



(31)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 466 of 2003

- Harihar S/o Prem Sai Moharia, aged about 25 years, R/o village Telsara, P.S. Bankimogra, Distt. Korba.

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant.	:	Smt. Ranjana Jaiswal, Advocate.
For Respondent.	:	Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board

Pritinker Diwaker, J

29/06/2016

This appeal arises out of the judgment of conviction and order of sentence dated 25.06.1996 passed by the 7th Additional Sessions Judge, Bilaspur, in S.T. No.344/91 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life.

02. As per prosecution case, deceased Chhattar Singh was in possession of disputed agricultural land prior to 25 years of the incident. It is said that one Mohan Ram wanted to dispossess Chhattar Singh and on 11.01.1990 at about 5.00 pm he along with other persons including the accused/appellant assaulted him. On the basis of report lodged by Chhattar Singh, entry was made in the Rojnamcha Sanha on

11.01.1990 vide Ex.P/20 and on same day Chhattar Singh was medically examined by Dr. V.S. Sharma vide Ex.P/16, who noticed grievous injury on his head. FIR Ex.P/21 was registered against the accused/appellant as well as the other accused persons under Section 307/34 IPC. Considering the serious condition of Chhattar Singh, he was referred to Bilaspur Hospital, however, during treatment he expired on 13.01.1990. Inquest on the body of the deceased was prepared on 14.01.1990 vide Ex.P/12. Body of deceased was sent for postmortem to Dharam Hospital, Bilaspur vide Ex.P/23 where Dr. S.K. Verma (PW/9) conducted autopsy on the body of deceased and gave his report Ex.P/19 opining the cause of death as head injury and depressed fracture and injury to brain and the mode of death was coma. Merg intimation Ex.P/22 was recorded on 20.01.1990. Further case of the prosecution is that the accused/appellant gave solitary blow by axe on the head of the deceased resulting in his death. According to the case of the prosecution when Haridas (PW/3) and Sharif Das (PW/4) tried to intervene in the matter, they also suffered injuries. After filing of the charge sheet, the trial Judge has framed the charges against eight accused persons including the appellant under Section 302 IPC, in the alternative under Section 302 read with section 149, 148, 323 read with section 149 IPC.

03. So as to hold the accused persons guilty, the prosecution examined as many as 13 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted the accused/appellant under Section 302 IPC, whereas other accused persons have been convicted under Section 323 read with section 149 and 148 IPC. As the other accused persons already remained in jail for more than six months, they were sentenced to the period already undergone by them whereas appellant has been sentenced as mentioned above. Hence, this appeal.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant gave solitary blow on the head of the deceased and, therefore, even if the entire prosecution case is taken as it is, intention to cause death cannot be gathered and at best he is liable to be convicted under Section 304 Part-I IPC;

(ii) that as the accused/appellant has already remained in jail for more than 12 years, he may be sentenced to the period already undergone by him after convicting under Section 304 Part-I IPC. The additional submission for reduction in sentence is that since 2009 the accused/appellant is suffering from paralytic attack and his livelihood is fully dependent on begging and for that also, if sent to jail, an extra liability to take care of him would be on the jail authorities and, therefore, no useful purpose would be served in doing so.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Brijpal Singh (PW/1)-eye witness to the incident while supporting the prosecution case has stated that deceased was in possession of the disputed land and used to cultivate it, however, Mohan Ram got his name recorded in the land in question with the help of Patwari. In this regard, panchayat meeting was convened and it was decided that as the Chhattar Singh is in possession of the land in question, the accused persons may not interfere with. He has further stated that after 2-3 days of the panchayat meeting Chhattar Singh was beaten also. He has further stated that at the relevant time he was sitting near a mango tree and on hearing some commotion nearby he went to the spot and saw the accused persons other than the accused/appellant herein, assaulting the deceased with the lathi on account of which he had fallen down on the ground. This witness has stated that at the relevant time the accused/appellant herein also came to the spot carrying axe in his hand and assaulted the deceased with its edged side inflicting a solitary blow. Thereafter, the victim was taken to the hospital where he died during treatment. The other injured eye witnesses namely Haridas (PW/3) and Sarif Das (PW/4) have also supported the case of the prosecution in categorical terms. This apart, Haridas (PW/3) went on to state that he was beaten by accused/appellant herein. Girwar Singh (PW/6) is the patwari who prepared spot map Ex.P/14. Dr. V.S. Sharma (PW/8) is the witness who medically examined the victim and other injured persons and gave his reports Ex.P/16 and Ex.P/18. Dr. S.K. Verma (PW/9) is the

witness who conducted postmortem examination on the body of the deceased and gave his report Ex.P/19 describing the injuries noticed by him as under:

- (i) A dressed wound over right parietal region
- (ii) Stitched wound of 4 cm long over right parietal region.
- (iii) Disfigure swelling over right parietal and occipital region.
- (iv) Abrasion of 1.5 cm x 1 cm over right side of forehead.
- (v) Abrasion of 1.5 cm x 1 cm over left molar prominence.
- (vi) Abrasion of 0.5 cm x 0.5 cm over front side of left leg.
- (vii) Abrasion of 3 cm x 1 cm over right shoulder.
- (viii) Injuries were antemortem. Injury No.2 to 6 can be caused by hard and blunt object and regarding injury No.1 opinion can be given by the person who has stitched it.

According to the opinion given by this witness, the cause of death was as a result of depressed fracture and injury to the brain and the mode of death was coma.

09. Maheshwar Singh (PW/10) and Firan Singh (PW/11) are the witnesses who assisted in the investigation. Anand Pratap Singh (PW/12) and K.P. Jaiswal (PW/13) are the witnesses who did part of the investigation.

10. Close scrutiny of the evidence makes it clear that on the date of incident when the other accused persons were beating the deceased with lathi, the accused/appellant also came carrying axe in his hand and dealt a solitary blow on his head but why he did so has not been proved by the prosecution because no animosity or ill-will has been attributed between the two. It is only after the deceased being assaulted by other accused persons with lathi, the present appellant appeared on the spot and caused injuries to him. Had there been any

prior meditation on the part of the accused to kill the deceased he might have repeated the blows till his last breath. However, it is not the case in hand, rather according to the evidence of the witnesses, the deceased succumbed to the injuries three days after the incident in the hospital. Thus, the act of the accused/appellant does not fall within the ambit of Section 302 IPC and at the most his conviction would entail under Section 304 Part-I IPC.

11. Accordingly, the conviction of the accused/appellant under Section 302 IPC is set aside and he is convicted under Section 304 Part-I IPC. The incident took place about 26 years back, as per record the accused/appellant has already remained in jail for about 8 ½ years and considering the peculiar facts and circumstances of the case, he is sentenced to the period already undergone by him. However, the appellant is liable to pay fine of Rs.10,000/-. Let this fine amount be deposited by the appellant within six months from today, failing which he shall undergo the jail sentence of six months.

12. The appeal is thus partly allowed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
C.B. Bajpai
Judge