

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 643 of 2012**

Motilal Rajwade S/o Sukhlal Rajwade, R/o village Patrapali, PS
Baikunthpur, District Korla (CG)

---- Appellant

Versus

State of Chhattisgarh through PS Baikunthpur, District Korla
(CG)

---- Respondent

For Appellant	:	Shri Amit Singh, Advocate
For Respondent-State	:	Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice P. Sam Koshy

JUDGEMENT ON BOARD**Per P. Sam Koshy, Judge****25/11/2017**

The present appellant stands convicted for the offence under Section 302 of IPC and sentenced to undergo rigorous imprisonment for life with fine of Rs.1,000/-, in default of payment of fine to further undergo RI for 3 months vide judgment dated 08.05.2012 passed by the Sessions Judge, Korla (Baikunthpur) in Sessions Trial No. 74/2011.

2. The case of the prosecution in brief is that the appellant is said to have assaulted deceased Ramlal on 26.05.2011 at around 8.30 a.m. with a Tangi (small axe) causing grievous injury on his neck which resulted in his death. An FIR in this regard was lodged on the same day at Police Station Baikunthpur, District Korla vide Crime No.114/11 for the offence under Section 302 of IPC. Subsequently, the matter was put to trial before the

Sessions Judge, Koria.

3. During the course of trial, the prosecution examined as many as 12 witnesses and there was no witnesses examined on behalf of the defence.

4. The trial Court taking into consideration the evidences which have come on record vide impugned judgment dated 08.05.2012 found the appellant guilty for the offence punishable under Section 302 of IPC and accordingly, convicted and sentenced him under the said section as mentioned in paragraph-1 of this judgment leading to the filing of this appeal.

5. Contention of the counsel for the appellant is that the conviction of the appellant for the offence under Section 302 IPC was not just, in as much as the nature of injury reflects that there was only one blow inflicted by the appellant and that the appellant does not appear to have any intention of killing the deceased. There also does not seem to have any motive behind the attack. It was contended that from the deposition of the witnesses it appears that the appellant was not mentally very sound person and because of his mental imbalance, he had attacked the deceased. Therefore, the conviction of the appellant under Section 302 of IPC may be set aside or in the given circumstances, it may be converted into a lesser offence and considering the fact that the appellant is in jail since 29.05.2011, the sentence part may be reduced to the period already undergone.

6. State counsel, however, opposing the appeal submits that it is an open shut case where the witnesses examined during evidence themselves have proved the case of the prosecution beyond all reasonable doubts and that two of the witnesses namely Sheshman Paikra (PW-10) and Rakesh Kumar (PW-9) are the eye-witnesses who had seen the incident. The evidence of PW-9 & PW-10 stands further corroborated from the evidence of PW-8 Amar Singh. The other witnesses who have been examined before the Court

below have also proved the incident, the involvement of the appellant and also the assault being made by a Tangi. In the given facts and circumstances, State counsel prayed for rejection of the appeal.

7. Having heard the contentions put forth on either side and on perusal of the record what reflects is that admittedly, on 26.05.2011 an incident occurred where the deceased Ramlal was assaulted with a Tangi. An FIR in this regard was lodged by PW-1 Pyarelal Paikra stating that he was informed by PW-10 Shesman about the deceased being assaulted by the appellant and that PW-10 had seen the incident himself. Immediately PW-1 had gone to the spot and seen the deceased lying in a pool of blood. During the course of postmortem, the doctor had found large incised wound on the posterior of the left ear. The cause of death has been mentioned as comatic death (injury to brain) homicidal in nature. The conducting of postmortem and the report has been proved before the trial Court as Ex. P-5 by PW-7 Dr. D. K. Chickenjuri. Further, PW-9 Rakesh Kumar & PW-10 Sheshman Paikra are the two persons who have emphatically stated of having witnessed the incident wherein the present appellant is said to have assaulted the deceased with a Tangi from back on his neck causing grievous injury. The said evidence of PW-9 & PW-10 stands corroborated from the evidence of PW-8 Amar Singh. The statement of these three witnesses further stands corroborated from the evidence of PW-11 Sudershan Prasad, the nephew of the deceased who was informed by PW-1 Pyarelal on mobile in respect of the assault and he immediately rushed to the spot and found the deceased lying in a pool of blood. On an enquiry being made, the deceased Ramlal himself told this witness PW-11 of the assault being made by the appellant. Thus, it has to be construed as an oral dying declaration available on record to prove the incident. The statement of these witnesses further stands

proved from the statement of PW-12 K. P. Gupta, the Investigating Officer.

8. Considering the entire facts and circumstances of the case and the evidences which have come on record, there does not seem to be any material produced before the trial Court with which the contention of the counsel for the appellant could be accepted of the case against the appellant falling under any of the exceptions of Section 300 of IPC with which a lesser offence can be provided. In addition, it is also a case where there is not much material produced by the defence with which it could be said that the incident occurred due to some sudden provocation where the appellant in the spur of the moment and heat of passion had assaulted the deceased. In the absence of any such material, we do not find any illegality or error to have been committed by the trial Court while reaching to the conclusion of holding the appellant guilty for the offence under Section 302 of IPC.

9. As a result, we do not find any strong case made out by the appellant calling for an interference with the finding given by the Court below. Thus, affirming the impugned judgment of conviction and sentence, the present appeal stands dismissed.

Sd-
(Pritinker Diwaker)
JUDGE

Sd/-
(P. Sam Koshy)
JUDGE