

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 228 of 2013

- Bandhuraam Bhatra S/o Pachkaudi Bhatra Aged About 55 Years
R/o Guphni, Thana- Bhanpuri, Distt. Bastar C.G.

---- Appellant

Versus

- State Of Chhattisgarh S/o Through - P.S. Bhanpuri, Distt. Bastar
C.G.

---- Respondent

For Appellant : Shri Samir Singh, Advocate.

For Respondent/State : Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,

Hon'ble Shri P. Sam Koshy, JJ

Per P. Diwaker, J

25/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 23.1.2013 passed by the II Additional Sessions Judge, Bastar at Jagdalpur in ST No.107/2012 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. In the present case, name of the deceased is Sukman, nephew of the appellant. It is alleged that on account of old land dispute, on 4.6.2012 at around 4 am the accused/appellant committed murder of Sukman by causing several axe injuries. The entire incident is said to

have been witnessed by PW-6 Bondki whereas immediately after the occurrence PW-1 Shankar and PW-2 Badru Ram Kashyap also reached there. After the incident, injured Sukman was taken to Maharani Hospital, Jagdalpur where he succumbed to his injuries on 5.6.2012. In the meanwhile, FIR (Ex.P/10) was registered against the appellant under Section 307 of IPC. After the death of Sukhman, Unnumbered merg (Ex.P/20) and numbered merg (Ex.P/12) were recorded on 5.6.2012. Inquest over the dead body was prepared vide Ex.P/2 on 5.6.2012. The dead body was thereafter sent for postmortem which was conducted on the same day by PW-10 Dr. Mahendra Prasad vide Ex.P/22. He noticed stitched wound present in zygomatic area transverse in diameter upto left ear of size 5 cm x 1 cm approx bone deep and on internal examination found presence of scalp hematoma over left tempo-parietal region of size 4" x 3" approx. and there was internal bleeding in the brain. In his opinion, the cause of death was coma due to shock as a result of head injury. On 5.6.2012 memorandum of the appellant was recorded vide Ex.P/6, pursuant to which one axe and his lungi having stains like blood were seized vide Ex.P/7 & P/8 respectively. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all. Statement of the accused 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, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits that the appellant has been falsely implicated on account of there being old dispute between the parties. All the witnesses who have deposed against the appellant are relatives of the deceased and as such, being interested ones their evidence is required to be ignored. Alternatively, he has argued that even if the entire prosecution case is taken as it is, considering the manner in which the incident took place, the appellant may be convicted under Section 304 Part-I of IPC and as he is languishing in jail since 5.6.2012, after alteration of his conviction he may be sentenced to the period already undergone by him.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-6 Bondki, wife of the deceased, has stated that on the date of incident she was sleeping in her house, at that time the appellant entered her house and assaulted with axe near cheek of her husband as a result of which her husband fell down and blood started oozing from his face. He was admitted in Maharani Hospital, Jagdalpur where he succumbed to his injuries during treatment. In cross-examination, she has reiterated that it is the accused/appellant who inflicted axe

injury on her husband. PW-1 Shankar, son of the deceased, is the lodger of merg and also a witness to inquest. In cross-examination he has admitted the suggestion that he did not see the appellant assaulting his father, however, he has stated that he saw the appellant running away from the spot and when he entered his house, he found his father lying injured. PW-2 Bahruram Kashyap is a hearsay witness. PW-3 Narpat and PW-4 Sampat Kashyap are witnesses to memorandum and seizure. They have duly supported the prosecution case. PW-5 Laxman is a witness to inquest. PW-7 Tek Singh Thakur, Patwari, prepared the spot map Ex.P/4. PW-8 Satyanarayan Shukla, investigating officer, has duly supported the prosecution case. PW-9 S.S. Thakur, ASI, assisted in the investigation. PW-10 Dr. Mahendra Prasad conducted postmortem on the body of the deceased 5.6.2012 vide Ex.P/22 and noticed stitched wound present in zygomatic area transverse in diameter upto left ear of size 5 cm x 1 cm approx bone deep and on internal examination found presence of scalp hematoma over left tempo-parietal region of size 4" x 3" approx. and there was internal bleeding in the brain. In his opinion, the cause of death was come due to shock as a result of head injury.

09. Close scrutiny of the evidence makes it clear that on 4.6.2012 it is the accused/appellant who due to some old dispute assaulted his uncle Sukman by axe as a result of which he sustained grievous injuries, was admitted in hospital where he succumbed to his injuries on the next day. Eyewitness to the incident PW-6 Bondki, wife of the deceased, has categorically stated that appellant is the perpetrator of the crime. This apart, according to PW-1 Shankar immediate after the

incident he saw the appellant running away from the spot and when entered his house, found his father/deceased lying injured. On the memorandum of the appellant, weapon of offence axe and his bloodstained lungi were seized. Witnesses to the memorandum and seizure have duly supported the prosecution case. Medical evidence also lends due support to the ocular evidence according to which corresponding injuries were noticed on the person of the deceased and the cause of death was coma due to shock as a result of head injury.

10. Thus, considering the unrebutted ocular evidence duly supported by other documentary and medical evidence and non-explanation to the proved incriminating circumstances by the appellant in his statement under Section 313 of CrPC wherein he has made only bald denial of all such circumstances, the only inference which could be drawn is that it is the appellant and none else who committed the crime in question.

11. We also find no substance in the argument of counsel for the appellant that in the facts and circumstances of the case he is liable to be convicted under Section 304 Part-I of IPC. Considering the manner in which the appellant assaulted the deceased, the weapon of offence i.e. axe, the part of the body where assault was made and the force with which it was made, it can safely be inferred that while inflicting such injuries on the deceased, the appellant was not only having intention to cause his death but also had the knowledge that such bodily injury would result in his death. Being so, his conviction under Section 302 of IPC cannot be faulted with.

12. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order is required to be passed in respect of his arrest etc.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(P. Sam Koshy)
Judge

Khan