

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 31 of 2012

- Shishupal @ Bade Dau S/o Chhedilal Gond, aged about 25 years, R/o Village - Budhwara, Police Station Lormi, Dist. Bilaspur C.G.

---- Appellant

Versus

- State Of Chhattisgarh through Station House Officer, Police Station Lormi, Distt. Bilaspur (CG)

---- Respondent

For Appellant	:	Shri Akhil Agrawal, Advocate.
For Respondent/State	:	Shri Garry Mukhopadhyay, Dy. GA.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

04/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 12.10.2011 passed by the Additional Sessions Judge, Mungeli, Distt. Bilaspur in S.T.No.16/2011 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case, on 2.1.2011 at 9.30 am on account of some dispute with his mother Amolabai, the appellant caused her injuries by a sickle as a result of which she died on the spot itself. Merg intimation Ex.P/1 was lodged on 2.1.2011 at 11.15 am by PW-1 Faguram and thereafter FIR (Ex.P/4) was registered at 11.20 am at the

instance of PW-1 Faguram against the appellant under Section 302 of IPC. Inquest over the dead body was conducted vide Ex.P/3 on 2.1.2011 and the body was thereafter sent for postmortem which was conducted on the same day by PW-7 Dr. Ajay Pathak vide Ex.P/13, who noticed stab wounds on the back side and above right side of buttock. In his opinion, the cause of death was shock due to injured spinal nerve cord upper and lower spinal and that the death was homicidal in nature. On the memorandum of the appellant (Ex.P/10), one sickle was seized vide Ex.P/11. However, there is no FSL report on record. After completion of investigation, 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 as many as 8 witnesses. 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. Learned counsel for the appellant submits that there is no eyewitness account to the incident and the evidence of PW-1 Faguram, PW-2 Jaisingh and PW-3 Chandrashekhar who had seen the appellant with the weapon is not sufficient to uphold his conviction. Though on the memorandum of the appellant, sickle has been seized but in absence of FSL report, it is of no consequence. It has been further

argued that at the time of incident the appellant was not mentally fit and on this count also, even if this Court finally comes to the conclusion that he has committed the offence, he cannot be convicted for the same. Alternatively, it has been argued that considering the fact that the incident occurred on a trivial issue on sudden provocation, the appellant may be convicted for a lesser offence and not under Section 302 of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellants is strictly in accordance with law and as such, there is no scope for any interference in the judgment impugned by this Court.

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

08. PW-1 Faguram, uncle of the appellant, has stated that upon hearing the cries of the deceased when he reached her house, he saw her in injured condition and the appellant was standing there carrying sickle in his hand. He states that he lodged the FIR and merged intimation. Though he has admitted that mental condition of the appellant was not proper but has denied the suggestion that on account of being not mentally fit the appellant used to pick up quarrel with everyone. In cross-examination he has further admitted that though he did not see the appellant committing murder but upon hearing the cries of the deceased when he reached the spot, he saw the appellant standing there. Similar are the statements of PW-2 Jaisingh and PW-3 Chandrashekhar. Both these witnesses saw the

appellant near the dead body holding sickle in his hand. PW-4 Ramesh is a witness to the memorandum of the appellant and seizure effected in pursuance thereof. He has duly supported the prosecution case. PW-5 Manharan Lal, witness to seizure Ex.P/12, has turned hostile. PW-6 T. Sharif, Patwari, prepared the spot map Ex.P/9. PW-7 Dr. Ajay Pathak conducted postmortem on the body of the deceased on 2.1.2011 vide Ex.P/13 and noticed stab wounds on the back side and above right side of buttock. In his opinion, the cause of death was shock due to injured spinal nerve cord upper and lower spinal and that the death was homicidal in nature. He also examined the weapon of offence sickle and opined that the injuries found on the person of the deceased could be caused by the said weapon.

09. Close scrutiny of the evidence makes it clear that on 2.1.2011 it is the accused/appellant who caused injuries to his mother with sickle as a result of which she died on the spot itself. Upon hearing the cries of the deceased, PW-1 Faguram reached the house of the deceased and there he found the appellant standing with sickle. PW-2 Jaisingh has also deposed that when he reached the house of the deceased he saw the appellant standing there with sickle in his hand and thereafter he ran away from there. Likewise, PW-3 Chandrashekhar too has stated that he saw the appellant on the place of occurrence carrying sickle in his hand. On the memorandum of the appellant, the weapon of offence sickle was seized and witness to the memorandum and seizure PW-4 Ramesh has duly supported the prosecution case. This apart, as per postmortem report, corresponding injuries were noticed by the autopsy surgeon on the person of the deceased. In these

circumstances, absence of FSL report is of no help to the appellant.

10. As regards the mental condition of the appellant, there is no evidence on record to show that at the time of commission of the offence the appellant was suffering from any such mental ailment or his mental faculties were so impaired that he was not aware of the consequences of his act, rather PW-1 Faguram, uncle of the appellant, in cross-examination has denied the suggestion that on account of his mental condition being not proper the appellant used to quarrel with everyone. Hence, in the given facts and circumstances of the case, in particular the conduct of the appellant right from the date of incident till his statement under Section 313 of CrPC was recorded, the argument of counsel for the appellant that the appellant was not mentally fit at the time of commission of the offence is without any substance and is therefore not acceptable.

11. On the basis of aforesaid discussions, we are of the considered opinion that the findings of guilt of the appellant recorded by the trial Court are based on proper appreciation of the entire evidence available on record. There is no illegality or infirmity in the judgment impugned warranting interference by this Court. Accordingly, the appeal fails and is hereby dismissed. Appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required.

Sd/

**(Pritinker Diwaker)
Judge**

Sd/

**(R.C.S. Samant)
Judge**