

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 445 of 2011

- Sukhchand Chandravanshi, S/o Rikhiram Chandravanshi, aged about 30 years, R/o Village Majholi, Police Station-Pandatarai, District Kabirdham (CG)

---- Petitioner

Versus

- State Of Chhattisgarh, Through Police Station-Pandatarai, Distt. Kabirdham (Kawardha), Chhattisgarh.

---- Respondent

For appellant : Shri B.N. Nande, Advocate
For Respondent/State : Shri V. Goverdhan, P.L.

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

Judgment On Board by Justice Pritinker Diwaker

14/09/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 19.4.2011 passed by the Sessions Judge, Kabirdham (Kawardha), in S.T.No.34/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.50,000/-, in default whereof to remain in jail till death without parole or any remission.

02. In the present case, on 30.4.2009 at about 7 pm the accused/appellant committed murder of Kasim by causing several axe injuries on vital parts of his body. It is alleged that Kasim was a witness in some other case against the accused/appellant and therefore, in

order to eliminate him the accused/appellant committed his murder. The incident was witnessed by PW-4 Mohd. Farookh, PW-5 Rajkumar and PW-7 Ram Singh Bhaskar, however, FIR (Ex.P/4) was recorded on 30.4.2009 at 9 pm by PW-2 Yusuf Mohammed, brother of the deceased, under Section 302 of IPC naming the accused/appellant. Immediately thereafter at about 9.15 pm mereg intimation (Ex.P/5) was registered at the instance of PW-2. Inquest (Ex.P/6) over the dead body was conducted. Postmortem on the dead body was conducted on 1.5.2009 by Dr. R.K. Chandravanshi (PW-13) vide Ex.P/1 wherein he noticed several injuries, lacerated and incised, and cutting of trachea and opined that the cause of death was shock due to excessive bleeding from incised wounds and that the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant and accordingly charge under Section 302 of IPC was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 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. In defence he examined Gambhir Khan and Moolchandra Chandravanshi as DW-1 & DW-2 respectively.

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 in fact the incident was not seen by any one, had it been witnessed by PW-4 Mohd. Farookh, PW-5 Rajkumar and PW-7 Ram Singh Bhaskar, either they would have lodged report or would have informed about the incident to other villagers.

(ii) that the accused/appellant has been falsely implicated in the crime.

(iii) even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-I or II of IPC because the incident had taken place all of a sudden, without any premeditation in the heat of passion.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the accused/appellant came to the spot with full preparation carrying axe in his hand and assaulted the deceased on his vital parts leading to his instantaneous death. Eyewitness to the incident PW-4 Mohd. Farookh, PW-5 Rajkumar and PW-7 Ram Singh Bhaskar, remained intact and categorically stated as to the manner in which the deceased was done to death by the accused/appellant. He further submits that on chemical examination the bloodstained axe seized on the memorandum of accused/appellant (Ex.P/9) and his clothes seized as per Ex.P/10 were found to be stained with blood vide FSL report Ex.P/8 and further, as per serological report, blood found on the clothes of the accused/appellant was human blood.

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

08. PW-4 Mohd. Farookh while supporting the prosecution case has stated that at about 7-7.30 pm he was sitting along with the deceased, PW-5 Rajkumar and PW-7 Ram Singh Bhaskar and were discussing about marriage of daughter of the deceased. At that time, the accused/appellant came there carrying axe in his hand and without telling anything assaulted 4-5 times on the head and chest of the deceased, however, due to fear they could not interfere. Thereafter, the accused/appellant left the spot saying that he (deceased) is a witness in Nathuram's case against him and he (appellant) is afraid of being punished in that case. The deceased died on the spot and thereafter, they informed Yusuf Khan, Aabid Khan and Tasim Khan. In cross-examination he remained very firm and nothing could be elicited by the defence from him to render his evidence doubtful. PW-5 Rajkumar, another eyewitness to the incident, has made almost similar statement as has been made by PW-4 Mohd. Farookh. He too remained consistent in his cross-examination. PW-7 Ramsingh Bhaskar is also an eyewitness to the incident. While supporting the prosecution case he has stated that on the date of incident when he was sitting with PW-4, PW-5 and the deceased and discussing about marriage of daughter of the deceased, the accused/appellant came there with axe and assaulted the deceased with it on his head threatening him that how he would depose against him. Even when the deceased fell down, the accused/appellant assaulted him 3-4 times with axe as a result of which the deceased died on the spot itself. He has further stated that in the past there was quarrel between the accused/appellant and one Nathuram and in the said case the

deceased was a witness against the accused/appellant.

09. PW-1 Dr. R.K. Chandravanshi conducted postmortem on the body of the deceased on 1.5.2009 vide Ex.P/1 and noticed following injuries:

(i) lacerated wound on left fronto parietal region of skull, 4 x ½ x ½ cm.

(ii) deep incised wound in mid chest left side, left clavico-sternal joint cut and 1st and 2nd ribs left also cut medially.

(iii) lower part of upper lob of left lung is deeply incised.

(iv) left bronchus cut from trachea.

In his opinion, the cause of death was shock due to excessive bleeding from incised wounds and the death was homicidal in nature. He had also examined the seized axe sent by the police and opined that the injuries sustained by the deceased could be caused by the said weapon vide Ex.P/2.

10. PW-2 Yusuf Mohammed, brother of the deceased, at whose instance FIR and merg intimation were recorded, is also a witness to memorandum of the accused/appellant (Ex.P/9), pursuant to which axe was seized (Ex.P/10). He has duly supported the prosecution case.

PW-3 Tasim Khan, a witness to inquest Ex.P/6, has also supported the prosecution case. PW-6 Nathuram has stated that earlier he had a quarrel with the accused/appellant, cases were registered against each other and in the said case the deceased was one of the witnesses against the accused/appellant. PW-8 Ramesh Kumar Dhruve, Patwari, prepared the spot map Ex.P/11A and Panchanama Ex.P/11. PW-10 Sanjay Singh, investigating officer, has duly supported the prosecution

case.

11. DW-1 Gambhir Khan and DW-2 Moolchandra Chandravanshi have not stated anything which can disprove the charge leveled against the appellant or show his innocence.

12. Close scrutiny of the evidence makes it clear that it is the accused/appellant who on account of there being previous animosity with the deceased as he was a witness against him in a criminal case, assaulted him repeatedly with axe and caused his death. Eyewitnesses to the incident PW-4 Mohd. Farookh, PW-5 Rajkumar and PW-7 Ram Singh Bhaskar, have fully supported the prosecution case and categorically stated as to the manner in which the deceased was done to death by the appellant. Apart from these witnesses, other prosecution witnesses have also supported the prosecution case. The prosecution has also successfully proved memorandum of the accused/appellant and seizure of axe made pursuant thereto as also seizure of clothes of the appellant. According to FSL and serological report, the aforesaid seized articles were found to be stained with blood and blood found on the appellant's clothes was human blood, for which no explanation was offered by the appellant in his statement under Section 313 of Cr.P.C. Medical evidence further lends support to the prosecution version, according to which several corresponding injuries, lacerated and incised, were found by the doctor on the body of the deceased. Thus, on the basis of evidence adduced by the prosecution, complicity of the accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

13. As regards the argument that the appellant is only guilty of committing culpable homicide not amounting to murder, considering the ocular and medical evidence on record, the manner in which the appellant assaulted the deceased with a deadly weapon knife repeatedly on his vital organs leading to his instantaneous death despite being prevented by the witnesses, it is quite evident that he assaulted the deceased with intention to cause his death and had every knowledge that the injuries being inflicted by him on the deceased would certainly result in his death. In these circumstances, we are of the considered view that the trial Court has committed no illegality in holding the accused/appellant guilty under Section 302 of IPC and by no stretch of imagination his act can be held to be culpable homicide not amounting to murder.

13. For the reasons stated above, conviction and sentence imposed upon the appellant under Section 302 of IPC by the trial Court are hereby affirmed and the appeal being sans merits is, accordingly, dismissed. Since the appellant is already in jail, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge