

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 349 of 2010**

1. Omprakash @ Rambhaiya, S/o Balram Ram, aged about 50 years, Occupation- Agriculture, R/o Village-Tendupara, P.S.-Basdeyi, Distt. Surguja (CG)

**---- Appellant**

**In Jail**

**Versus**

- State Of Chhattisgarh, Through P.S. Basdeyi, Distt. Surguja (CG)

**---- Respondent**

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For appellant : Shri Neeraj Mehta, Advocate.  
For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

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**Hon'ble Shri Justice Pritinker Diwaker, &  
Hon'ble Shri Justice I.S. Uboweja, J J**

**Judgment On Board By Pritinker Diwaker, J**

**08/07/2015**

This appeal arises out of the judgment of conviction and order of sentence dated 6.4.2010 passed by the First Additional Sessions Judge, Surajpur, Distt. Surguja in S.T.No.361/08 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.100/- and in default to undergo additional R.I. for 15 days.

02. As per prosecution case, there was land dispute between the family of the accused/appellant and that of PW-1 Premchand. On 7.5.2008 when wife of PW-1 Premchand namely Manturiyabai (deceased) was guarding her mango trees, the accused/appellant, his

wife Tarabai and son Gulabram Rajwade reached there and the appellant caused three injuries with axe on the face of Manturiyabai as a result of which she died instantaneously. Merg intimation Ex.P/1 was recoded at the instance of PW-1 Premchand and FIR (Ex.P/2) was registered against the appellant, his wife Tarabai and son Gulab Rajwade under Section 302/34 of IPC. Postmortem on the body of the deceased was conducted on 8.5.2008 by PW-4 Dr. I.D. Bhatnagar who noticed two lacerated wounds and one incised wound on the face including fracture of maxilla bone and opined that the cause of death was haemorrhagic shock due to injuries and bone fracture of both side of maxilla and that the death was homicidal in nature. The appellant was tried by the trial Court whereas accused Tarabai was shown absconder and accused Gulab Ram being juvenile was tried by the Juvenile Justice Board.

03. During trial, charge under Section 302/34 of IPC was framed against the appellant to which he denied the charges and pleaded innocence. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 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 unfortunately the terms between the family of the appellant and PW-1 Premchand were not good, number of litigations were going on between them and therefore, a totally false and concocted case has been instituted against him.

(ii) that PW-1 Premchand, PW-2 Keshav Prasad Jaiswal and PW-3 Rajendra are not reliable witnesses.

(iii) even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part I or II of IPC because present is a case of culpable homicide not amounting to murder.

He has placed reliance on the judgments of the Apex Court in the matters of ***Dharam and others Vs. State of Haryana, AIR 2007 SC 397***; ***State of Rajasthan Vs. Manoj Kumar, (2014) 5 SCC 744***; and the judgment dated 16th August, 2011 passed by this Court in Criminal Appeal No.786/2005 (Dhannu and another Vs. State of CG) and Criminal Appeal No.12/2006 (Manoj Das Vs. State of CG).

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that there is no reason for PW-1 Premchand to lodge a false report against the appellant, his wife and son.

(ii) that in the said incident Manturiyabai has been murdered and this fact has also been proved by the medical evidence.

(iii) that PW-1 Premchand, eyewitness, has fully supported the prosecution case and there is no reason to doubt his statement.

(iv) that the appellant had caused three injuries on the vital part of the deceased i.e. face resulting in fracture of maxilla bone and her instantaneous death. Thus, considering the manner in which the appellant brutally assaulted the deceased with a deadly weapon leading to her death on the spot itself, the Court below has rightly convicted him under Section 302 of IPC.

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

08. PW-1 Premchand has stated that he knows the accused/appellant who is his brother-in-law in relation. On the date of incident at about 4 pm when he returned from his workplace, his wife was not there in the house as she had gone to guard the mango trees. When he was going towards the said place, on the way he saw wife of the accused/appellant Tarabai and his son Gulab Ram holding his wife Manturiyabi and the accused/appellant causing injury with axe on her. He has stated that upon hearing his cries, PW-2 Keshav and two other boys reached there and after seeing them the accused persons fled from the spot. The deceased expired at the spot itself. He has clarified that on account of old land dispute, for which case is pending in the Court, the accused/appellant has killed the deceased and earlier also he had beaten his wife and broken her hand for which report was lodged and the case is pending. He has further stated that he lodged the merg intimation Ex.P/1, FIR (Ex.P/2) and inquest Ex.P/3 over the body of the deceased was performed in his presence. He has stated that wife of the accused/appellant Tarabai is absconding. In cross-examination he remained very firm and reiterated as to the manner in

which the appellant killed the deceased.

09. PW-2 Keshav Prasad Jaiswal who reached the place of occurrence immediately after hearing the cries of PW-1 and saw the accused persons fleeing from the spot, has duly supported the prosecution case. He also saw the appellant carrying axe in his hand. He has stated that the appellant does not own any land near the place where the incident had taken place. PW-3 Rajendra has made almost similar statement as has been made by PW-2 and has duly supported the prosecution case. PW-4 Dr. I.D. Bhatnagar conducted postmortem on the body of the deceased and noticed the following injuries:

- (i) one lacerated wound over right face prominent part outside the nose 2" x 1" bony deep and fracture of maxilla;
- (ii) one lacerated wound over left side of face and fracture of left maxilla, bony deep 2" x 1";
- (iii) one incised wound over chin 3" x 1" bony deep.

According to him, injuries No. (i) & (ii) were caused by blunt aspect of weapon like tangi whereas injury No.(iii) was caused by sharp edged of thin weapon. All the injuries were antemortem in nature and were sufficient to cause death in the ordinary course of nature. He opined that the cause of death was haemorrhagic shock due to injuries and bone fracture of both side of maxilla and that the death was homicidal in nature.

10. PW-5 Tarkeshwar, Patwari, prepared spot map Ex.P/11. PW-6 Krishna Kumar is son of PW-1. He has stated that there was old land dispute between the two families and earlier also the

accused/appellant had assaulted him, for which a case is pending before the Court. He has stated that he was informed about the incident by PW-1 that the accused/appellant, his wife and son have killed the deceased. He is also a witness to memorandum Ex.P/7 of the appellant and seizure Ex.P/8 by which the axe was seized. PW-7 C.P. Tiwari, investigating officer, has duly supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that there was dispute between the family of the accused/appellant and that of the deceased. On 7.5.2008 when the deceased was guarding her mango trees, wife of the accused/appellant Tarabai and his son Gulab Ram caught hold of the deceased and the accused/appellant assaulted her with axe on her vital part i.e. face resulting in fracture of maxilla bone and her instantaneous death. The incident has been witnessed by PW-1 Premchand, who has categorically stated as to the manner in which the appellant brutally assaulted the deceased. PW-2 Keshav Prasad and PW-3 Rajendra also reached the place of occurrence immediately after the incident and saw the accused persons fleeing from the spot and the accused/appellant carrying axe in his hand. Medical evidence also lends support to the prosecution story. There is no reason for this Court to disbelieve the evidence of these witnesses.

12. We further find no substance in the arguments of counsel for the appellant that in the facts and circumstances of the case, the appellant is liable to be convicted under Section 304 Part-I or II of IPC. The appellant on account of there being old enmity with the family of the deceased, assaulted with the deceased - a woman aged about 45 years - with a deadly weapon axe on her face, thereby causing two

lacerated wounds, one incised wound and fracture of maxilla bone. According to the autopsy surgeon (PW-4), these injuries were sufficient in the ordinary course of nature to cause her death. Thus in the totality of the circumstances and the evidence on record, we are of the opinion that the trial Court has rightly held the appellant guilty under Section 302 of IPC. The judgments relied upon by the appellant being distinguishable on facts are of no help to him. We find no illegality or infirmity in the judgment impugned warranting interference by this Court.

13. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The appellant is already in jail, therefore, no further order is required.

Sd/-

**(Pritinker Diwaker)**  
**JUDGE**

Sd/-

**(I.S. Uboweja)**  
**JUDGE**