarh, Through officer Incharge P.S. Saja Distt. Durg, Chhattisgarh.

---- Respondent

For appellant : Shri Uttam Pandey, Advocate.
For Respondent/State : Shri Adil Minhaj, Panel Lawyer

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

Judgment On Board by Justice Pritinker Diwaker

01/10/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 24.2.2010 passed by the Additional Sessions Judge, Bemetara, Distt. Durg in S.T.No.24/09 convicting the accused/appellant under Sections 302 of of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.100/- and in default thereof to suffer additional R.I. for two months.

02. As per prosecution case, about 1 ½ months prior to date of incident son of the accused/appellant died in accident from the tractor of Ramkumar (PW-2). It is alleged that after death of the appellant, deceased Alalram, who is uncle of Ramkumar, used to visit the house

of the appellant to have some compromise and to ensure that no case is filed by him in relation to death of his son. It is said that on 21.4.2009 deceased Alalram again went to the house of the appellant, there was some hot talk between between the appellant, his wife Laxmibai and the deceased and during that, the appellant picked up an axe from his house and caused injuries to the deceased leading to his instantaneous death. At the instance of Ramkumar (PW-2) on 21.4.2009 itself Dehati merg (Ex.P/6) was recorded and thereafter Dehati Nalishi (Ex.P/5) was registered. On 22.4.2009 numbered merg (Ex.P/16) was recorded and then FIR (Ex.P/14) was registered against the appellant and his wife Laxmibai Yadav under Sections 302, 34 of IPC. Inquest over the dead body of the deceased was prepared vide Ex.P/2. Postmortem on the body of the deceased was conducted by PW-11 Dr. O.P. Mahobiya vide Ex.P/17 wherein he noticed three incised wounds over neck and face and opined that the cause of death was hemorrhage from cut of carotid artery and jugular vein. After completion of investigation charge sheet was filed against the appellant and his wife Laxmibai Yadav under Section 302, 34 of IPC and thereafter, charge under Section 302 in the alternative 302, 34 of IPC was framed against them.

03. So as to hold the accused persons guilty, the prosecution examined as many as 14 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, the accused/appellant stated that his son Goutriha died in accident from

the tractor of Ramkumar (PW-2), he wanted to file a case for compensation, but Ramkumar and his family members pressurized him not to do so, they also forced villagers not to talk with him and even did not allow him to take his cattle for grazing, they also used to threaten him for his life.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting co-accused Laxmibai Yadav, convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that even if the entire the prosecution case is taken as it is, at best the appellant can be convicted under Section 304 Part-II of IPC because the incident had taken place all of a sudden in the heat of passion when the deceased Alalram came to his house and was pressuring him to have some compromise. It appears that in retaliation out of anger the appellant caused him injuries which unfortunately resulted in his death. He submits that there was no intention on the part of the appellant to commit murder of the deceased. The appellant is in jail for the last more than six years and therefore, after converting his conviction into Section 304 Part-II of IPC, he may be sentenced to the period already undergone by him.

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.

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

08. PW-1 Girdhar Jaghel, PW-2 Ramkumar, PW-3 Manoj Kumar and PW-6 Latmar are eyewitnesses to the incident. They have categorically stated that on the date of incident the deceased had gone to the house of the appellant, wife of the appellant Laxmibai (acquitted co-accused) was abusing the deceased by saying as to why he has come to her house and during that the appellant caused axe injuries on the head and neck of the deceased as a result of which he died. These witnesses have also admitted the fact that about 1 ½ - 2 months prior to the incident, son of the appellant died in accident caused from the tractor of Ramkumar (PW-2). PW-2 Ramkumar has also admitted this fact. He has further admitted that to persuade the appellant, his uncle deceased Alalram used to visit the house of the appellant. PW-8 Mangra Bai, PW-12 Kanhaiya and PW-13 Narendra reached the place of occurrence immediately after it had taken place, they saw the appellant along with his wife standing there with axe in his hand and the deceased lying on the floor in the pool of blood with injuries on his head and neck. PW-3 Manoj Kumar and PW-4 Manharan are also witnesses of memorandum of the appellant (Ex.P/9) and seizure (Ex.P/10 & P/12) by which axe and clothes of the appellant were seized respectively. PW-5 Pileshwar is a witness of seizure Ex.P/11 by which sari of acquitted co-accused Laxmibai was seized. PW-7 Rajkumar is a witness of inquest Ex.P/2. PW-10 Santuram, Head Constable, registered FIR (Ex.P/14) and merged intimation (Ex.P/16).

PW-14 Rajendra Singh, investigation officer, has duly supported the prosecution case.

09. PW-11 Dr.O.P. Mahobiya conducted postmortem on the body of the deceased vide Ex.P/17 and noticed following injuries:

(i) incised wound - 10 cm x 4 cm x 3 cm deep at right side of neck obliquely in the sub-mendibular region, underlying right carotid artery and jugular vein are cut, clotted blood present margins are everted.

(ii) incised wound - 5 cm x 1.5 cm x 4 cm deep at right side of neck 3 cm below the injury no. (i) clotted blood present, edges of wound are everted.

(iii) incised wound - 5 cm x 1.5 cm x 3 cm deep transverse over the right side face from the angle of mandible to maxilla. Under laying bones of the mandible and maxilla are cut, margins of wounds are everted, clotted blood present.

In his opinion the cause of death was hemorrhage from cut of carotid artery and jugular vein.

10. In his statement recorded under Section 313 Cr.P.C. the accused/appellant has categorically stated that as his son Goutriha died in accident from the tractor of Ramkumar (PW-2), he wanted to file a claim case for compensation, but Ramkumar and his family members were pressurizing him not to do so, they also forced the villagers not to have talk with him and even did not allow him to take his cattle for grazing and that they also used to threaten him for his life.

11. Close scrutiny of the evidence makes it clear that the deceased used to visit the house of the accused/appellant frequently after death

of son of the appellant from the tractor of his nephew Ramkumar (PW-2) in order to persuade him not to lodge any report or file any case against Ramkumar and instead have some compromise in the matter. From the evidence it reflects that on the date of incident i.e. 21.4.2009 the deceased came to the house of the appellant for the same purpose, on seeing him the wife of the appellant started abusing him saying as to why he has come to their house, in the meantime the appellant also reached there, there was some hot talk between them and during that process the appellant picked up axe and assaulted with it on the head and neck of the deceased causing as many as three incised wounds which led to his spontaneous death. In view of the un rebutted evidence of eyewitnesses PW-1 Girdhar Jaghel, PW-2 Ramkumar, PW-3 Manoj Kumar and PW-6 Latmar, which further finds due support from the medical evidence as also the evidence of PW-3 Manoj Kumar and PW-4 Manharan who are also witnesses of memorandum of the appellant and seizure of weapon of offence i.e. axe and clothes of the appellant made in pursuance thereof, complicity of the appellant in crime in question stands proved beyond all reasonable doubt.

12. Now the next question for consideration is whether act of the accused/appellant is culpable homicide not amounting to murder?

13. It is an admitted fact that on account of death of his son in an accident caused by the tractor of Ramkumar (PW-2), nephew of the deceased Alalram, there was animosity between the appellant and the the deceased and time and again, the deceased was unsuccessfully trying to persuade the appellant to compromise the matter and not to

take any action against Ramkumar or his family members. On the date of incident when the deceased went to the house of the appellant for the same purpose, being enraged the appellant assaulted him with axe 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 injuries and the manner in which the appellant assaulted the deceased, a person about 55 years, with a deadly weapon axe on his vital part head and neck repeatedly with such a force leading to his instantaneous death, 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, his act would be culpable homicide not amounting to murder, making him liable to be convicted under Section 304 Part-I of IPC and not under Section 304 Part-II of IPC as has been argued by counsel for the appellant.

14. 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 23.4.2009, therefore no further order is required.

Sd/
(Pritinker Diwaker)
JUDGE

Sd/
(I.S. Uboweja)
JUDGE