

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 181 of 2011

- Chalki Halba S/o Motiraram Hulba Aged About 26 Years
Occupation Agriculture, R/o Gram Katenar Patelpara, Thana
Darbha, Distt. Bastar Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Darbha, Distt.
Bastar Chhattisgarh.

---- Respondent

For Appellant	: Shri Ramakant Pandey, Advocate
For Respondent/State	: Smt. Smita Ghai,P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S.Samant

Judgment On Board By Pritinker Diwaker

16/05/2017

This appeal arises out of judgment and order dated 05.01.2011 passed by the Sessions Judge Bastar at Jagdalpur in S.T. No. 130/09 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 500/- with default stipulation.

2. The prosecution case in a nutshell is : On the fateful day i.e. 04.08.09, at about 4.00 p.m. daughter of the appellant was not well and he suspected that deceased had be-witched her daughter, he went to the house of the deceased carrying axe in his hand and said to him that because of him his daughter is ill and when the deceased denied this fact, out of anger with an intention to kill him, gave a blow of axe on the

head of the deceased resultantly he died on the spot itself. Merg intimation Ex.P-12 was recorded on 05.08.2001 at the instance of Lakshar @ Lakheshwar who is the grandson of the deceased. Thereafter FIR Ex.P-11 was registered against the accused/appellant under Section 302 IPC read with Section 4 of the *Chhattisgarh Tonhi Pratadna Nivaran* Act 2005. Inquest Ex.P-14 was prepared and body was sent for postmortem examination which was conducted by Dr. P.L.Mandavi (PW-7) vide Ex.P16 on 05.08.09 and according to him cause of death was shock due to head injury (brain hemorrhage) and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and Section 4 of the *Tonhi Pratadna Nivaran* Act 2005 and accordingly charge was framed.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 9 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) the accused/appellant has been falsely implicated in the crime in question.

ii) even taking the entire prosecution case as it is, at best appellant can be convicted under Section 304 IPC

iii) he is in jail since last eight years and therefore after converting the offence under Section 304 Part-I or Part-II, the appellant's sentence be reduced to the period already undergone by him.

6. On the other hand learned State counsel supported the order of conviction and sentence. However, regarding nature of offence, it was submitted that an axe blow was administered on the vital part of the body i.e. head which resulted in death of the deceased which was rightly held to be a case of an offence of murder.

7. We have carefully perused the judgment of the learned trial Judge and considered the arguments advanced by counsel for the appellants and the State counsel on the basis of the evidence brought on record.

8. Lakshar @ Lakeshwar (PW-4) is the grandson of the deceased. He has stated that on the date of incident he was sitting along with his grandfather, accused/appellant came there carrying axe in his hand and asked the deceased to cure his daughter and threatened him for life and when he denied the fact, out of anger he gave a blow of axe on the head of the deceased as a result of which his grandfather died on the spot itself. He has stated that he tried to intervene and also pushed the appellant. He has further stated that immediately after the incident he narrated about the entire incident to his aunt who was working at the field and then he informed about the incident to the village Kotwar. In cross-examination he remained firm and nothing could be elicited from him. Lachhani (PW-6) is the daughter-in-law of the deceased who has stated that at the time of occurrence of the incident she was working in

the field where she was informed about the incident by Lakeshwar (PW-4). Kamlu (PW-1) is a village kotwar to whom also the incident was informed by Lakeshwar (PW-4). He is also a witness of seizure Ex.P-2 by which axe was seized on the basis of memorandum of the accused/appellant. Dr. P.L.Mandavi (PW-7) conducted postmortem examination on the body of the deceased and according to him cause of death was shock due to head injury (brain hemorrhage) and death was homicidal in nature. Pramod Shrivastava (PW-9) is the Investigating Officer who has done the investigation.

9. Close scrutiny of the evidence makes it clear that on 04.08.09, it is the accused/appellant who had gone to the house of the deceased carrying axe in his hand under the suspicion that the deceased had bewitched his daughter and gave a blow of axe on the head of the deceased resulting his death. The incident has been witnessed by Lakeshwar (PW-4) grand son of the deceased who has duly supported the prosecution case and had immediately informed about the same to the village Kotwar (PW-1) and Lachhani (PW-6). All these witnesses have also supported the prosecution case. The postmortem examination also confirms the statement of PW-4. Further considering the nature of weapon used by the accused (axe) and the vital part of the body (head) of the deceased chosen by him, it is clear that the intention of the accused was to cause death of the deceased.

10. Thus on the basis of the aforesaid discussion, there is no reason to interfere in the judgment of conviction and sentence passed by the learned Additional Sessions Judge. Hence, the appeal filed by the appellant cannot be accepted. Consequently, the appeal is hereby

dismissed by maintaining the conviction as well as the sentence directed by the trial Court against the appellant. Appellant is in jail and therefore no further order is required.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S.Samant
Judge