

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 121 of 2012

- Santosh Lohar R/o Village Kenda , Chowki Belgahana , Police Station Kota , Distt. Bilaspur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - The Police Station Kota , Distt. Bilaspur C.G.

---- Respondent

For Appellant	:	Shri Alok Dewangan, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble The Chief Justice
Hon'ble Shri Justice Pritinker Diwaker

Judgement

Per P. Diwaker, J

09/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 15.12.2011 passed by the Sessions Judge, Bilaspur in S.T. No.201/10 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.1,000/-, in default to undergo additional R.I. for 3 months.
2. In the present case name of deceased is Santosh Kewat.
3. The prosecution story, in brief, is that the accused/appellant along with deceased had gone to Delhi for his treatment where the deceased spent about Rs.500/- on his treatment. Though the accused had already repaid the said amount, but the deceased used to demand money from him and

therefore on 10.8.2010 when the deceased was standing at the *tiraha* (an inter-section of three roads) of the village, the accused/appellant had caused axe injuries to him as a result of which he died on the spot. Unnumbered Merg Ex.P-10 was recorded on 10.8.2010 itself. Dehati Nalishi was recorded vide Ex.P-14. Numbered merg intimation was recorded vide Ex.P-7. FIR (Ex.P-8) was registered on 12.8.2010 under Section 302 IPC against the appellant. Inquest was prepared on the body of deceased vide Ex.P-3. Body was sent for post-mortem examination which was conducted by Dr. Nand Raj Kanwar (PW-3) vide Ex.P-9 and he noticed one incised wound over right temporal region 5cm above right ear of 8cm x 1.5cm x 6cm in size, with extensive bleeding and one incised wound over right jaw below the eye of 1x 0.5cmx1cm in size. The doctor has opined that cause of death was haemorrhagic shock due to head injury along with injury to vital organ and the death was homicidal in nature. Memorandum of accused/appellant was recorded vide Ex.P-12 and on the basis of disclosure statement made by accused/appellant, one axe was recovered at his instance vide seizure memo Ex.P-13. Statements of witnesses were recorded under Section 161 CrPC.

4. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against accused/appellant and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/ appellant examined 11 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.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that[

- the alleged eyewitness i.e. Kanti Kumari (PW-4) & Dipak (PW-5) are not only child witnesses but also relatives of the deceased and likewise PW-9 is also a related and interested witness being niece of the deceased. Therefore, in this situation, the possibility of tutoring these witnesses cannot be ruled out.
 - though on the memorandum of appellant an axe has been seized but in absence of any FSL or serological report confirming the presence of blood and that too, its origin and group, the same cannot be taken against the appellant.
 - appellant caused single injury to the deceased and thus it is apparent that he had not intention to commit murder of the deceased and therefore even if the entire prosecution case is taken as it is, at best the appellant can be convicted under Section 304 Part I or II of IPC and not under Section 302 IPC as has been done by the trial Court.
 - the appellant is in jail for the last more than seven years and therefore after converting his conviction under Section 304 Part I or II of IPC, he may be sentenced to the period already undergone by him.
7. 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.
 8. We have heard counsel for the parties and perused the evidence available on record.
 9. Chaitram (PW-1), father of deceased, is the lodger of FIR (Ex.P-1). He is also witness of inquest (Ex.P-3) and seizure memo Ex.P-4 by which bloodstained and plain soil was seized. He has stated that at about 5-6 in the fateful evening he saw the accused/appellant entering his house and at that time he was carrying weapon in his hand. His son was lying on the

tiraha with injury on his right temple region. In the cross-examination this witness has stated that when he reached the spot at that time Dipak, Kanti, Sharifu Begum and Malti were present there and Dipak (PW-5) told him that the accused/appellant killed the deceased.

10. Kishore Kale (PW-2) is the police Constable who helped in the initial investigation.
11. Dr. Nand Raj Kanwar (PW-3) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as mentioned above. This witness has opined that cause of death was head injury along with injury to vital organ, mode of death was haemorrhagic shock and the death was homicidal in nature. The query - whether the injury present on the body of deceased could be caused by the axe produced before him, has been answered by this witness in the affirmative vide Ex.P-10.
12. Mst. Kanti Kumari (PW-4) is an eyewitness to the incident. She has stated that at the relevant point of time she along with Dipak was playing at the tiraha. Her uncle (deceased) was also present there. At that time, the accused/appellant came there and assaulted on the head of her uncle by axe as a result of which he started bleeding and fell down on the earth. After inflicting injuries, the accused/appellant ran away from there. In the cross-examination this witness remained firm and nothing incriminating could be elicited in her cross-examination which makes her testimony unreliable or untrustworthy.
13. Dipak (PW-5), son of deceased, has stated that when his father (deceased) was standing near the platform, the accused/appellant came there and assaulted on the head of his father by axe as a result of which he fell down. After assaulting the deceased, the accused/appellant fled away from the spot. Nothing could be brought out by the defence counsel

in the cross examination of this witness to make his testimony unworthy.

14. P.R. Dhruw (PW-6) is the Head Constable who registered the FIR (Ex.P-8). Ajay Singh is the police Constable who helped in the initial investigation. Prem Narayan (PW-8) is the witness of memorandum (Ex.P-12) and seizure (Ex.P-13), however, he did not support the prosecution case and turned hostile.
15. Malti Kumari (PW-9) is the another eyewitness of the incident. She has also made almost similar statement as has been made by Kanti Kumari (PW-4) & Dipak (PW-5). According to this witness, she saw the accused/appellant assaulting the deceased by an axe on his head. In the cross-examination of this witness nothing could be brought out by the defence counsel to disbelieve her testimony and she asserted even in the cross-examination that she had witnessed the incident.
16. Ramnaresh Bagdi (PW-10) is the Patwari who prepared the spot map Ex.P-5. Vineet Dubey (PW-11) is the investigating officer who has duly supported the prosecution case.
17. Close scrutiny of evidence makes it clear that on 10.8.2010 the accused/appellant had caused injuries on the head of the deceased by axe and because of this assault, he died on the spot. The incident was witnessed by Kanti Kumari (PW-4), 12 years old niece of deceased, Dipak (PW-5), 9 years old son of deceased, and Malti Kumari (PW-9), who have categorically deposed in their evidence that it is the accused/appellant who had assaulted the deceased by axe as a result of which he started bleeding and fell down on the earth. Evidence of these witnesses gets corroboration from the statement of PW-1 Chaitram, lodger of FIR, who has stated that he saw accused/appellant going inside his house carrying weapon in his hand and at that time his son (deceased) was lying on the road with injury on his temple. Statements of aforesaid eyewitnesses

further get corroboration from the medical evidence wherein two incised wounds were noticed by the autopsy surgeon on the body of deceased and according to him, cause of death was head injury. The query-whether the injuries present on the body of deceased could be caused by the club produced before him, has been answered by this witness in affirmative.

That apart, before recording evidence of Kanti Kumari (PW-4) & Dipak (PW-5), the Court had asked certain questions to them and after satisfying itself of the fact that they understand the duty to speak truth and are able to rationally answer the questions put to them, it has examined them. Nothing has been brought by the defence in their cross-examination that being aged about 9 years & 12 years respectively there was any infirmity in their understanding of facts perceived, their ability to narrate the same correctly or that they were tutored by their parents. Being so, we have no hesitation in holding that evidence of Kanti Kumari (PW-4) & Dipak (PW-5) inspire confidence and are fully corroborated by other witnesses & the medical evidence and there exists no likelihood of being tutored. It is a settled principle of law that if the statement of child witness is reliable, truthful and is corroborated by other prosecution evidence, the Court can safely rely upon the statement of such witness and can form the basis for conviction as well.

18. So far as evidence regarding memorandum and seizure of the appellant is concerned, true it is that the witness to memorandum and seizure has not fully supported the prosecution case and there is also no report of FSL, but the fact remains that the present is a case where eyewitnesses, as discussed above, have categorically stated that it is the appellant who killed the deceased and in such a case, even if the memorandum and seizure have not been proved, the same is not fatal to the prosecution.

19. We further find no substance in the argument of appellant that in the facts and circumstances of the case, the accused/appellant, at the most, is liable to be convicted under Section 304 Part I or II of IPC. Considering the manner in which the appellant assaulted the deceased on his vital part head by axe as a result of which he died on the spot and the cause of death was head injury along with injury to vital organ, it cannot be said that the appellant had the only intention of causing bodily injury to the deceased which are likely to result in his death or only had the knowledge that such bodily injury would result in his death. The manner in which assault was made on the deceased with such a force on his vital organ which led to his death on the spot itself speaks volumes about the intention and knowledge of the appellant. In other words, while inflicting such injuries on the deceased, the appellant had not only intention to cause his death by such bodily injuries but also had the knowledge that such injuries would result in his death. As such, his conviction under Section 302 IPC cannot be faulted with.

20. For the reasons set out above, this Court is of the considered opinion that the findings recorded by the Court below are based on due appreciation of the evidence available on record. That being so, the judgment impugned does not call for any interference. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellant is already in custody no extra direction is needed regarding her surrender etc.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge

roshan/-