

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 726 of 2011

1. Tilak Ram, son of Laxman Gond, aged about 27 years, R/o village Domartola, P.S. Mohala, Dist. Rajnandgaon (CG)

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh, through P.S. Mohala, Dist.- Rajnandgaon

---- Respondent

For appellant:	Mr. H.S. Ahluwalia, Advocate
For Respondent;	Mr. Ashish Shukla, Government Advocate

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

Judgement on Board

Per P. Diwaker, J

11/08/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.8.2011 passed by the Sessions Judge, Rajnandgaon, District Rajnandgaon (CG) in S.T. No.13/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life & fine of Rs.3,000/-, in default to undergo additional R.I. for 01 year.
2. As per prosecution case, on 3.1.2010 at about 11.30 a.m. there was some quarrel between the accused/appellant and deceased Santosh Kumar, nephew of Atmaram (PW-3), lodger of report, and in that process the accused/appellant killed the deceased by causing three axe injuries on his vital parts. As per Merg Intimation (Ex.P-4) & FIR (Ex.P-4A), the incident was witnessed by Kavita Bai (PW-1), daughter-in-law of Atmaram (PW-3). According to Atmaram (PW-3) after receiving

information from Kavita Bai (PW-1), he lodged merger intimation on 3.1.2010 at about 3.30 p.m. and thereafter FIR was registered on the same day at about 3.35 p.m. against the accused/appellant under Section 302 of the IPC. Post-mortem on the body of deceased was conducted on 4.1.2010 by Dr. S.R. Kowachi (PW-2) who noticed following injuries;

- Incised wounds, 02 in numbers, were present in the back of neck of 2½" x 1"x3" size. Clotted blood was present.
- Incised wound in front of left side of neck adjacent to the lower jaw of 2½" x 1"x3" size. Clotted blood was present.
- Incised wound in front of neck over trachea transversely in size of 2" x 1"x ½" size.
- Great vein and artery of neck was cut.
- 3rd & 4th cervical vertebra were fractured.

As per post-mortem report, cause of death was shock due to excessive haemorrhage and death was homicidal in nature. Based on the disclosure statement (Ex.P-9) of accused/appellant, axe & bloodstained clothing of the accused/appellant were seized vide seizure memos of Ex.P-10 & Ex.P-11 respectively. Seized articles were sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-19 was received confirming presence of blood in the said articles.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed against him.
4. In order to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the

circumstances appearing against him in the prosecution case and pleaded innocence & false implication.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced the accused/appellant as described above.

6. Learned counsel for the accused/appellant submits:

(i) that the star-witness Kavita Bai (PW-1) has not supported the prosecution case and turned hostile.

(ii) that statements of Atmaram (PW-3) & Vimla Bai (PW-5), being the hearsay witnesses, are not reliable for basing conviction.

(iii) in absence of any legally admissible evidence against the accused/appellant, he cannot be convicted merely on the basis of suspicion, howsoever strong it may be.

(iv) though bloodstained axe & clothes were allegedly seized from the possession of the accused vide Ex.P-10 & P-11 respectively, but in absence of any corroboration from the seizure witnesses namely Jhumuklal (PW-7) & Kinsu Ram (PW-9), the same is of no consequence and cannot be connected with the crime in question.

(v) though FSL report (Ex.P-19) states about presence of blood on the axe & clothing allegedly seized from the accused/appellant, but in absence of report of Serologist, it does not carry any evidentiary value.

(vi) Even if the entire prosecution case is taken as it is, at best the accused/appellant can be held guilty under Section 304 Part-II of IPC i.e. culpable homicide not amounting to murder.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in

accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that though Kavita Bai (PW-1) has been declared hostile but her evidence could be relied upon to the extent that supported the prosecution case. He further submits that Vimla Bai (PW-5) while supporting the prosecution has categorically stated that she saw the accused/appellant coming out from her house carrying axe in his hand and this witness remained very firm while deposing in the Court and nothing could be elicited from her so as to discredit her testimony. He further submits that presence of blood on the axe & clothing seized from the accused/appellant was confirmed by FSL vide its report (Ex.P-19) and even as per autopsy surgeon, the injuries sustained by the deceased could have been caused by the axe so seized.

8. We have heard learned counsel for the parties and perused the material available on record.
9. Kavita Bai Mandavi (PW-1) in her Court statement has stated that she knew the accused/appellant and deceased Santosh was her nephew. She has stated that she saw the deceased in the house asleep with injury on his neck from which blood was oozing. She called her sister- Vimla Bai (PW-5) and informed that Santosh has died. This witness has been declared hostile however in Para-6 of cross-examination by the Public Prosecutor she has admitted that the axe was stained with blood and she does not know as to in which hand the accused was holding axe. She has also admitted that she did inform her sister that it is the accused/appellant who had killed the deceased by causing axe injuries and asked her to come soon. She has further stated that thereafter her brother-in-law (जेठ) Atmaram & others came there. In Para-11 she has

further stated that she also informed her sister-in-law (जेठानी) about the death of deceased Santosh.

10. Dr. S.R. Kowachi (PW-2) conducted post-mortem on the body of the deceased vide Ex.P-1A and according to him, cause of death was shock due to excessive haemorrhage and the death was homicidal in nature. He has opined that the injuries found on the body of deceased may be caused from the axe seized by the accused/appellant
11. Atmaram (PW-3) has stated that deceased Santosh was his nephew and he was resident of village Piturgondi. He would often visit his house and on the date of incident also he came to his house. After hearing cries when he reached his house, he saw deceased Santosh lying in the verandah in a pool of blood. He has further stated that he was informed by Kavita Bai (PW-1) that it is the accused/appellant who had killed the deceased by causing axe injuries.
12. Shyamlal (PW-4) is the father of deceased who came to know about the incident through Atmaram (PW-3) that the accused/appellant has killed his son. He has further stated that he was informed by Atmaram (PW-3) that at the time of incident, Kavita (PW-1) & the deceased were there in the house.
13. Vimla Bai (PW-5) is the sister-in-law of Kavita (PW-1). She has stated that the deceased would often visit to her house and on the date of incident also he had come to her house. She has further stated that when she left the house for boring to wash the clothes, the deceased was asleep in the floor. On hearing cries of Kavita Bai (PW-1) when reached her house she saw the accused/appellant coming out from the house carrying axe in his hand. She has further stated that deceased Santosh was drenched with blood and Kavita Bai (PW-1) was screaming

“मार डालिस” (killed). This witness has further stated that she was informed by Kavita Bai (PW-1) that it is the accused/appellant who killed the deceased.

14. Imran Ahmed (PW-6) is the Patwari who prepared panchnama (Ex.P-8) and map (Ex.P-8A).

15. Jhumuklal (PW-7) is the witness of notice (Ex.P-5) & inquest (Ex.P-5A).

He is also the witness of memorandum (Ex.P-9) and seizure memos of Ex.P-10 & P-11. This witness has though stated that accused/appellant has not made any disclosure statement in his presence but admitted that he has handed over the axe to the police and that clothing of accused/appellant were seized by the police. He has admitted his signature on the aforesaid documents.

16. Kinsun Ram (PW-8) is another witness of disclosure statement (Ex.P-9) and seizure memos (Ex.P-10 & Ex.P-11) who has been declared hostile but admitted his signature on the aforesaid documents.

17. B.S. Rajput (PW-9) is the police officer who did initial part of investigation. Yuvraj Singh (PW-10) is the investigating officer who has duly supported the prosecution case.

18. Close scrutiny of the evidence makes it clear that though Kavita Bai Mandavi (PW-1) has been declared hostile by the prosecution but she has admitted in her cross-examination done by the Public Prosecutor that she did inform Vimla Bai (PW-5) that it is the accused/appellant who had killed the deceased, and Vimla Bai (PW-5) corroborating the statement of Kavita Bai (PW-1) has stated that on hearing screams of Kavita Bai (PW-1), when she reached house she saw the accused coming out from her house carrying bloodstained axe in his hand and thereafter when she went inside the house she saw the deceased

drenched with blood and Kavita Bai (PW-1) informed her that accused/appellant had killed. It is not in dispute that the blood was found on the axe & clothing of the accused/appellant and it has also been affirmed even in the FSL report (Ex.P-19). Even the defence has not been able to deny the existence of blood on the said articles by offering suitable explanation. True it is that in such cases origin of blood has to be proved by the prosecution by bringing on record the serological report etc. but it is equally true that if there is other material on record raising an accusing finger towards the accused, mere absence of serological report would not be fatal for the prosecution. This is what has happened in this case. More importantly, even the doctor performing autopsy has stated that the injuries suffered by the deceased could be caused by the axe seized from the accused. Factum of recovery of axe from the accused/appellant also finds corroboration from Jhumuklal (PW-7). Thus, it cannot be said that the trial Court has erred in acting on the evidence of Kavita Bai (PW-1), which was duly corroborated by other evidence available on record, for establishing complicity of accused/appellant in the crime in question. Even otherwise, it is settled legal position that when a witness is declared hostile and cross-examined by the Public Prosecutor with the permission of the Court, his evidence remains admissible and there is no legal bar to have a conviction upon his testimony, if corroborated by other reliable evidence.

19. We find no substance in the argument of the accused/appellant that act of the accused/appellant would fall under Section 304 Part-II of the IPC as from the facts it is apparent that while the deceased was asleep, the accused/appellant came with axe and caused repeated blows from axe on the vital part of his body i.e. neck. Thus, having regard to the weapon

of offence i.e. axe, by which assault was made, the part of the body i.e. neck on which assault was made and the force with which the assault was made, intention of the accused/appellant to cause death of the deceased is apparent. Therefore the act done by appellant cannot be said to be done in the heat of passion upon sudden quarrel without premeditation.

20. In view of aforesaid factual and legal discussion, this Court is of the considered opinion that the judgment impugned does not suffer from any legal flaw and the same is hereby affirmed. The appeal being without substance is hereby dismissed. As the accused/appellant is already in jail, no direction regarding surrender etc. is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-