

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 559 of 2013

- Bhuneshwar @ Ganjhu Lohar, S/o Maansai, aged about 25 years, R/o Khalakjhar, Poloce Chowki Rerumakhurd, Thana – Dharamjaigarh, Distt. Raigarh (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through : Station House Officer, Police Station : Dharmjaigarh, Dist. Raigarh (C.G.)

---- Respondent

For Appellant	:	Mr. Virendra Pratap Singh, Advocate.
For Respondent / State	:	Mr. Neeraj Jain, Govt. Advocate.

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

CAV JUDGMENT

Passed on : 07/07/2015

Per I.S. Uboweja, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 26.04.2013 passed by the 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.163/2010, whereby and whereunder the trial Court has convicted the appellant under Section 302 of the Indian Penal Code (for short, 'the IPC') for causing homicidal death amounting to murder of Ramnath and sentenced him to undergo imprisonment for life & fine of Rs.2,000/-, in default, additional R.I. for six months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of prosecution, on fateful day of 09.03.2010 at about 5.30 p.m., complainant Bhagatram (PW-2), Asanram (PW-8), Matbal (PW-3) and deceased Ramnath went to the house of the appellant for settling the

marriage of the appellant since he kept Somari as his wife without marriage. Appellant's wife made arrangements of dinner. After dinner Asanram (PW-8) returned to his village and deceased Ramnath, Bhagatram (PW-2) and the appellant were having dinner. During dinner, deceased Ramnath demanded liquor and appellant ignored the demand of the deceased. Enraged this, deceased kicked the dinner plate and also kicked the appellant. On seeing this appellant got annoyed and assaulted the deceased by pump and thereafter by axe on his head. After the incident, the appellant fled away from the place of incident. Sarpanch of village Jejaipur informed the police about the murder of Ramnath by his mobile. Thereafter, police lodged FIR against the appellant and also registered the case against the appellant under Section 302 of the IPC.

4. During the course of investigation, dead body of Ramnath was sent for autopsy to Community Health Centre, Dharamjaigarh. Dr. B.L. Bhagat (PW-10) conducted autopsy vide Ex.P-16 and found following injuries :-
 - i. Lacerated wound of 17 x 8 x 10 cm over upper part of neck, Blood clot around the wound with fracture of bone;
 - ii. Lacerated wound of 13 x 7 x 5 cm over right side of neck with bone fracture;
 - iii. Lacerated wound of 6 x 5 cm just below injury No. (ii) Clotted blood around the wound;
 - iv. Lacerated wound in right supra scapular region on 6 x 3 x 1 cm;
 - v. Lacerated wound just 2 cm lateral to injury No. (iv) of 5 x 3 x 4 cm. Underlying bone fractured.

Cause of death was opined to be syncope as a result of severe haemorrhage caused by injuries and death was homicidal in nature.

5. Bloodstained soil & plain soil, one bloodstained axe and cloth (Gamcha) were recovered from the spot vide Ex.P-3. One bloodstained cloth (Gamcha) was seized from Bhagatram (PW-2) vide Ex.P-4. One bloodstained shirt was seized from Matbal (PW-3) vide Ex.P-5. Bloodstained clothes of the deceased were seized from hospital. Accused surrendered himself and thereafter he was arrested by the police. Seized articles were sent for chemical examination.
6. Statements of 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 before the Court of Judicial Magistrate First Class, Dharamjaigarh, who in turn committed the case to the Court of Sessions Judge, Raigarh, from where learned Additional Sessions Judge received the case on transfer for trial.
7. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as sixteen witnesses. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.
8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
9. We have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.

10. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Bhagatram (PW-2), Matbal (PW-3) and Asanram (PW-8), who were present on the spot at the time of incident. As per their evidence, on account of attitude of Ramnath under the influence of intoxication during dinner, some altercation took place between Ramnath and the appellant. Enraged this, appellant assaulted deceased - Ramnath firstly by pump, thereafter he used axe over the neck of deceased, which shows that there was no premeditation or no pre-plan. Evidence of these witnesses shows that appellant has not assaulted the deceased with intent to cause his death, therefore, the act attributed to the appellant does not travel beyond the scope of Section 304 Part – II of the IPC.
11. On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that the prosecution had proved its case beyond shadow of doubt. Evidence of Bhagatram (PW-2), Matbal (PW-3) and Asanram (PW-8) are sufficient to prove the fact that only the appellant has committed the offence and none else.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Ramnath has not been substantially disputed on behalf of the appellant. On the other hand, it is also established by the evidence of Bhagatram (PW-2), Matbal (PW-3), Asanram (PW-8), Dr. B.L. Bhagat (PW-10) and autopsy report (Ex.P-16) and the death of deceased Ramnath was homicidal in nature.

14. As regards complicity of the appellant in crime in question, conviction is substantially based on the evidence of Bhagatram (PW-2), Matbal (PW-3) and Asanram (PW-8). As per their evidence, they went to the appellant's house for having dinner. During the time of dinner, deceased Ramnath demanded more liquor, which he had already consumed, on which appellant replied that he did not have liquor stock. Thereafter, deceased Ramnath kicked the appellant and also kicked the dinner plate, upon which, some altercation and quarrel took place. The attitude of Ramnath has prompted the appellant to assault the deceased firstly by pump and thereafter by axe. After the incident, the appellant fled away from the place of incident. Ramnath died on the spot. The defence has cross-examined these witnesses at length, but has not been able to elicit anything to discredit their testimonies. These witnesses admitted that controversy was started firstly by the deceased by demanding more liquor, which was denied by the appellant. During dinner, both the appellant and Ramnath had consumed liquor and under the intoxication of liquor the appellant and deceased were quarreling with each other. Evidence of these witnesses clearly reveals that this is a clear case of sudden provocation, the incident took place when the appellant got annoyed with the attitude of the deceased, both the persons quarrelled with each other in inebriated condition and the appellant assaulted the deceased over his neck by axe which has been proved as fatal, as a result of which the deceased died on the spot. Evidence of these witnesses shows that there was neither premeditation nor pre plan for murder of deceased Ramnath. Evidence further shows that incident took place on heat of passion, however, at

the time of causing such fatal injuries the appellant was having definite knowledge that by his such act the deceased may die.

15. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant under Section 302 of the IPC, but, while convicting and sentencing the appellant under Section 302 of the IPC, the trial Court has not considered the aforesaid circumstances in which the incident took place and thereby committed an illegality.
16. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 302 of the IPC is hereby altered to Section 304 Part – I of the IPC and the appellant is sentenced to undergo R.I. for 10 years and fine of Rs.2,000/-, in default of payment of fine further undergo R.I. for one year.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE