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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 517 of 2012****(Arising out of judgment/order dated 24.03.2012 in S.T. No.52/2011
of the learned Sessions Judge, Jashpur)**

- Goutiya Sai S/o Dilbodh Sai, aged about 50 years, Agriculturist, R/o village Kudhrajhariya (Khutera), Police Station Kansabel, District Jashpur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Police Station - Kansabel, District Jashpur (C.G.)

---- Respondent

For Appellant.	:	Shri Rakesh Pandey, Advocate.
For Respondent.	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Thottathil B. Radhakrishnan, CJ
Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board**Pritinker Diwaker, J****09/09/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 24.03.2012 passed by the Sessions Judge, Sessions Division, Jashpur, in S.T. No.52/2011 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, in default of payment of fine amount to further undergo R.I. for one month.

02. In the present case, name of the deceased is Tijo Bai, aunt of the accused/appellant. It is alleged that the accused/appellant suspecting the deceased to be Tonhi, on 01.01.2011 at about 5.00 pm, he first chased the deceased carrying axe in his hand and assaulted the

deceased by axe and caused injury on her neck as a result of which she died instantaneously. On 02.01.2011 at 9.35 am, FIR (Ex.P/2) was lodged by Ramnath Sai against the accused/appellant under Section 302 IPC and immediately thereafter merg intimation (Ex.P/3) was recorded. On same day, inquest on the body of deceased was prepared vide Ex.P/1 and dead body was sent for postmortem to District Hospital, Kansabel vide Ex.P/9-A where postmortem examination on the body of deceased was conducted on 02.01.2011 by Dr. S. Tirkey (PW/11) who gave his report Ex.P/9 opining the cause of death to be hypovolumic shock due to neck injury and death was homicidal in nature.

03. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits :

(i) That the accused/appellant has been falsely implicated in the crime in question.

(ii) That the accused/appellant has caused only single injury to the deceased. It has been argued that even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-I or Part-II IPC.

(iii) That the accused/appellant is in jail since 02.01.2011 and, therefore, after converting his conviction in to Section 304 Part-I or Part-II, his sentence may be reduced to the period already undergone by him.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He submits that there are as many as three eye-witnesses Chunni Lal (PW/1), Savitri Bai (PW/4) and Birju Sai (PW/5) [renumbered as PW/12] to the incident and all of them have supported the prosecution case. He further submits that considering the nature of injury which has been duly proved by the autopsy surgeon PW/11, the accused/appellant has rightly been convicted under Section 302 IPC.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Chunni Lal (PW/1) is a neighbour of the deceased. He has stated that at the time of incident he was standing outside the house and upon hearing the cries of the deceased, he went there and saw the appellant assaulting the deceased by an axe, as a result of which deceased sustained injury on her neck and died on the spot itself. He has further stated that thereafter when he along with 10-12 person were standing near the community hall, the accused/appellant came out of his house and was shouting that he had killed one person and would kill another. At the

relevant time also he was carrying axe in his hand. He is also a witness to inquest Ex.P/1.

10. Savitri Bai (PW/4) - another eye-witness to the incident, has stated that at the time of incident she was working in her barn and heard the cries of the deceased that she would not survive. When she reached to her, she saw the accused/appellant giving two axe injuries on the neck of the deceased resulting in her death. In cross-examination, she remained firm and nothing could be elicited to discredit her testimony.

11. Birju Sai (PW/5) [renumbered as PW/12], is another eye-witness to the incident. He too has categorically stated that upon hearing the cries of the deceased when he reached there, he saw the accused/appellant chasing the deceased carrying axe in his hand and thereafter he caused axe injuries on her neck as a result of which she died on the spot.

12. Dr. S. Tirkey (PW/11) conducted the postmortem on the body of deceased and gave his report Ex.P/9 noticing following injuries:-

- (i) Incised wound in the size of 7 cm x 1 cm x deep over left side of neck with blood clot.
- (ii) Vein and carotid artery with muscle were cut.

The Doctor has opined the cause of death to be hypovolumic shock due to neck injury and death was homicidal in nature. R.P. Sharma (PW/14) Investigating Officer has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that on 01.01.2011 it is the accused/appellant who committed murder of the deceased by causing injuries on her neck by an axe. Chunni Lal (PW/1), Savitri Bai

(PW/4) and Birju Sai (PW/5), eye-witnesses to the incident, have categorically stated that on the date of incident at about 5-5.30 pm, upon hearing the cries of the deceased they reached there and saw the accused/appellant assaulting the deceased on her neck by an axe as a result of which deceased died on the spot. The version of these witnesses is well corroborated by the evidence of Dr. S. Tirkey (PW/11) and postmortem report Ex.P/9 wherein one incised wound of 7cm x 1cm x bone deep was noticed and according to autopsy surgeon, the cause of death was hypovolumic shock due to neck injury. The evidence of these witnesses is sufficient to infer that it is the accused/appellant who has caused death of deceased and we have no reason to disbelieve the statements of these witnesses. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially to the fact that the accused/appellant has not committed murder of deceased.

14. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

15. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE