

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1044 of 2007

- Purendra Soni @ Chhote @ Guddu S/o Brij Lal Soni, R/o Village Karhauwadih, P.S.Kharsia, Distt.-Raigarh,C.G.

---- Appellant

Versus

- State Of Chhattisgarh, Through P.S. Kharsia, CG

---- Respondent

For Appellant	:	Shri Aditya Khare, Advocate
For Respondent/State	:	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Pritinker Diwaker,J.

13/09/2017

This appeal has been preferred against the judgment and order dated 25.09.07 passed by the Sessions Judge, Raigarh in Sessions Trial No. 21/06 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000 with default stipulation.

2. At the relevant time, appellant Purnendra Soni was the Up sarpanch of gram panchayat Karwadih whereas deceased Komal Singh Rathia was the Sarpanch. It is said that on 19.04.06, a gram sabha was being organized for construction of road, deepening of pond, building water tank and kitchen, proposal was passed and members signed in the register and thereafter some of them left the said place however

rest of the members were present inside the Angan Badi Bhawan. At about 3.30 p.m. accused/appellant came there carrying axe and gave two-three blows of axe on the body of deceased Komal Singh as a result of which he died instantaneously. Merg intimation Ex.P-9 was recorded on 19.04.06 at the instance of Sadhan Das Panika (PW-7), Kotwar. Immediately thereafter FIR Ex.P-7 was lodged by him against the appellant under Section 302 IPC. Inquest Ex.P-12 on the body of deceased was prepared and body was sent for postmortem examination by Dr. S.K.Agrawal (PW-6) vide Ex.P-21 and according to him, there were three incised wounds over left upper arm muscle deep, on chin bone deep and back of neck and cause of death was instantaneous and sudden due to injury over spinal cord and heavy bleeding and death was homicidal in nature. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 19 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. This apart two defence witnesses have also been examined.

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) statement of eyewitnesses Sadhan Das Panika (PW-7), Lakhan

Singh Rathia (PW-8), Lahran Ram Pradhan (PW-9) and Navratan Gupta (PW-10) does not appear to be trustworthy.

ii) even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304-Part II or Part I IPC.

iii) from the record it appears that the appellant is suffering from serious ailment and therefore a lenient view be taken against him.

6. On the other hand, it has been argued by the State counsel that there are as many as four eyewitnesses i.e. Sadhan Das Panika (PW-7), Lakhan Singh Rathia (PW-8), Lahran Ram Pradhan (PW-9) and Navratan Gupta (PW-10) and they have supported the prosecution case. He submits that even Medni Prasad Gupta (PW-11) and Smt. Balkunwar Kanwar (PW-14) have partially supported the prosecution case and the statement of these witnesses have been duly supported by the postmortem report of the deceased. State counsel further submits that as many as three incised wounds have been caused by the appellant including the one on the neck by axe and therefore his conviction under Section 302 IPC is in accordance with law and there is no infirmity in the same.

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

8. Sadhan Das Panika (PW-7) is the village kotwar who lodged the FIR Ex.P-7 and merged intimation Ex.P-9, while supporting the prosecution case has stated that on the date of incident, meeting was being organized for construction of road, deepening of pond, building water tank and kitchen and there the accused/appellant came carrying

axe and gave blow of axe on the deceased. He has stated that number of villagers were present in the meeting who caught hold of the deceased. Lakhan Singh Rathia (PW-8) has stated that in the meeting at about 3.30 p.m. accused/appellant came there carrying axe in his hand and assaulted the deceased on his neck and chin as a result of which he died. In cross-examination he remained firm and has reiterated as to the manner in which the deceased was done to death by the accused/appellant. Lahran Ram Pradhan (PW-9) and Navratan Gupta (PW-10) are the other witnesses to the incident have duly supported the prosecution case. Medni Prasad Gupta (PW-11) another witness to the incident has stated that he saw the accused/appellant holding axe in his hand. Smt. Balkunwar Kanwar (PW-14) also saw the accused/appellant assaulting the deceased. Dr. S.K.Agrawal (PW-6) conducted postmortem examination on the body of deceased and opined that there were three incised wounds over left upper arm muscle deep, on chin bone deep and back of neck and cause of death was instantaneous and sudden due to injury over spinal cord and heavy bleeding and death was homicidal in nature. B.M. Puri (PW-19) is the Investigating Officer who has done the investigation.

9. Close scrutiny of the evidence makes it clear that on account of previous dispute on 19.04.06, in the meeting of gram sabha accused/appellant caused number of injuries on the vital part of the body of the deceased as a result of which he died. Immediately after the incident FIR was lodged by village kotwar who is the eyewitness to the incident and there are as many as four eyewitnesses to the incident i.e. Sadhan Das Panika (PW-7), Lakhan Singh Rathia (PW-8), Lahran Ram Pradhan (PW-9) and Navratan Gupta (PW-10) and all of them have supported the prosecution case and stated that they saw the

accused/appellant assaulting the deceased. Even the postmortem examination also supports the statement of the eyewitnesses. Furthermore Medni Prasad Gupta (PW-11) and Smt. Balkunwar Kanwar (PW-14) have also seen the accused/appellant carrying axe in his hand. This apart, as per FSL report Ex.P-23, on the shirt and axe seized at the instance of the appellant blood has been found on them. Thus, we find no substance in the argument of the counsel for the accused/appellant that he is liable to be convicted under Section 304 Part I or Part II IPC. The manner in which the injuries have been inflicted on the deceased clearly makes out a case under Section 302 IPC. The trial Court was justified in convicting the accused/appellant under Section 302 IPC. Appeal has no substance the same is accordingly dismissed.

If the appellant has not been arrested till date, police authorities are directed to make all the efforts to arrest him and send to jail.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge