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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 263 of 2006

- Ganesh Madrasi S/o Raju Madrasi, aged 26 years, R/o village Nawagarh, Thana Ambikapur, District Sarguja (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through – P.S. Ambikapur, District Sarguja (C.G.)

---- Respondent

For Appellant : Shri P.P. Sahu, Advocate.
For Respondent/State : Shri Vivek Sharma, G.A.

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

Judgment On Board

By Pritinker Diwaker, J

28/08/2017

This appeal arises out of the judgment of conviction and order of sentence dated 08.02.2006 passed by the 1st Additional Sessions Judge, Ambikapur District Sarguja, in S.T. No.156/2004 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, in default of payment of fine amount to further undergo R.I. for one year.

02. As per the prosecution case, the appellant wanted to marry Dilrajo Bai (PW/1), daughter of deceased Balmat. It is said that on 16.01.2004 at about 2.00 pm, the appellant had caused single injury on left leg of the deceased by battle-axe . Thereafter, injured was taken to



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hospital where he succumbed to his injuries on the same day at 3.20 pm. In the meanwhile, on 16.01.2004 at 2.40 pm, FIR Ex.P/1 was lodged against the appellant by Dilrajo Bai (PW/1). After receiving an information from the hospital about the death of the deceased, merger intimation Ex.P/8 was recorded on 16.01.2004 at 4.00 pm. On the same day, inquest was prepared on the body of deceased vide Ex.P/10. Body was sent for postmortem to District Hospital, Ambikapur where Dr. Azad Bhagat (PW/12) conducted postmortem on his body on 17.01.2004 and gave his report Ex.P/14 opining the cause of death to be shock as a result of excessive hemorrhage from the incised wound. After filing of charge sheet, the trial Court framed the charge against the accused/appellant under Section 302 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statement of the accused/appellant was also 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits that :

(i) Admittedly, present is a case of single injury caused by the appellant on the left leg of the deceased and not on any vital part and, therefore, the case of the appellant would fall within the ambit of Section 323 or 326 of IPC and not under Section 302 IPC as has been done by

the Court below.

(ii) It has been argued that the appellant has already remained in jail for about three and half years and, therefore, after converting his sentence into Section 323 or 326 of IPC, his sentence may be reduced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Dilrajo Bai (PW/1) is daughter of the deceased. She has stated that she knew the appellant who wanted to marry with her and when she refused to marry him, he got annoyed and gave injury on the leg of her father by battle-axe. Thereafter, her father was taken to hospital where he succumbed to his injuries. Defence has cross-examined this witness at length but has not been able to elicit anything in cross-examination to discredit her testimony especially to the fact that the appellant had not caused any injury to the deceased. Sanotri Bai (PW/2), Manmati (PW/3), Dhansai (PW/4) and Bhagwan Kushwaha (PW/9) have turned hostile. G.S. Pandey (PW/5) is the Assistant Sub Inspector who registered the FIR (Ex.P/1) and merged (Ex.P/9). Kishun Ram (PW/6) and Ravi Prakash (PW/7) are the formal witnesses. Vishwanath Tiwari (PW/8) is the Patwari who prepared spot map vide Ex.P/11. Dr. Azad Bhagat (PW/12) is the witness who conducted

postmortem on the body of deceased and gave his report Ex.P/14 noticing following injuries:-

- (i) Left leg was bandaged.
- (ii) On opening bandage, incised wound over left leg over middle 1/3rd region on posterior aspect placed obliquely in the size of 7 x 4.5 cm x bone deep.

The Doctor has found vessels of the deceased to be cut and opined the cause of death to be shock due to excessive hemorrhage from the incised wound.

09. J.S. Bhadoriya (PW/13) is the Investigating Officer who had duly supported the prosecution case.

10. Close scrutiny of the evidence available on record, makes it clear that on 16.01.2004, the appellant came to the house of PW/1, daughter of the deceased, and made proposal of marriage and when she refused to marry him, he got annoyed and gave a single blow on left leg of the deceased by battle-axe as a result of which his vessels got cut and he died in the hospital while undergoing treatment. The incident was witnessed by PW/1, who has categorically stated that it is the appellant who caused injury to the deceased on his leg by battle-axe. Evidence of this witness gets corroboration from the promptly lodged FIR (Ex.P/1) naming the appellant to be the perpetrator of crime and also medical evidence in which injury on left leg of the deceased was noticed and according to autopsy surgeon (PW/12), the same was caused by sharp object. In these circumstances, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.



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11. Now the question to be considered by this Court is whether the act of the appellant makes him liable to be convicted under Section 302 IPC.

12. Looking to the facts and circumstances of case, the nature and number of injury coupled with the medical evidence and further considering the fact that there is nothing on record to suggest that the appellant wanted to cause some other injuries, it would not be safe to hold that the appellant caused injury to the deceased in an attempt to commit his murder. However, the nature and number of injury caused and the weapon used for causing such injury, it can safely be said that the accused/appellant had caused grievous injury to the deceased with dangerous weapon battle-axe making him liable to be convicted under Section 326 IPC.

13. As regards the sentence, considering the fact that the appellant has already remained in jail for a period of three years and six months and the incident had taken place in the year 2004 i.e. about 13 years have elapsed since then, this Court is of the considered opinion that it will be in the interest of justice to sentence him to the period already undergone by him.

14. Accordingly, the appeal is partly allowed. While acquitting the appellant of the charge under Section 302 IPC, he is held guilty under Section 326 IPC and sentenced to the period already undergone by him. He is directed to deposit an additional sum of Rs.5,000/- with the concerned trial Court within a period of six months from today under Section 357 (3) of Cr.P.C., failing which he shall have to suffer R.I. of



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six months. The amount so deposited shall be paid as compensation to Dilrajo Bai (PW/1), daughter of the deceased Balmat, by the trial Court after due verification.

15. The appellant is already on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge

vijay