

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 970 of 2012**

- Panchram Rathiya S/o Seetaram Rathiya, aged about 26 years, R/o Shyang Nawadih, PS Kartala, Distt. - Korba C.G.

---- Appellant
(in jail 21.02.2011)

Versus

- State Of Chhattisgarh Through PS Kartala, Distt. - Korba C.G.

---- Respondent

For Appellant:	Shri Prakash Tiwari, Advocate with Shri Palash Tiwari, Advocate
For Respondent:	Shri Vivek Sharma, Government Advocate.

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

Judgement

Per P. Diwaker, J

06/05/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 1.9.2012 passed by the Sessions Judge, Korba in S.T. No.30/2011 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 and fine of Rs.1,000/-, in default to undergo additional R.I. for 1 year.
2. Accused/appellant is the son of deceased Seetaram. As per case of the prosecution, there was a dispute between the appellant and the deceased over the construction of house and on the fateful day i.e. 20.2.2011, when the deceased was resting on the cot, the accused/appellant caused six axe injuries on various parts of the body of deceased. The deceased was immediately taken to the hospital where his MLC was done vide Ex.P-18.

FIR (Ex.P-6) was registered against the accused/appellant under Section 326 IPC. During the course of treatment the deceased succumbed to the injuries and therefore the offence under Section 302 IPC was registered against the accused/appellant. Inquest over the body of deceased was prepared on 22.2.2011 vide Ex.P-13. Dead body was sent for post mortem examination to the District Hospital, Korba where Dr. R.K. Divya (PW-12) conducted autopsy and noticed following injuries

- Compound fracture in the middle part of humerus bone with stitched wound of 7 cm size in length.
- Stitched wound over left forearm of 7cm size in length.
- Stitched wound over left palm dorsum of 6cm in length.
- Stitched wound over left forearm at posterior aspect side having length of 6 cm.
- Stitched wound over left forearm of 2½ cm size in length.
- Stitched wound over urinal bladder of 2½ cm size in length.
- Fracture in the middle of right radio-ulna bone.

The autopsy surgeon has opined the cause of death to be shock due to injury of vital organs i.e. perforation of stomach, small intestine with haemorrhage and multiple fracture of bones, and the death was homicidal in nature. Accused/appellant was taken into custody and his memorandum statement was recorded on 21.2.2011 based on which axe used for committing the offence was seized vide Ex.P-10. The axe seized at the instance of accused/appellant was sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-29 was received in which presence of blood on the axe has been affirmed. Statements of witnesses were recorded under Section 313 of Cr.P.C.

3. On completion of investigation, charge sheet for the offence punishable

under Section 302 IPC was filed against accused/appellant and accordingly the charge was framed by the trial Court against him. The prosecution in order to bring home the charge levelled against accused/appellant examined 18 witnesses in all. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted and sentenced the accused/appellant in the manner as described above.
5. Learned counsel for accused/appellants submits that;
 - conviction of the appellant is substantially based on the circumstantial evidence i.e. last seen, and in the cases of circumstantial evidence the prosecution is required to prove that the entire chain of circumstances is complete but in the present case the quality of evidence is not as such on which basis it can be said that chain of circumstances is complete.
 - Evidence of Nehar (PW-5) & Dr. K.S. Porte (PW-9), alleged witnesses of oral dying declaration made by the deceased, are not reliable and likewise, witnesses of last seen is also not reliable because Sonmati (PW-3) has categorical stated that if the accused/appellant would remain in jail then the entire property would devolve to her.
 - Even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 325 IPC or in any condition, under Section 304 Part-I IPC and not under Section 302 IPC as has been done by the trial Court.
 - Appellant is in jail since 21.2.2011 and thereby completed more than five years of jail sentence and therefore while converting his conviction,

the sentence imposed upon him may be reduced to the period already undergone.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. There is no reason to disbelieve the testimonies of Sonmati (PW-3), Nehar (PW-5) & Dr. K.S. Porte (PW-9). He further submits that from the injuries caused by accused/appellant it is apparent that accused/appellant had not only intention to kill the deceased but also had the knowledge that the injuries being inflicted by them on the deceased were sure to result in his death and therefore he is not entitled for any leniency.
7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Chamar Rai Rathiya (PW-1) is the person who lodged the FIR (Ex.P-6) and also a witness to the inquest (Ex.P-13). However, this witness has not supported the prosecution in its entirety and turned hostile.
9. Dev Singh (PW-2) is the witness of memorandum (Ex.P-9) and seizure memo (Ex.P-10), but he has not supported the prosecution and turned hostile. However, this witness has admitted his signature over the aforesaid documents.
10. Sonmati (PW-3) is the step mother of accused/appellant and wife of the deceased. She has stated that her husband (deceased) used to say after construction of new house, they all would live there together. She has further stated that the accused/appellant had asked the accused/appellant many times to live with him, but he refused. On the date of incident, after removing the door of old house, her husband (deceased) was resting on

the cot. At that time wife of accused/appellant came and informed that her daughter is suffering from fever whereupon she asked accused/ appellant to take his daughter to the quack for indigenous treatment, however, he refused to do so and then the deceased asked her to take the daughter of accused/appellant to the quack and accordingly, she went to the quack. On returning home, she found her husband lying in injured condition on the cot and being asked, he informed her that it is the accused/ appellant who had inflicted axe injuries on him. She has further stated that while they were going to the hospital, the accused/appellant met her on the way and asked as to what had happened to the deceased and then she replied that knowing well that you have committed the incident, you are asking me as to what had happened. She has further stated that the deceased died in the hospital during the course of treatment. Nothing has been asked by the defence in the cross-examination of this witness about the oral dying declaration made by the deceased to her.

11. Chandrabhan (PW-4), Nehar (PW-5), Vinod Kumar (PW-7) & Sheikh Yaseen (PW-8) have been declared hostile by the prosecution as they have not supported the prosecution case.
12. Dr. K.S. Porte (PW-9) is the person who treated the deceased at Community Health Centre, Kartala. He has stated that the deceased informed him that his son (accused/appellant) had assaulted him at 5.00 p.m. This witness has admitted that injuries present on the body of the deceased were not fatal.
13. J.P. Thakur (PW-10) is the person who did initial part of the investigation.
14. Dr. R.K. Divya (PW-12) is the doctor who conducted post mortem examination on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was shock

due to injury of vital organs i.e. perforation of stomach, small intestines and multiple fractures and death was homicidal in nature. This witness has also opined that injuries No.1 to 5 present on the body of deceased were not fatal in nature.

15. Kedar Singh (PW-14) is the Investigating Officer and he has duly supported the prosecution case.

16. K.R. Sahu (PW-15) is the Sub Inspector who helped in the investigation.

17. Maniram (PW-16) has stated that having come to know that somebody had assaulted the deceased, he visited the house of deceased and saw the deceased lying on the cot and at that time he was talking. This witness has not supported the prosecution case and turned hostile.

18. Sheikh Nooruddin (PW-17) is the witness of inquest Ex.P-13.

19. Ram Singh Kanwar (PW-18) is the Patwari who prepared the spot map vide Ex.P-3.

20. Close scrutiny of evidence makes it clear that on 20.2.2011 when the deceased was alone in his house and resting on the cot, the accused/appellant caused repeated axe injuries to him as a result of which he died on 22.2.2011 in the hospital while undergoing treatment. The deceased immediately after the incident made statement before Sonmati (PW-3) & Dr. K.S. Porte (PW-10) that it is the accused/appellant who had inflicted axe injuries on him. According to Sonmati (PW-3), at the instance of deceased she had gone to the quack for indigenous treatment of the daughter of accused/ appellant and on returning home, she found the deceased lying in a pool of blood and being asked, the deceased informed her that accused/appellant had assaulted him by axe. Dr. K.S. Porte (PW-10), who had no axe to grind against the accused/appellant, has stated that the deceased was produced before

him for treatment, he was conscious & talking and being asked, he informed him that his son (accused/appellant) attacked on him. No suggestion has been given to the aforesaid witnesses by the defence during the course of their cross-examination that the deceased had not made any statement before them that it is the accused/appellant who had inflicted injuries on him or as to why they would falsely implicate the accused/appellant roping them in false charge of murder. This apart, on the memorandum (Ex.P-9) of accused/appellant, an axe was seized vide Ex.P-10 and as per report of FSL (Ex.P-29), blood was found on it, however, no explanation as to its source has been offered by the defence in his statement under Section 313 Cr.P.C.

Another piece of evidence against the accused/appellant is that according to Sonmati (PW-3), after the accused/appellant refused to take his unwell daughter to the quack, she took her to the quack and on returning home, she found her husband lying on the cot in injured condition. Thus it is apparent that accused/appellant and deceased were alone together in the house before the occurrence and thereafter the deceased was found dead, but the accused failed to explain in his statement under Section 313 Cr.P.C. as to how and when he parted company of the deceased. Thus, on the basis of evidence adduced by the prosecution, the complicity of accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

21. Coming to submission of accused/appellant that the act attributed to the accused/appellant would fall within the ambit of Section 304 Part I or II IPC. True it is that the injuries were not caused on vital part of body except one in the stomach due to which the deceased died two days later and according to the medical evidence, the injuries present on the body of

deceased were not fatal to his life. It is thus apparent that the accused/appellant had not taken undue advantage or acted in a cruel & unusual manner, but looking to the manner in which accused/appellant had assaulted the deceased, number of injuries inflicted by him and the weapon used in the commission of crime i.e. axe, it is also apparent that the accused/appellant had the intention to cause such bodily injuries to the deceased as was likely to cause his death and as such, act of accused/appellant would be culpable homicide not amounting to murder, making him liable to be convicted under Section 304 Part-I IPC and not under Section 302 IPC as has been held by the trial Court.

22. In the result, the appeal is allowed in part. Conviction of accused/appellant is altered from Section 302 IPC to Section 304 Part-I IPC and he is sentenced to undergo R.I. for 10 years. The appellant is already in jail, therefore, no order regarding his surrender etc. is needed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S. Uboweja)
Judge

roshan