

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 882 of 2013

1. Awadoot @ Dhoomdas Sahu S/o . Viratlal Sahu, aged about 34 years R/o. Village Pikipali, Police Station Baramkela, District Raigarh, Revenue District and Civil District Raigarh (C.G.)

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

Versus

1. State of Chhattisgarh Through: the Station House Officer, Police Station Baramkela, Distt. Raigarh (C.G.)

---- Respondent

For Appellant:
For Respondent:

Shri Rajneesh Shrivastava, Advocate.
Shri Ashish Shukla, Government Advocate.

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

Judgement

Per P. Diwaker, J

22/01/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 23.8.2013 passed by the Special Judge, (SC/ST Act), Raigarh in Special Case No.64/09 convicting the accused/appellant under Sections 302 & 323 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life & fine of Rs.10,000/-, in default to undergo additional R.I. for 03 years and R.I. for 06 months and fine of Rs.500/-, in default to undergo R.I. for 01 month respectively.
2. The prosecution story, in brief, is that on 2.11.2009 at about 23.10 hrs Chitrasen (PW-8), son of deceased Shaukilal, lodged the merg intimation (Ex.P-2) alleging therein that on that day at about 6-6.30 p.m his father

Shaukilal was done to death by accused/appellant and injuries have been caused to him also by the accused/appellant. Immediately thereafter FIR (Ex.P-11) was registered against the accused/appellant under Sections 302, 294, 506, 323 of IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989'). Inquest was prepared vide Ex.P-12. Body of the deceased was sent for post-mortem which was conducted by Dr. J.R. Dhritlahare (PW-11) on 3.11.2009 vide Ex.P-11 and noticed following injuries:-

- Lacerated wound of 5x3x1cmxdeep to bony prominence on the right side of face.
- Incised wound at angle of mandible, right side, of 4x2cm with swelling at face.
- Contusion on the right parietal region of 2x2cm
- Abrasion on the left side of face near the ear of 9x6cm. Pinkish in colour.
- Incised wound in front of left ear of 2x1cm and 3x1cm horizontal.
- Incised wound on the back side of left ear of 2.5cm x 1cm horizontal.

The doctor has opined that cause of death was haemorrhagic shock due to head injury and death was homicidal in nature. Injured Chitrasen (PW-8) was also medically examined by the doctor (PW-11) vide Ex.P-20 who noticed following injuries;-

- lacerated wound of 5x2cm on left knee
- abrasion of 2x2cm on right knee.

After completion of investigation, charge sheet was filed against the accused/appellant and the trial Court has framed charges under Sections 302 & 323 of the IPC and Section 3 (2) (v) of the Act, 1989 against the accused/appellant.

3. So as to hold the accused/appellant guilty, the prosecution examined as

many as 16 witnesses. Statement of the accused/appellant was 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.

4. After hearing the parties, the Court below, while acquitting the accused/appellant of the charge under Section 3 (2) (v) of the Act, 1989, has convicted & sentenced the accused/appellant in the manner as described above.

5. Learned counsel for the accused/appellant submits that;

- there exists a land related dispute between the accused and the deceased due to which he has been falsely implicated in the crime in question.
- though the prosecution has examined Chitrasen (PW-8) & Bhuvneshwar Sahu (PW-10) as eyewitnesses to the incident but their evidence are not reliable and there are material contradictions and omissions in their statements.
- 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.
- Appellant is in jail for last more than six years, therefore, after converting his conviction into Section 304 Part-1, he may be sentenced to the period of detention already undergone by him.

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 Chitrasen (PW-8) & Bhuvneshwar (PW-10), who are eyewitnesses of incident. The appellant had caused as many as six injuries 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. Rohit Kumar (PW-1) is the village Kotwar. He has stated that having been informed by Chitrasen (PW-8) that the accused had killed his father Shaukilal, he immediately rushed to the spot and saw the deceased lying in injured condition. He is also the witness of spot map (Ex.P-1).
9. Chaitu Sahu (PW-2) is the witness of documents (Ex.P-1 & P-2).
10. Dhobaram Sidar (PW-3) is the witness of seizure memos Ex.P-4 to P-8 by which bloodstained stone, soil, plain soil, motorcycle and clothing were seized. He is also witness to the spot map of Ex.P-3 & panchnama of Ex.P-1.
11. Sadhram Yadav (PW-4) is the person who reached on the spot after coming to know about the incident from Chitrasen (PW-8). He has stated that there was a land related dispute between accused and deceased.
12. Setkunwar (PW-5) is the wife of deceased who also came to know about the incident through her son Chitrasen. She too has stated about the existence of land related dispute between the accused and the deceased.
13. Goverdhan (PW-6) and Pardeshi (PW-7) are the witnesses of inquest (Ex.P-9)
14. Chitrasen (PW-8) is an injured eyewitness of the incident. While supporting the prosecution case, this witness has stated that on the fateful day his father and Bhuvneshwar (PW-10) were irrigating the field. On his

arrival, his father left the field by saying that he is going to the house. At about 6-6.30 p.m. upon hearing the voice of his father that accused/appellant is assaulting him, he along with Bhuvneshwar rushed towards the side where from the voice was coming and on reaching there, he saw that his father is lying on the ground and accused/appellant is assaulting his father by pointed stone. When he tried to intervene, accused/appellant said to him that he had already killed his father, now he would kill him also and saying so, he threw the club aiming at him which hit his left shoulder. While he was running away, the accused/appellant again threw the same club aiming at him which hit his left shoulder. He came running to the village and informed about the incident to her mother & nephew and thereafter all of them came on the spot, however, by that time the accused/appellant fled from there. The deceased informed them that it is the accused/appellant who assaulted him. The deceased was taken to Baramkela hospital in the Bolero vehicle where he was declared brought dead by the doctor. He has further stated that he was also medically examined by the doctor. This witness remained firm in the cross-examination and nothing incriminating could be elicited by the defence in his evidence so as to discredit his testimony.

15. Kanhaiya Lal Sarthi (PW-9) is the witness of seizure memos (Ex.P-4, P-5, P-7 & P-13), memorandum (Ex.P-16), spot map (Ex.P-3) and panchnama (Ex.P-1).
16. Bhuneshwar Sahu (PW-10) is another eye-witness of the incident. This witness has categorically stated that on the date of incident, he along with the deceased and Chitrasen (PW-8) had gone for irrigating the field and after completing the said work, the deceased left the place for his house. After some time, he and Chitrasen had heard the voice of the deceased

coming from the side of pond that Dhoomdas is assaulting him. On this, they reached there and saw that accused is sitting on the chest of deceased and assaulting him by stone. He has further stated that when Chitrasen (PW-8) tried to intervene, accused/appellant chased him saying that he would kill him also. This witness remained firm in his cross-examination.

17.Dr. J.R. Dhritlahare (PW-11) is the witness who conducted post-mortem examination on the body of the deceased and gave his report of Ex.P-17. According to this witness, he noticed as many as six injuries on the body of deceased and opined the cause of death haemorrhagic shock due to head injury and the death was homicidal in nature. The query raised by the police – whether injuries present on the body of the deceased could be caused by the pointed stone produced before him, has been answered by this witness in the affirmative vide Ex.P-18.

18.Dr. B.C. Sai (PW-12) is the witness who examined the injuries of Chitrasen (PW-8) and gave his report of Ex.P-20.

19.Hemsagar (PW-13) is the Patwari who prepared the spot map (Ex.P-3).

20.Ajit Patle (PW-15) is the investigating officer and he has duly supported the prosecution case.

21.M.S. Kaushal (PW-16) is the witness who did initial part of investigation.

22.Close scrutiny of the evidence makes it clear that on 2.11.2009 at about 6-6.30 p.m. in the evening the accused/appellant had assaulted the deceased with the pointed stone and injuries suffered by him led to his death. Accused/appellant had also caused injuries to Chitrasen (PW-8) by club. The incident was witnessed by injured Chitrasen (PW-8), son of deceased, & Bhuvneshwar (PW-10) and these witnesses have categorically stated that it is the accused/appellant who had assaulted the

deceased with pointed stone. Their evidence finds corroboration not only from the facts stated in the promptly lodged FIR (Ex.P-11) but also from the medical evidence wherein it has been stated that cause of death was haemorrhagic shock due to head injury by sharp, hard & blunt object. Query raised by the prosecution as to whether the injuries present on the body of the deceased could be caused by the seized stone, was also answered by the doctor in affirmative. This apart, on the basis of disclosure statement (Ex.P-16) made by accused/appellant, bloodstained clothing were recovered vide seizure memo of Ex.P-15 and there is no explanation from the accused/appellant as to how the blood stains are there in the articles seized from his possession. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve statements of eyewitnesses who have described the incident in a lucid manner.

23. Further, we find no substance in the argument of counsel for the accused/appellant that in the facts and circumstances of case the accused/appellant is liable to be held guilty under Section 304 Part-I of the IPC. The manner of attack by the accused/appellant i.e. accused/appellant sat on the chest of deceased and assaulted him repeatedly by pointed stone on the vital parts of the body including head, goes to show that the accused/appellant 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.

24. Thus, considering the totality of facts and circumstances of case, the un-rebutted eyewitnesses' account which finds due corroboration from the medical evidence, this Court is of the considered opinion that the trial Court was fully justified in convicting and sentencing the accused/

appellant under Section 302 of IPC for causing murder of the deceased.

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/-
(C.B. Bajpai)
Judge

roshan/-