

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 367 of 2004

- Sita Ram, Son of Bodhi Singh, aged about 30 years, resident of Pater Kony, P.S. Gaurela (Pendra Road) District Bilaspur (CG)

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant	:	Smt. Ranjana Jaiswal, Advocate
For Respondent	:	Shri Avinash K Mishra, Panel Lawyer

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

Judgement

17/08/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 30.4.1998 passed by the 7th Additional Sessions Judge, Bilaspur in S.T. No.400/97 whereby the accused/appellant has been convicted under Sections 307 & 302 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo R.I. for 10 years and R.I. for Life.
2. As per prosecution case, on 28.6.1997 at about 9.00 in the morning on account of old land dispute the accused/appellant firstly inflicted injuries to Rammu (PW-9) by axe as a result of which he became unconscious. Thereafter the accused/appellant chased Panchu and committed his murder by causing axe injuries to him. FIR (Ex.P-4) was registered on the same day at 10.30 a.m. at the instance of Ramswaroop (PW-2). Merg (Ex.P-15) was also registered on the same day. Inquest on the dead body

was made vide Ex.P-9. Dead body was sent for post-mortem which was conducted by Dr. R.K. Gupta (PW-8) vide Ex.P-12 and he noticed following injuries;-

- Incised wound of 2½" x 1" x ½" deep at the level of & over T, thoracic vertebra slightly left side on back, clotted blood with cut.
- Incised wound of 2½" x 1" x deep upto thyroid cartilage antero lateral left side of neck 1" above the base of neck, left sterno cleidomostoid.
- Abrasion of 3"x1" on back of left forearm.

The doctor has opined that cause of death was syncope caused by haemorrhagic shock due to injuries over neck and back. Injured Rammu (PW-9) was also medically examined by Dr. R.K.Gupta (PW-8) vide Ex.P-25 and he noticed following injuries on his person;-

- Left leg was totally cut from below knee only tag of skin present.
- Incised wound of 6x1cm x muscle deep over left scapular region
- Incised wound of 9x4x4cm, muscle deep over left scapular region
- Incised wound of 5x1x2cm, muscle deep over upper part of left side of neck.
- Incised wound of 9x1cmx1cm, muscle deep with muscle incised at left side of neck upper part at level of angle of mandible
- Incised wound of 7 x 1 cm x bone deep over posterior region in left side extended to left ear.
- Incised wound of 3x1cm, through & through cut of pinha.
- Incised wound of 3x1cm x muscle deep over left side of face
- incised wound of 2x1cm of size, muscle deep transversely placed over left side of fact in front of left ear.
- Lacerated wound 3x1cm, bone deep over occipital region of scalp, left side.

The doctor has opined that all the injuries were caused by hard and sharp cutting object except Injury No.10 which is caused by hard and blunt object. He further opined that Injuries No.1, 6 & 7 were grievous in nature.

3. On completion of investigation, charge sheet for the offence punishable under Sections 302 & 307 of the IPC was filed against the accused/appellant and accordingly the charges were framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the appellant had examined 9 witnesses in all. Statement of 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 the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for accused/appellant submits that;
 - conviction of appellant is based on the testimony of injured eyewitness Rammu (PW-9), but his evidence is not reliable and trustworthy and therefore on the basis of his evidence, it is not safe to convict the appellant.
 - on account of old land dispute between the accused/appellant and complainant party, he has been falsely implicated in the crime.
 - though certain articles seized allegedly at the instance of appellant were found to be stained with blood but in absence of serological report opining that the blood group of the deceased was detected on those articles, the FSL report has no evidentiary value.
 - even if the entire prosecution case is taken as it is, at best the appellant can be held guilty under Section 304 Part-1 of the IPC and not under Section 302 IPC because the incident had occurred all of sudden, in the spur of moment and without any premeditation.
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. He further submits that Rammu (PW-9), an injured witness, has duly supported the prosecution and there is no reason before this Court to disbelieve his testimony. He further submits that considering the evidence of injured eye-witness (PW-9) coupled with the medical evidence, according to which corresponding injuries were found on the body of deceased, though serological report is not there, but the same is not fatal to the prosecution case, particularly when the accused/appellant failed to offer any explanation as to how the articles seized at his instance were found to be bloodstained.

7. We have heard counsel for the parties and perused the evidence available on record.
8. Motilal (PW-1) is the witness of memorandum of accused/appellant Ex.P-1 and seizure memo Ex.P-2 by which weapon of offence i.e. axe was seized.
9. Ramswaroop (PW-2) has been cited as an eyewitness to the incident by the prosecution. He has stated that on the fateful day he was working in his field. At about 12 noon one lady of the locality came and informed him that a quarrel between Rammu, Pancham & Sitaram is going on at the house of Bodhi. Hearing this, he went to the house of Bodhi and saw that Rammu was lying at the door of the house of Bodhi and injuries were present on his shoulder and leg. His leg was completely broken and blood was oozing from his head. Accused/appellant armed with axe was chasing Panchu to assault him and in his presence, he gave three axe blows on temple region, shoulder and back of Panchu as a result of which he fell down. After assaulting Panchu, accused went towards the kitchen garden. Thereafter, he went to the police station and lodged the report of incident vide Ex.P-4. He is also a witness to seizure memo Ex.P-1 & P-3.

10. Sumitra Bai alias Dhelhin Bai (PW-3) did not support the prosecution case and turned hostile. Balwan Singh (PW-4) is the Patwari who prepared the spot map Ex.P-6. Ramprasad (PW-5) is the witness of inquest (Ex.P-9) and seizure memo (Ex.P-11) by which plain and bloodstained soil was seized.
11. Dr. R.K. Vyas (PW-6) is the person who conducted post-mortem on the body of the deceased and noticed injuries as stated above. He has stated that cause of death was syncope caused by haemorrhagic shock due to injuries over neck and the death was homicidal in nature. Query raised by the police as to whether the injuries found on the deceased could be caused by the axe seized from the accused/appellant has been answered by this witness in affirmative.
12. P. Santosh Rao (PW-7) is the investigating officer who has duly supported the prosecution case.
13. Dr. R.K. Gupta (PW-8) is the person who medically examined injured Rammu (PW-9) and noticed the injuries as described above. He has stated that Injury No.1 present on the body of injured was sufficient to cause his death in the ordinary course of nature.
14. Rammu Gond (PW-9) is the injured eyewitness. He has stated that on the fateful day he along with Panchu & Dhelain Bai had gone to the house of accused/appellant, at that time accused/appellant was inside his house. All of a sudden, accused/appellant armed with axe came from the side of kitchen garden and gave two axe blows on his left leg as a result of which his left leg was cut from below the knee. He has further stated that accused/appellant had caused axe injuries on his neck and back also. He has further stated that when Panchu tried to escape from there, accused chased him and gave axe blows on his neck as a result of which his neck got cut and he died. This witness remained very firm in the cross-examination and the defence has not been able to elicit anything in his

cross-examination which makes his testimony unreliable or untrustworthy.

15. Close scrutiny of the evidence on record makes it clear that on 28.6.1997 at about 9.00 in the morning the accused/appellant had assaulted Rammu (PW-9) and deceased Panchu by axe and the injuries suffered by Panchu (deceased) led to his instantaneous death. Injured witness Rammu (PW-9) has categorically stated that it is the accused/appellant who had assaulted him and the deceased as well by axe. This apart, Ramswaroop (PW-2), a person who had no axe to grind against the accused/appellant, has categorically stated that he saw the accused/appellant assaulting the deceased with axe. According to this witness, accused/appellant gave three axe blows on temple region, shoulder & back of the deceased as a result of which he fell down. Both these witnesses remained consistent throughout their cross-examination and nothing substantial was elicited to discredit their version. The defence has also not been able to show as to why the aforesaid witnesses would falsely implicate the accused/appellant in the crime in question. Furthermore, one bloodstained axe was seized at the instance of accused/appellant and there is no explanation from him as to how the blood stains are there in the axe seized at his instance. Motilal (PW-1), a seizure witness, has supported the seizure made from the accused/appellant. According to the medical evidence also, injuries to the deceased were caused by blunt and sharp edged weapon and as per query report (Ex.P-14), the grievous injuries found on the body of deceased could have been caused by the -axe seized at the instance of accused/appellant. Similarly, on account of injuries caused by accused/appellant, left leg of injured Rammu (PW-9) was cut off below the knee. PW-8 who medically examined injured Rammu (PW-9) has opined that Injury No.1 of the injured alone was sufficient to cause his death in the ordinary course of nature. 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.

Looking to the facts and circumstances of the case in particular the evidence of injured eye-witness who has categorically supported the case of the prosecution, this Court is not in the agreement of the submission of the counsel for the appellant that as the prosecution has not obtained the serological report to find out genesis of blood, the conviction cannot be made. There are several judicial pronouncements where it has been categorically held that if there is conclusive evidence on record indicating the involvement of accused/appellant, the Court is not supposed to look for any other evidence including the serological report to slap conviction on the accused. That apart, in the statement under Section 313 CrPC, the accused/appellant has utterly failed to bring forth any explanation as to how the blood stains appeared on the articles seized at his instance.

16. 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. he gave repeated axe blows to the deceased on his vital parts of the body including neck, 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.

17. 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 Sections 307 & 302 of IPC for attempting to commit murder of Rammu (PW-9) and for causing murder of the deceased.

18. In the result, the appeal being devoid of substance is liable to be and is, accordingly, dismissed. Appellant is reported to be on bail. His bail bonds stand cancelled. He is directed to surrender forthwith before the Court below concerned to serve out the remaining jail sentence imposed upon him.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RP Sharma)
Judge

roshan/-