

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 760 of 2012**

- Dalit Kumar son of Manghilal, aged 21 years, R/o village Chakraway, Chowki Maro, PS Nandghat, District Bemetara, CG

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Chowki Maro, PS Nandghat, District Bemetara CG.

---- Respondent

For appellant	:	Smt. Kiran Jain, Advocate
For Respondent/State	:	Shri Vivek Sharma, GA

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

Judgment On Board by**Pritinker Diwaker, J****05/02/2016**

This appeal is directed against the judgment and order dated 28.07.2012 passed by Additional Sessions Judge, Bemetara, District Durg in Sessions Trial No. 62/2010 convicting the accused/appellant under Section 302 of Indian Penal Code and sentencing him to undergo imprisonment for life with fine of Rs. 500/-, in default of payment of fine to further undergo rigorous imprisonment for two months.

2. Tolaram (PW-1) has three sons namely Manghilal, Top Singh and Gendram. Deceased Haldhar was the son of Manghilal from first wife whereas appellant Dalit is also his son but from the second wife. Thus deceased

Haldhar and the appellant are the step brothers and Top Singh is their uncle. According to the case of the prosecution, initially the family partition was done by Tolaram amongst his three sons and then Manghilal also partitioned his land amongst his four sons i.e. Haldhar from first wife as well as Dalit, Lalit and Falit from second wife. It is said that there was some land dispute between deceased Haldhar and appellant Dalit, Lalit and Falit. Allegedly, on 8.6.2010 the deceased had gone to the house of Tolaram (PW-1) and after taking water he went towards the house of the accused/appellant. However, after 4-5 minutes when this witness came out of his house, he saw that the accused/appellant as well as his juvenile brothers and sister Falit, Lalit and Manisha were assaulting the deceased with axe and club. According to this witness, accused/appellant was assaulting the deceased with axe whereas his juvenile brothers and sister namely Falit, Lalit and Manisha were assaulting him with club and that the incident was witnessed by Top Singh also. Un-numbered FIR (Ex.P-1) was lodged on 8.6.2010 by Tolaram (PW-1) followed by numbered one (Ex.P-2) registered against the accused/appellant and the juvenile accused persons under Section 307/34 IPC. However, while being taken to hospital Haldhar died and based on the information received from the hospital un-numbered *merg* (Ex. P-13) was registered followed by numbered one (Ex.P-21) recorded on 8.6.2010. Inquest on the body of the deceased was conducted vide Ex. P-5. Thereafter, postmortem examination was conducted by Dr. C.B. Mishra (PW-26) who gave his report Ex. P-26 stating that he noticed incised wound, contusion and fracture on his occipital and parietal region and the cause of death was the injury to vital organ i.e. brain resulting in syncope and the death was homicidal in nature. After investigation, charge-sheet was filed against the appellant under Section 302 IPC and then the Court below also framed the charge accordingly. The other juvenile accused persons namely Lalit, Falit and Manisha were however being prosecuted by the Juvenile Court.

3. In order to prove the guilt of the accused/appellant, prosecution has examined 27 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that the incident had taken place on account of the false allegation made by deceased Haldhar against the appellant that he had tilled his land. She submits that it is the deceased who had come to the house of the accused/appellant to pick up quarrel but was unfortunately overpowered. According to the counsel for the appellant, there was no intention on the part of the appellant to cause death of Haldhar but his intention was just to cause simple injuries and therefore his conviction under Section 302 IPC is not in accordance with law and at best he can be convicted under Section 304 (Part-I) IPC. According to her, from the evidence of eyewitnesses namely Tolaram (PW-1), Paremin Bai (PW-2), Gendram (PW-3) and Top Singh (PW-10), it is apparent that the incident had taken place in the house of the appellant where the deceased had come to have a quarrel. Referring to the postmortem report Ex. P-26 counsel for the appellant submits that Haldhar sustained only one grievous injury on head and therefore also his conviction under Section 302 is not proper. In support of her submissions, she placed reliance on the decisions of the Apex Court in the matter of **Baijnath v. State of Uttar Pradesh** reported in **(2008) 3 SCC (Cri.) 940** , in the matter of **Madan and others v. State of Madhya Pradesh** reported in **(2008) 3 SCC (Cri.) 942** as also on the decision of this Court in the matter of **Taran Kumar v. State of CG** reported in **2012 (2) CGLJ 403 (DB)**.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the deceased had gone to the house of the appellant without being armed with any weapon and taking advantage of his helplessness, the accused/appellant and his juvenile siblings caused grievous injuries with axe and club on his vital part like head. He submits that impact of the injuries was as such that the deceased sustained multiple fracture on his occipital and parietal region ultimately putting an end to his life. He further submits that on the memorandum of the accused/appellant Ex. P-14, blood stained axe was seized under Ex. P-17 which according to the FSL report Ex. P-26 contained blood. The overall submission of the State counsel is that the conviction of the accused under Section 302 IPC is strictly based on the evidence of the witnesses and needs no interference in this appeal.

7. Heard counsel for the parties and perused the material available on record.

8. Tolaram (PW-1) – grandfather of the accused and the deceased and one of the eyewitnesses to the incident has stated in his evidence that on the date of incident at about 1-1.30 afternoon the deceased came to his house, had water and then proceeded towards the house of the accused/appellant without making any utterance and 4-5 minutes thereafter when he came out of his house, he saw the accused/appellant and his siblings namely Lalit, Falit and Manisha assaulting him with axe and club. Clarifying further, this witness has stated that accused/appellant herein was assaulting the deceased with axe whereas other three with club and that the incident was witnessed by Top Singh as well. According to this witness, when Top Singh intervened in the matter, accused/appellant and his brothers and sister threatened him saying that whoever approached them, would not survive and on this, Top Singh left the spot. This witness has further stated that after assaulting the deceased,

the accused/appellant and his siblings threw over him the panel of door and then moved out of the village. He has further stated that when he went to the spot, deceased was lying on the ground with number of injuries on his head, hand, leg and forehead which were bleeding profusely. Thereafter, he along with other villagers went to the police station to lodge the report and when the deceased was being taken to the hospital he died on the way. In cross examination also this witness remained stuck to his examination-in-chief and stated nothing extra. Paremin Bai (PW-2) – another eyewitness to the incident has also supported the case of the prosecution stating that on the date of incident when she came out of her house after hearing quarrelsome activities, she saw that the accused/appellant, his brothers Falit and Lalit as also their sister Manisha were assaulting the deceased. According to her, accused/appellant was carrying axe whereas the deceased was carrying nothing and that the deceased expired on the spot itself. This witness has further stated that accused/appellant and his siblings had threatened to kill her if she went to them. Cross examination of this witness also contains the same thing as the examination-in-chief. Yet another eyewitness to the incident namely Gendram (PW-3) – the uncle of the appellant and the deceased has also supported the case of the prosecution stating almost the same thing like Tolaram (PW-1) and Paremin Bai (PW-2). Top Singh (PW-10) another uncle of the accused and deceased and one of the eyewitnesses to the incident has also supported the case of the prosecution stating that there was some land dispute between the appellant and the deceased and that on the date of incident he had seen the accused and his siblings namely Lalit, Falit and Manisha assaulting the deceased. According to this witness, accused/appellant herein was assaulting the deceased with axe and the others with club and that when he tried to intervene in the matter, the appellant and his siblings threatened him saying that anyone from Kosaria family coming forward would also be done away with. This witness went on to

state that after being chased by the appellant and his brothers Lalit and Falit, he left for his house and disclosed the incident to his wife Pushpa Bai. Smt. Janki Bai (PW-4) – the wife of the deceased has stated that on the date of incident her brother-in-law Harishchand came and told her about the quarrel and when she went to the spot her husband (deceased) was lying there but was alive at that time. According to her, she was not aware as to who had assaulted the deceased. This witness, at this stage, has been declared hostile. Smt. Pushpa Bai (PW-5) has stated that she was informed by her husband Top Singh that the accused/appellant and his brothers and sister namely Lalit, Falit and Manisha had assaulted the deceased and when he tried to intervene in the matter, they threatened him saying that anyone coming forward from Kosariya family would not be spared. Dolaram (PW-6), Rekham Patel (PW-7), Jeevanlal (PW-8) and Meghnath (PW-11) have not supported the case of the prosecution and have been declared hostile. Doli alias Parasram (PW-9) has stated that he was informed by his father Top Singh that the accused/appellant and his brothers and sister assaulted the deceased with axe and club. Banshilal Sharma (PW-12) is the witness to *merg* intimation Ex. P-13. Chandra Kumar (PW-13) - the witness to memorandum (Ex. P-14) and seizure made on the basis of the same under Ex. P-15 to P-18, has been declared hostile but has admitted his signatures thereon. Vrihnal Jangde (PW-14)-the witness to memorandum Ex. P-14 and the seizure made under Ex. P15, P-17 and P-18 has though been declared hostile but admitted his signature on the seizure memo. Santram Mandavi (PW-16) is the witness who registered FIR and *merg*. Dilip Kumar Sinha (PW-22) is the Patwari who prepared spot map (Ex. P-3). Shiv Kumar Bhatt (PW-23) is the witness who took the seized articles to Forensic Science Laboratory. Murlidhar Sahu (PW-25) is the witness who took the deceased to CIIMS for medical examination where the doctor declared him dead. Dr. C.B. Mishra (PW-26) is the witness who conducted postmortem examination on the body of the deceased and

gave his report Ex. P-26 stating that he noticed incised wound over the occipital region in the size of 3 x 2 inch, fracture of occipital and parietal region and contusion on the left side of forehead near scalp as also just above the left eye in the size of 1 x 1 inch, and the cause of death was injury on the vital organ i.e. brain resulting in syncope. A.L. Chaturvedi (PW-27) is the investigating officer who has duly supported the case of the prosecution.

9. This Court has undertaken an arduous exercise of scanning the entire material on record and the evidence of the witnesses with utmost circumspection and while doing so it has come to the surface that on the date of incident the deceased had gone to the house of Tolaram (PW-1) and after taking water when he went to the house of the accused/appellant, he was brutally assaulted by him (the appellant) as well as his siblings namely Lalit, Falit and Manisha with axe and clubs. While attributing specific role, the eyewitnesses namely Tolaram (PW-1), Paremin Bai (PW-2), Gendram (PW-3) and Top Singh (PW-10) who happen to be the close relatives of the accused and the deceased have categorically stated that the accused/appellant herein assaulted the deceased with axe and the others with club. Even the doctor (PW-26) who conducted the postmortem examination on the body of the deceased has noticed multiple injuries over his head including fracture of occipital and parietal region and opined the cause of death to be injury to vital organ i.e. brain resulting in syncope. There is nothing on record to show that the deceased had gone to the house of the accused/appellant carrying any weapon with him or that he picked up the quarrel first and that the accused and his siblings acted in self defence, rather the witnesses have spoken to the contrary that he was not armed with anything like that whereas the accused party was holding axe and clubs. Evidence of some of the witnesses further goes to show that when they tried to intervene in the matter, the appellant and his associates threatened them to be finished if

they came forward to the rescue of the deceased. Moreover, the presence of blood on the axe seized on the memorandum of the accused has been confirmed by the FSL report Ex. P-26. Thus the manner in which, the weapon used in the offence and the intensity of the blow dealt, it can very well be held that the accused/appellant and his juvenile brothers and sister were hell-bent in eliminating the deceased. The evidence of the witnesses including that of the doctor conducting postmortem examination being absolutely consistent was sufficient to hold the accused guilty under Section 302 IPC and the trial Court has done the same in an infallible manner. The decisions of the Apex Court and this Court as well pressed into service by the counsel for the appellant referred to above to alter the conviction of the accused under Section 304 (Part-I) IPC being on the different factual background, are of no help to him. Barbaric assault in hurling deadly blows with axe and club that too on vital part like head of the deceased keeps this case quite apart from the ones relied upon by the counsel for the appellant.

10. In the result, this Court is of the considered opinion that the findings of the Court below convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life are strictly in accordance with law and based on correct appreciation of the evidence of the witnesses and being so the judgment impugned is hereby affirmed and the appeal is dismissed. As the appellant is already in jail, no further order for sending him to jail appears necessary.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(I.S. Uboweja)

Judge