

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 827 of 2010

- Jai Ram Cherva @ Bhethalu, aged about 40 years, S/o Prabhu Cherva, Occupation - Agriculturist, R/o Village Amandon Ghutrapara, PS - Pratappur, District Surguja (CG)

---- Appellant

(In Jail)

Versus

- State Of Chhattisgarh Through Police Station - Pratappur, Distt. Surguja (CG)

---- Respondent

For appellant : Shri FS Khare, Advocate.
For Respondent/State : Shri Adil Minhaj, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice I.S. Uboweja

Judgment On Board By Justice Pritinker Diwaker

24/02/2016

This appeal arises out of the judgment of conviction and order of sentence dated 28.8.2010 passed by the Additional Sessions Judge (FTC), Pratappur, Distt. Surguja in S.T.No.515/09, convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and fine of Rs.500/- with default stipulation.

02. Brief facts of the case are that on 2.9.2009 at about 9 am while deceased Ramprasad was sleeping outside his house, the appellant assaulted on his head with axe. He was immediately taken to Community Health Center, Pratappur where his MLC (Ex.P/8) was

done by PW-5 Dr. AK Vishwakarma. FIR (Ex.P/1) was registered on 2.9.2009 at the instance of PW-2 Brijmohan against the accused/appellant under Sections 294, 506B and 323 of IPC. Considering the precarious condition of the deceased, he was referred by the doctor (PW-5) to District Hospital, Ambikapur where he succumbed to his injuries on 3.9.2009. On receipt of memo from the hospital (Ex.P/10) unnumbered merg intimation (Ex.P/5) was recorded on 3.9.2009 at Police Station - Ambikapur. Inquest over the body of the deceased was prepared vide Ex.P/3 and thereafter, the dead body was sent for postmortem which was conducted by PW-4 Dr. Anupam Minj vide Ex.P/6 who noticed two sutured wounds, one over right parietal region near occiput and another anterior to the first wound. He also noticed depressed fracture of right parietal bone. In his opinion, the cause of death was coma due to head injury. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 294, 506B, 302 of IPC and accordingly, charges were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 20 witnesses. Statement of the accused 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.

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 appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the prosecution has utterly failed to prove any motive on the part of the accused/appellant for commission of murder of the deceased.

(ii) that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part-I of II of IPC and considering the fact that he is in jail since 6.9.2009, after conversion of the conviction, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in it. He submits that PW-10 Lalmani and PW-11 Hirmaniya, eyewitness to the incident, have duly supported the prosecution case. Apart from this, PW-12 Ganpat also saw the appellant going to the place of occurrence carrying axe in his hand.

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

08. PW-10 Lalmani, wife of the deceased, has stated that on the date of incident at about 9 am her husband/deceased was sleeping on a cot, at that time the accused/appellant came there carrying axe in his hand and assaulted her husband on right side of his head and then fled from there. Her husband started writhing in pain, blood started oozing from his head, and hearing the commotion Indrakunwar and her husband reached there. She has stated that the accused/appellant was

staying in the house of Indrakunvar as guest and he was step son of Indrakunvar. She has further stated that her husband/deceased was first taken to hospital at Pratappur and from there to Ambikapur where he expired. In cross-examination she remained very firm and reiterated as to the manner in which her husband was done to death by the accused/appellant.

09. PW-11 Hirmaniya, mother-in-law of the deceased, is another eyewitness to the incident. While supporting the prosecution case she has stated that she was sitting in the house of her son-in-law/deceased where the appellant came carrying axe in his hand and assaulted on the head of the deceased, who at that time was sleeping on a cot, and then ran away from the spot. She has stated that after the incident the deceased was taken to hospital at Pratappur and Ambikapur. In cross-examination, this witness also remained very firm and duly supported the prosecution version.

10. PW-12 Ganpat, step-father of the appellant, has stated that the accused/appellant left his house carrying axe in his hand and committed the offence. He has further stated that upon hearing the commotion while he was going to the place of occurrence, he saw the accused/appellant running away along with his children.

11. PW-5 Dr. SK Vishwakarma first treated the deceased when he was brought to Community Health Center, Pratappur in injured condition and vide Ex.P/8 noticed one lacerated wound on right side of parietal bone which was skin deep, it appeared to have been caused by hard and blunt object and considering the condition of the patient, he

referred him to District Hospital. In cross-examination he has admitted that though in MLC he has mentioned that the injury was caused by club, but all the injuries suffered by the victim cannot be possibly caused by club.

12. PW-4 Dr. Anupam Minj conducted postmortem on the body of the deceased on 3.9.2009 vide Ex.P/6 and noticed following injuries:

- (i) sutured wound over right parietal region near occiput oblique from midline to posterior of length 4 cm,
- (ii) sutured wound ant. to 1st sutured wound oblique of length 3.

He also noticed one depressed fracture of right parietal bone posteriorly 3 cm in diameter, there was subdural blood clot of 10 cm diameter, swelling in both lungs, spleen, kidneys and right chamber of heart was full whereas left was empty. All the injuries were antemortem in nature, caused by hard and blunt object. In his opinion, the cause of death was coma due to head injury.

He had also examined the weapon of offence axe sent to him by the police and vide Ex.P/7 opined that the injuries suffered by the deceased could be caused by the said weapon.

13. PW-1 Indrakunvar, step-mother of the appellant, in whose house the appellant was staying as guest, has stated that upon hearing hue and cry when she went to the house of the deceased, she saw the deceased lying in injured condition, there was a cut injury on his head, blood was oozing and that the accused/appellant was running away from there with his children, however, he was caught hold by the villagers at some distance. PW-2 Brijmohan is lodger of FIR (Ex.P/1)

and is also a witness to inquest Ex.P/3. PW-3 Tribhuvan Singh Bisen recorded unnumbered merger intimation. PW-6 Kanval Sai, brother of the deceased, reached the place of occurrence after it had taken place. PW-7 Dr. BP Sonkar had sent the memo to the police after death of the deceased. PW-13 SC Shukla, Sub Inspector, effected seizure (Ex.P/13) of clothes of the deceased and sent the axe for examination to the doctor vide Ex.P/14. PW-15 Ramuram, Patwari, prepared the spot map Ex.P/16. PW-17 DR Dhruv, investigating officer, has duly supported the prosecution case. PW-18 Shivkumar Singh recorded FIR (Ex.P/1) and referred the deceased for medical treatment to Community Health Center, Pratappur vide Ex.P/27. PW-19 Brihaspati is a witness to inquest Ex.P/3, seizure Ex.P/20 whereby plain and bloodstained soil were seized from the place of occurrence, memorandum of the appellant Ex.P/18 and seizure Ex.P/19 of the axe. PW-20 Shivprasad is also a witness to memorandum of the appellant Ex.P/18 and seizure Ex.P/19 of axe.

14. Close scrutiny of the evidence makes it clear that on 2.9.2009 it is the accused/appellant who armed with axe came to the house of the deceased, who at that time was sleeping on his cot, and assaulted him with axe on his head as a result of which he ultimately died in the hospital while undergoing treatment. Eyewitness to the incident PW-10 Lalmani and PW-11 Hirmaniya, have duly supported the prosecution case and the defence has utterly failed to elicit anything from them to make their evidence doubtful or untrustworthy. Apart from this, PW-12 Ganpat also supports the prosecution case. According to this witness, on hearing commotion when he was going to the house of the

deceased, he saw the appellant running away with his children. Medical evidence also lends due support to the prosecution case. Thus, in view of the un rebutted eyewitness' account duly corroborated by the medical evidence and witnesses to memorandum of the appellant and seizure of axe in pursuance thereof, complicity of the accused/appellant in commission of the offence stands established beyond reasonable doubt.

15. We find no substance in the argument of the appellant that in the facts and circumstances of the case, the appellant can at best be held guilty under Section 304 Part-I or II and not 302 of IPC. Considering the manner in which the appellant assaulted the deceased, while he was sleeping, with a deadly weapon axe on his vital part head with such a force which led to fracture of parietal bone and resulted in his death, it is evident that the appellant assaulted the deceased with an intention to kill him and he had every knowledge that such bodily injury was sure to result in his death. In these circumstances, his case does not fall under any of the exceptions to Section 300 of IPC i.e. culpable homicide not amounting to murder and therefore, by no stretch of imagination his conviction is liable to be converted into Section 304 Part-I or II of IPC.

16. In the result, the appeal fails and is, accordingly, dismissed. The accused/appellant is already in jail, therefore, no order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(I.S. Uboweja)
Judge