

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 131 of 2009

- Chottelal @ Madhu, S/o. Shriram Uraon, Aged about 29 years, Occupation Farmer, R/o. Village Bishunpur Khurd, P.S.Gandhinagar, District Surguja (CG)

---- Appellant

Versus

- State Of Chhattisgarh, Through P.S. Gandhinagar, District Surguja (CG)

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent/State	:	Shri Adhiraj Surana, Dy.G.A.

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

Judgement on Board by Pritinker Diwaker, J.

20/09/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 27.12.08 passed by the Sessions Judge Surguja, District Ambikapur, in Sessions Trial No. 56/2008 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/-, plus default stipulation.

2. In the present case name of the deceased is Raghunath, father-in-law of the accused/appellant. It is said that on 10.11.07, deceased came to the house of accused/appellant. On some trivial issue the accused/appellant and his wife had a quarrel and when the appellant tried to beat her, she went inside and hid herself. Further case of the

prosecution is that under the influence of liquor, appellant started shouting by saying that he would finish the deceased. Father-in-law of the appellant intervened in the matter and tried to make him understand and thereafter when he was sitting in the verandah at about 9.00 p.m. accused/appellant assaulted him on his head with axe as a result of which he died. FIR Ex.P-1 and merger intimation Ex.P-2 was recorded on 10.11.07 at the instance of Ramkali, wife of the deceased under Section 302 against the accused/appellant. Inquest Ex.P-11 was prepared on 11.11.2008 and body was sent for postmortem examination which was conducted by Dr. J. K. Bhutani (PW-8) vide Ex.P-13 and according to him cause of death was coma 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. To prove the charges against the accused, prosecution has examined 10 witnesses. The statement of accused 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) both the appellant and the deceased were under the influence of liquor and thus if any act has been committed by the accused/appellant, lenient view is required to be taken.

ii) there was no premeditation on the part of the accused/appellant to commit the offence.

iii) quarrel appears to have started when the deceased intervened in the matter and during which under the influence of liquor, the appellant appears to have assaulted and caused injury to the deceased unfortunately resulting his death.

iv) appellant is in jail since 12.11.07 and has almost completed 10 years of jail sentence therefore after converting his conviction into Section 304 Part II or I IPC his sentence is reduced to the period already undergone by him.

Counsel for the appellant has placed her reliance in the matter of **Ahmed Shah Vs. State of Rajasthan** reported in **MANU/SC/0021/2015**.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that Ram Kali (PW-1) wife of the appellant has duly supported the prosecution case. Considering the nature of injury sustained by the deceased it is apparent that the accused/appellant has taken undue advantage and acted in a cruel and unusual manner therefore his case would not fall under Exception 4 of Section 300 and the trial court was justified in convicting him under Section 302 IPC.

7. On the memorandum of accused/appellant Ex.P-8, seizure Ex.P-9 of axe was made and as per FSL report Ex.P-20 blood has been found on the said axe.

8. We have heard counsel for the parties and perused the evidence on record and the impugned judgment.

9. Ramkali (PW-1) wife of accused/appellant who lodged the FIR and merged intimation has stated that on the date of incident in the evening deceased came to her house and there was some quarrel between her and the appellant. She has stated that at about 9.00 p.m. her husband and the deceased were in the verandah and she was inside. After about 10 minutes when she heard the *maar-peeth* and came out in the verandah, she saw her father lying on the ground in a pool of blood and there was injury on his temple. She has stated that at that time her husband was not there. She immediately called her brother-in-laws Manbodh, Dilbodh, and sister-in-laws who came there and after seeing the deceased they informed her that her father has died. In cross-examination, she remained firm and nothing could be elicited from her. She has further stated that at about 1.00 p.m. in the afternoon appellant had consumed liquor. Manbodh (PW-2) brother of the accused/appellant who reached the place of occurrence after being informed by Ram Kali (PW-1) has not supported the prosecution case and has turned hostile. After being declared hostile he has stated that on the date of incident, accused/appellant had consumed liquor in his house. Dilbodh (PW-3) is also the brother of the appellant has almost made similar statement as has been made by Manbodh (PW-2). Sukhendra Kumar (PW-4) and Ram Sai (PW-5) are the witnesses to memorandum Ex.P-8 and seizure Ex.P-9 have turned hostile. Somaruram (PW-6) is a witness to inquest. S.C.Shukla (PW-7) is the Head Constable who assisted in the investigation. Dr.J.K. Bhutani (PW-8) is the doctor who conducted postmortem examination on the body of deceased vide Ex.P-13 and found lacerated wound in the size 2 x 1 cm. posterior to left ear and contusion 4 x 3 cm. left to left outer of right eye. Multiple bony fragment felt on left temporal region. Upon

opening the head, he found that temporal bone was found in pieces and some of the pieces of bone have been entered the brain. According to him, cause of death was coma and death was homicidal in nature. He also examined the axe which was used in commission of the offence. P.Ekka (PW-9) is the Investigating Officer who has duly supported the prosecution case. Shiv Pujan Tiwari (PW-10) is the patwari who prepared spot map (Ex.P-4).

10. Close scrutiny of the evidence makes it clear that on 10.11.07 accused/appellant assaulted the deceased with axe resulting his instantaneous death. Ran Kali (PW-1) wife of the appellant has duly supported the prosecution case. According to the postmortem report of the deceased, the temporal bone was found in pieces and some of the pieces of bone have entered the brain. Even assuming that the deceased and appellant have consumed liquor prior to the incident it does not give license to the appellant to commit murder of the deceased. We find no substance in the argument of counsel for the appellant that the case of the appellant would fall under Exception 4 of Section 300 because present is a case where the accused/appellant had taken undue advantage and has acted in a cruel and unusual manner for committing the offence. The intention of the appellant and the gravity of the injury can be noticed whereby the temporal bone was found in pieces. It is thus apparent that the case of the appellant would not fall under Exception 4 of Section 300. The judgment relied upon by the counsel for the appellant is of no help to the appellant because the facts of the said case are entirely different from the present case. On the memorandum of accused/appellant Ex.P-9) seizure of axe (Ex.P-9) was made. Though as per FSL report Ex.P-20, blood was found on articles A,B, D i.e. *gamchha*, soil and axe, there is no serological report

but even in absence of same, FSL report can be treated as an additional evidence against the appellant.

11. In view of the aforesaid factual and legal position this Court is of the considered opinion that the prosecution has collected sufficient evidence to hold the accused/appellant guilty for committing the murder of his father-in-law and the Court below has also been justified to arrive at a conclusion of convicting the accused under Section 302 IPC. Accordingly, the judgment impugned calls for no interference in this appeal.

12. Appeal thus being devoid of any substance is liable to be dismissed and it is hereby dismissed. Judgment impugned is affirmed. Being already inside, no order in respect of arrest etc. of the accused/appellant is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge