

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 403 of 2012**

- Makhanlal S/o Mohan, R/o Village Kurud, Post Gidhpuri P.S. Palari Distt Raipur C.G. Now Baloda Bazar C.G.

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

- State Of Chhattisgarh Through Station In-charge, Center Palari, District Raipur (Now Baloda Bazar) C.G.

**---- Respondent**


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For Appellant: Shri Arvind Shrivastava, Advocate.

For Respondent: Shri Ravindra Agrawal, Panel Lawyer.

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**Hon'ble Shri Justice Pritinker Diwaker****Hon'ble Shri Justice I.S. Uboweja****Judgement****Per P. Diwaker, J****29/04/2016**

1. This appeal arises out of the judgment of conviction and order of sentence dated 24.3.2012 passed by the 1<sup>st</sup> Additional Sessions Judge, Balodabazar in Sessions Trial No.76/11 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life & fine of Rs.500/-, in default to undergo additional R.I. for 03 months.
2. The prosecution story, in brief, is that on 3.8.2009 at about 6.00 p.m. Manikram (since deceased), brother-in-law of accused/appellant, along with Mangluram (PW-16) & Shesh Narayan (PW-17) came to the house of

accused/ appellant to drop *rakhi* & sweets. Deceased Manikram insisted accused/appellant for liquor and when he expressed his financial inability, the deceased gave him Rs.100/- to bring liquor. When the discussion over liquor was going on, Shesh Narayan (PW-17) told him that he would not consume liquor as night had fallen. When Shesh Narayan (PW-17) refused to take liquor, the deceased demanded back the amount given by him and on refusal by accused/appellant, they started quarrelling and in that process the accused/appellant assaulted on the neck, chin & temporal region of deceased by axe as a result of which he died on the spot. At the instance of Bhukhan Lal (PW-7), Merg Intimation (Ex.P-21) was recorded on 4.8.2009. Un-numbered FIR (Ex.P-22) was recorded on the same day and based on that numbered FIR (Ex.P-20) was registered against the accused/appellant under Section 302 IPC. Inquest was prepared vide Ex.P-2 on 4.8.2009. Body of the deceased was sent for post-mortem which was conducted by Dr. B.S. Dhruv (PW-9) on 4.8.2009 vide Ex.P-11 and noticed following injuries:-

- Lacerated wound of ½ x ½ x 2' size at the exterior side of right ear.
- Incised wound of 1 ½ x ½ x 2' size at the right side of upper part of neck.
- Incised wound of 1 ½ x ½ x 1' size at the right side of lower part of neck.
- Lacerated wound of ½ x 3' size at right mastoid region
- Incised wound of 1 x ½ x ½ inch size at the left side of lower part of neck.
- Incised wound of 3x1½ x 1½ inch size below the lower jaw of chin.

The autopsy surgeon opined that cause of death was complication of hypovolemic shock due to neck injuries and death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly the charge

was framed against him.

3. In order to hold the accused/appellant guilty, the prosecution had examined as many as 17 witnesses. Statement of 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 and pleaded innocence & false implication.
4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced him as mentioned in para-1 of this judgment.
5. Learned counsel for the accused/appellant submits that;
  - though the prosecution has examined Ramkumari (PW-1), wife of accused/appellant, Manglu (PW-16) & Shesh Narayan (PW-17) as eyewitnesses to the incident but their evidence are not reliable as there are material contradictions and omissions.
  - recoveries effected vide seizure memo Ex.P-8 on the basis of memorandum statement (Ex.P-7) of accused/appellant have no value in absence of report of FSL.
  - Even if the entire prosecution case is taken as it is, at best the accused/appellant can be held guilty under Section 304 Part-1 of the IPC and not under Section 302 of the IPC as has been done by the trial Court.
6. 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 there is no reason for this Court to disbelieve statements of Ramkumari (PW-1), wife of accused/appellant, Manglu (PW-16) & Shesh Narayan (PW-17), who

are eyewitnesses of incident. The appellant had caused injuries on the neck to the deceased in inhuman manner which shows his grave intention of causing homicidal death, amounting to murder, of the deceased.

7. We have heard learned counsel for the parties and perused the material available on record.
8. Ramkumari (PW-1) is the wife of accused/appellant. She has stated that on the eve of Rakhi festival at about 12.00 a.m. in the night, deceased along with two others came to her house and awakened her husband. At that time she was asleep. In Para-2 she has stated that her husband armed with axe chased the deceased and assaulted him. Seeing this, she along with her two children fled from the spot. When she returned in the next morning, she found the deceased lying dead and injuries were present on his neck. At this stage this witness has been declared hostile and in the cross-examination by the prosecution she has admitted that when her husband armed with axe chased the deceased, she intervened. She has further admitted that she saw axe in the hand of her husband.
9. Murit Das (PW-2) is the witness of inquest Ex.P-2 & spot map Ex.P-3.
10. Dasodabai (PW-3) is the wife of deceased and she came to know about the incident later.
11. Channulal (PW-4) is the brother of the appellant. He has not supported the prosecution case and turned hostile.
12. Mohan (PW-5) is the father of appellant and he has stated that he gave Rs.20,000/- to the deceased.
13. Basanti Sinha (PW-6), daughter-in-law of accused/appellant, has proved the relationship between the parties. She has stated that on seeing axe in the hand of accused/appellant, she went inside the room and asleep. Next morning she saw the body of deceased lying at the place where she saw

him in the night and blood was coming out from the body of deceased.

14. Bukhan Sinha (PW-7) is the real brother of accused/appellant and also the lodger of FIR. This witness has admitted that the body of deceased was lying in the verandah of his house.
15. Ramkishun Kosle (PW-8) is the witness of Ex.P-1, P-2, maps of Ex.P-5 & P-6, memorandum Ex.P-7 and seizure memos Ex.P-8 & P-9. He has not supported the prosecution case and turned hostile. However, he admits his signature over the aforesaid documents.
16. Dr. B.S. Dhruv (PW-9) is the person who conducted autopsy and gave his report Ex.P-12 opining that cause of death was complication of hypovolemic shock due to neck injuries, mode of death was asphyxia and it was homicidal in nature. The doctor has further opined that the injuries found on the body of deceased could be caused by the axe produced before him for examination.
17. Goverdhan (PW-11) is the witness of memorandum (Ex.P-7) and seizure memos (Ex.P-8 & Ex.P-9) by which bloodstained axe, soil & plain soil were recovered.
18. Santosh Kumar Sahu (PW-12) is the Patwari who prepared the spot map Ex.P-3.
19. Anul Nag (PW-13) is the investigating officer and he has duly supported the prosecution case.
20. I.R. Dhruv (PW-15) is the Assistant Sub-Inspector who helped in the investigation.
21. Manglu (PW-16) is the eyewitness of the incident. He has stated that on the fateful day at about 12.00 midnight he along with deceased & Sheshnarayan (PW-17) reached the house of the sister of deceased where they met accused/appellant. On demand being made by

accused/appellant, the deceased gave him money for purchasing liquor. However, when this witness & Sheshnarayan (PW-17) refused to take liquor, the deceased demanded back the amount from accused/appellant which he refused by saying that the deceased already owe Rs.20,000/- to him. Thereafter accused and deceased started quarrelling, accused/appellant took out axe and assaulted in the neck of deceased. Though they tried to snatch axe from accused/appellant but could not succeed. He has further stated that since accused/appellant was brandishing the axe, they got frightened. He has further stated that the wife of accused/appellant warned him & Shesh Narayan to move away else accused/appellant would kill them also and when they were fleeing from the spot on the motorcycle, accused/appellant threw axe at them which did not hit them.

22. Sheshnarayan (PW-17) is the another eyewitness of incident and he has also stated in the manner as has been deposed by Manglu (PW-16).

23. Close scrutiny of the evidence makes it clear that on 3.8.2009 at about 10-11.00 p.m. in the night the accused/appellant had assaulted the deceased with axe and injuries suffered by him led to his instantaneous death. The incident was witnessed by Manglu (PW-16) & Shesh Narayan (PW-17), who along with deceased had come to the house of accused/appellant, and these witnesses have categorically stated that it is the accused/appellant who had assaulted on the neck of the deceased by axe. Their evidence gets corroboration from the medical evidence wherein it has been stated that cause of death was hypovolemic shock as a result of neck injuries. Query raised by the prosecution as to whether the injuries present on the body of the deceased could be caused by the axe seized from accused/appellant, was also answered by the doctor in

affirmative. The defence has not been able to elicit anything in their evidence which goes to show that they were not present on the spot or they have not witnessed the incident.

Evidence of Manglu (PW-16) & Shesh Narayan (PW-17) further find corroboration from the statement of Ramkumari Bai (PW-1), wife of accused/appellant, who has stated that seeing the accused/appellant assaulting the deceased with axe, she along with her children fled from the spot. True it is that this witness has not supported the prosecution case and turned hostile, but she has specifically deposed about the participation and involvement of accused/appellant and the defence has not been able to elicit anything in her evidence which goes to show that she was not present on the spot at the time of incident. It is established principle of law that evidence of hostile witness is not required to be rejected in toto on account of few infirmities or contradictions in his evidence and if any part of his evidence is otherwise found useful, the same can be read in evidence.

That apart, on the basis of disclosure statement (Ex.P-7) made by accused/appellant, bloodstained axe & clothing were recovered vide seizure memo of Ex.P-8 and there is no explanation from the accused/appellant in his statement under Section 313 Cr.P.C. as to how the blood stains are there in the articles seized from his possession. True it is that in the statement recorded under Section 313 Cr.P.C. the accused/appellant has raised the plea of false implication, but the defence has utterly failed to substantiate the same by leading cogent evidence in that regard.

Furthermore, looking to the quality of evidence of eyewitness to the incident, the fact that blood was found on the articles seized at the

instance of accused/appellant and that there is no explanation on behalf of accused/appellant as to how blood stains are there, it cannot be said that non-production of report of FSL is fatal to the prosecution. Accordingly, the conviction part of the impugned judgment being just and proper, is not required to be interfered with.

24. As regards the submission of counsel for accused/appellant that act of accused would fall under Section 304 Part-1 IPC, in order to bring a case within Exception IV, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. According to Manglu (PW-16), Shesh Narayan (PW-17) and Ramkumari (PW-1), wife of accused/appellant, they have tried a lot to prevent the appellant from assaulting the deceased but he did not stop and gave repeated axe blows to the deceased which has resulted in his instantaneous death. Manglu (PW-16) & Shesh Narayan (PW-17) have further stated that after assaulting the deceased, the accused/appellant was brandishing axe and when they were fleeing from the spot, accused/appellant attempted to assault them by throwing axe at them which fortunately could not hit them. Thus, from the background facts as considered in the light of the evidence, it cannot be said that there was no time for accused/appellant to cool down or that he has not taken undue advantage or acted in cruel or unusual manner. The manner of attack by accused/appellant, that is to say, repeated axe blows on the vital part (neck) of the deceased despite insistence by three persons not to assault the deceased, goes to show that he had intention to cause death of the deceased and had every knowledge that the injuries being inflicted by him on the deceased were sure to result in his death. Being so, it cannot be



said that case of accused/appellant is covered under Section 304 Part-1 IPC. It is a clear case of murder.

25. In the result, the appeal being devoid of substance is liable to be and is, accordingly, dismissed. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-  
(Pritinker Diwaker)  
Judge

Sd/-  
(I.S. Uboweja)  
Judge

roshan/-