

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 420 of 2013**

1. Ratiram S/o Manbodhram Aged About 60 years R/o Village Khodri , Pasan Korba C.G.

---- Appellant

Versus

1. State of Chhattisgarh, Through - P.S. Pasan ,distt. Korba C.G.

---- Respondent

For Appellant : Mr. I. Lakra, Advocate
 For Respondent/State : Mr. Neeraj Jain, Government Advocate

**Hon'ble Mr. Justice T.P.Sharma &
 Hon'ble Shri Justice I.S.Uboweja, JJ.**

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

21/04/2015

Challenge in this appeal is to the judgment of conviction and order of sentence dated 24.11.2009 passed by the Additional Sessions Judge, Katghora, in Sessions Trial No. 32/2008 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of his son – Vijay, the trial Court convicted the appellant under Section 302 of the I.P.C. and sentenced him to life imprisonment with fine of Rs.1000/- and in default to undergo additional RI for one year.

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, on fateful day of 28.09.2007 on account of

regular drinking of liquor by deceased – Vijay, the appellant was got annoyed by the activity of deceased, due to which, the appellant caused multiple injuries to deceased by battle axe on vital part and caused his instantaneous death. The incident was witnessed by P.W.1 Ramsingh and P.W.3 Jageshar Singh as well as P.W. 5 Chirondia Bai, mother of deceased. P.W.5 Chinrondia Bai lodged *Dehati* merg intimation vide Ex.P.3 and *Dehati Nalishi* vide Ex.P.4.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.1, inquest over the dead body was prepared vide Ex.P.2. Bloodstained and plain soils and other articles stained with blood were seized from the spot vide Ex.P.10. Spot map was prepared vide Ex.P.11. Dead body was sent for autopsy to Community Health Center, Podi Uproda vide Ex.P.16. P.W.7 Dr. Kiranbala Sonkar conducted the autopsy vide Ex.P.6 and found following injuries:

1. Incised wound of 7" x 1" x 1" on right side of face starting 1" below the right ear extending obliquely involving the nose upto middle part of left eyebrow. Muscle and bones are cut.
2. Incised wound of 7.5" x 2" x 1" on right side of neck at middle part extending to right lower part of face upto right lateral part of lower lip. Muscle and bones are cut.
3. Incised wound of 7.5" x 1.5" x 1" over right side & lower part of neck extending upto right angle of face and left lateral side of chin. Muscle was cut.
4. Incised wound of 3.5" x 2" x 1" at post lower part of neck upto right lateral side of neck. Cervical vertebra was cut horizontally.
5. Incised wound of 4" x 1.5" x 1" lower right side of neck upto lateral side of neck. Muscle and bones as well as trachea was found cut.
6. Incised wound of 6" x 2" x 1" over upper lateral side and chest – 3" above & lateral to left nipple upto medial aspect of upper part of left arm. Muscle was cut.
7. Incised wound of 2.5" x 1.5" x 0.5" over medial aspect of lower part of left arm.
8. Incised wound of 3" x 2" x 0.5" over ventro-medial aspect of right elbow. Muscle was cut.

Mode of death was shock and cardio respiratory arrest and death of homicidal in nature.

5. During the course of investigation, appellant was taken into custody. He made disclosure statement of battle axe vide Ex.P.7. The same was recovered at the instance of the appellant vide Ex.P.8. Bloodstained cloth of the appellant was seized vide Ex.P.9. Finally, numbered merg was recorded vide Ex.P.14 and F.I.R. was registered vide Ex.P.15.

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

7. After completion of investigation, charge sheet was filed before the Court of J.M.F.C. Katghora, who in turn committed the case to the Court of Sessions Judge, Korba. Learned Additional Sessions Judge has received the case on transfer for its trial.

8. In order to prove the guilt of accused, the prosecution examined as well as 10 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication in the crime in question was claimed.

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

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

11. Mr. I. Lakra, learned counsel for the appellant, vehemently argued that conviction of the appellant is substantially based on the evidence of P.W.1 Ramsingh, P.W.3 Jageshar Singh and P.W.5 Chirondia Bai. P.W.5 Chirondia, mother of deceased and wife of the appellant, did not witness the incident whereas P.W.1 Ramsingh and P.W.5 Jageshar Singh are chance witnesses. Their evidence is not reliable without

corroboration. Their evidence does not reveal that they witnessed the incident. P.W.3 Ramsingh and P.W.5 were having enmity with the appellant. Therefore, their evidence alone is not sufficient for conviction of the appellant.

12. On the other hand, Mr. Neeraj Jain, learned counsel for the State, opposed the appeal while submitting that the evidence of P.W.1 Ramsingh, P.W.3 Jageshar Singh and P.W.5 Chirondia Bai is sufficient for drawing an inference that the appellant caused homicidal death amounting to murder of his own son – Vijay.

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 injuries found over the body of deceased – Vijay has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Ramsingh, P.W.5 Jageshwar Siongh and P.W.5 Chirondia Bai, F.I.R. Ex.P.15, numbered merg Ex.P.14, P.W.7 Dr. Kiranbala Sonkar and autopsy report Ex.P.6. Death of deceased – Vijay 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.1 Ramsingh, P.W.3 Jageshwar and P.W.5 Chirondia Bai, mother of deceased and wife of the appellant. As per evidence of P.W.5 Chirondia Bai, appellant was holding battle axe and assaulted deceased by it causing grave injuries to deceased. On seeing it, P.W.5 Chirondia Bai fled from the spot. P.W.1 Ramsingh and P.W.3 Jageshar have deposed that they have visited the house of the appellant to invite him. On seeing them, wife of the appellant invited them for meals. While they were present in the house of appellant, appellant took out battle axe and caused fatal injuries to his son, whereupon they fled from the spot. 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 they have visited the house of the appellant and that they have seen the appellant assaulting his Vijay by battle axe and thereafter they fled from the spot. The evidence

of these witnesses clearly reveal that they have seen the first assault made by the appellant on his son. As per medical report, there were as many as six injuries found by the Doctor on vital part of body of deceased, which shows that the appellant has caused injuries by dangerous weapon of offence, i.e., battle axe and has caused the instantaneous death of deceased – Vijay. Causing the aforesaid injuries by battle axe shows the grave intention of the appellant for causing homicidal death amounting to murder of his own son – Vijay.

15. After appreciating the evidence available on record, the learned Additional Sessions Judge has rightly convicted and sentenced the appellant as aforementioned. On close scrutiny of the evidence, we also do not find any illegality and infirmity in the judgment of conviction and order of sentence.

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

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE