

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1193 of 2014**

1. Pawar Singh Kanwar S/o Johan Singh Kanwar Aged About 45 years R/O Vill. Dongribhata, Barpaali, P.S. Urgaa, Dist. Korba C.G. Civil & Rev. Dist. Korba C.G.

---- Appellant

Versus

1. State Of Chhattisgarh, Through P.S. Urgaa, Dist. Korba C.G.

---- Respondent

For Appellant	:	Mr. Vikas Shrivastava, Advocate.
For Respondent/State	:	Mr. Roshan Dubey, P.L.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.**16/04/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.12.2008 passed by the 2nd Additional Sessions Judge (F.T.C.), Korba, in Sessions Trial No. 38/2007 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Bhanjan Singh, the trial Court convicted the appellant under Section 302 of the I.P.C. and sentenced him to life imprisonment with fine of Rs.2000/-.

2. Conviction is impugned on the ground that without there being any iota of evidence against the appellant, the trial Court convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of prosecution, on 05.04.2007 at about 3.00 am at night while deceased – Bhanjan Singh was coming after fetching water, the appellant

assaulted him by axe upon his head near the house of deceased, resulting into, he received serious injury and fell down. Incident was witnessed by P.W.1 Shiv Kumar, son of Bhanjan Singh, who went to Police Outpost Urgaa and lodged F.I.R. vide Ex.P.2.

Injured was brought to District Hospital, Korba, where he was examined by P.W.10 Dr.S.S.Pal vide Ex.P.13 and found one incised wound of 2" x 1" x 1" over left side of the head with blood clotted. The condition of the injured was poor, who was semi-conscious and was referred to C.I.M.S. Bilaspur. X-ray was taken vide Ex.P.14. During the course of treatment, deceased died. Death was intimated on 19.04.2007 to the Police and merg was recorded vide Ex.P.21 and P.22.

4. After summoning the witnesses, inquest over the dead body was prepared vide Ex.P.5. Spot map was prepared vide Ex.P.3. Bloodstained and plain soils as well as Lungi of deceased were seized on the spot vide Ex.P.4. Dead body was sent for autopsy to B.R.Ambedkar Hospital, Raipur, vide Ex.P.19. P.W.12 Dr. Vikas Kumar Dhruw conducted autopsy and found following injuries and symptoms:

- i. Stitched wounds in 10 number over left thigh lateral upper part of 10 cm. On opening the stitches gape is 0.5 cm, which are in muscle deep.
- ii. Stitched wound on scalp left frontal and temporo-parietal region with 14 stitches for a length of 11 cm. On opening, the stitches' gap is 0.5 cm.
- iii. Underneath scalp is faint reddish yellowish. Skull is in area of 8 x 4 cm. Sagital at fronto-temporo parietal removed. Anterior part and medial & lateral margin of anterior region ½ part irregular margin and posterior part & medial.
- iv. On dissection, it was found in the heart that blood was partially clotted. There is radiating fracture arising from posterior part of main fracture and going towards parietal & occipital region left side oblique for a length at 8 cm.

5. During the course of investigation, appellant was taken into custody, who made disclosure statement of axe vide Ex.P.7 and the same was recovered at his instance vide Ex.P.8.
6. Statements of the witnesses were recorded under Section 161 of the Criminal Procedure Code, 1973 (for short 'the Code').
7. After completion of investigation, charge sheet was filed before the Court of C.J.M., Korba, who in turn committed the case to the Court of Sessions. The learned Additional Sessions Judge received the case on transfer for its trial.
8. In order to prove the guilt of the appellant, prosecution examined as many as 15 witnesses. Accused person was examined under Section 313 of the Code where he denied the circumstances appearing against him and innocence and false implication of the crime in question was claimed.
9. After providing an opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties and perused the judgment impugned including record of trial Court.
11. Mr. Vikas Shrivastava, learned counsel for the appellant, vehemently argued that conviction of the appellant is substantially based on P.W.3 Lakhan Singh and P.W.7 Budhwar @ Golu, son of deceased – Bhanjan Singh, but, whose evidence does not inspire confidence and trustworthy. As per evidence of P.W.7 Budhwar, he has witnessed the incident and the appellant assaulted his father by axe and no other person has witnessed the incident and incident occurred during dark time and there was no light facility, which evidence is contrary to the evidence of P.W.3 Lakhan Singh and P.W.6 Firtin Bai, wife of deceased and mother of P.W.3. The aforesaid contradictory evidence of prosecution witnesses is sufficient for drawing an inference that whether or not the appellant caused homicidal death of deceased.

Even otherwise, the incident took place at 3.00 am at night, presence of witnesses was not natural. Presence of Lakhan Singh, who is a guest of the deceased, is not sufficient for consideration without corroboration from the other evidence. Lastly, he submitted that single injury has been caused to the deceased while he was coming after fetching water, which shows that on spur of moment all of sudden injury has been caused, and therefore, the act attributed to the appellant does not travel beyond the scope of Section 304 Part II of the I.P.C.

12. On the other hand, Mr. Roshan Dubey, learned counsel for the State, argued that the evidence of P.W.3 Lakhan Singh and P.W.7 Budhwar is sufficient for proving the guilt of the appellant, and therefore, the trial Court has rightly convicted the appellant as aforementioned.

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 injury found over the body of deceased – Bhanjan Singh has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Shivkumar, P.W.3 Lakhan Singh, P.W.6 Firtin Bai and P.W.7 Budhwar as well as F.I.R. Ex.P.2, P.W.12 Dr. Vikas Kumar Dhruw, autopsy report Ex.P. 17, P.W.10 S.S. Pal and injury report Ex.P.13. Death of deceased 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.3 Lakhan Singh and P.W.7 Budhwar, son of deceased Bhanjan Singh. P.W.7 Budhwar was a minor aged about 17 years. His detailed evidence revealed that he has witnessed the incident, which took place in the dark as there was no light and nobody was present. The evidence of P.W.7 is contradictory to the evidence of P.W.3 Lakhan Singh. As per evidence of P.W.3 Lakhan Singh, he was guest of the deceased and was sleeping after having lunch. On the date of incident at 2.00 am at night the appellant knocked the door forcibly while abusing filthy language, upon which the deceased

came out then the appellant assaulted Bhanjan Singh and caused injury by axe. As per his evidence, the appellant caused single blow to deceased. After hearing the sounds of quarrel, this witness came out and saw the incident. His evidence clearly revealed that there was quarrel between both deceased and the appellant on account of some dispute, thereafter, the appellant caused single injury to deceased and then he fled from the spot. Although appellant caused single blow to deceased but he has not caused homicidal amounting to murder of deceased.

15. As regards question of motive, in case of direct evidence, motive loses its importance. Even otherwise, it is aid in criminality and can be inferred from the kind of weapon used, part of body hit, nature of injury and other circumstances. In the present case, as per evidence of P.W.3 Lakhan Singh, after quarrel with deceased while hurling filthy abuses, appellant caused single blow to deceased, who was alive at the time of incident despite receiving injury. The deceased died after 14 days of the incident, which shows that appellant caused death of deceased but has not caused homicidal death with intent to cause his death, but, considering the nature of injury caused by the appellant, that too, by axe, and the fact that on spur of moment all of sudden injury has been caused, it may be safely inferred that the appellant has caused injury and he was not having any knowledge that by his act deceased may die. Therefore, the act attributed to the appellant squarely falls within the purview of Section 304 Part II of the I.P.C.

16. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 302 of the I.P.C. is altered to Section 304 Part II of the I.P.C. and the appellant is sentenced to the period already undergone by him. The appellant is said to be in custody since 29.04.2007. He shall be released forthwith, if not required in any other case.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE