

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 871 of 2012

- Mohanlal S/o Dhhoba Binjhwar Aged About 33 Years R/o Raipani, Thana - Saraipali, Distt. - Mahasamund C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Saraipali, Distt. - Mahasamund C.G.

---- Respondent

For Appellant	:	Shri Govind Dewangan, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble the Chief Justice

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board By Justice Pritinker Diwaker

09/09/2017

This appeal arises out of the judgment of conviction and order of sentence dated 28.4.2006 passed by the 1st Additional Sessions Judge, Mahasamund in ST No.110/2006 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.100/- with default stipulation.

02. As per prosecution case, on 5.1.2006 the appellant and the deceased both attended the sixth day ceremony (*chhatti*) following the birth of a child in the house of PW-12 Nanki and in the courtyard of the house of PW-12 decapitated body of the deceased was found. It is alleged that the appellant severed the head of the deceased by means

of axe in the courtyard of PW-12, left the headless body there and went away carrying head in his hand towards jungle. PW-12 Nankibai saw the appellant carrying the head of the deceased in his hand. The dead body was recovered from the courtyard of PW-12. FIR (Ex.P/11) was lodged by son of the deceased Heeralal Binjhwar (PW-10) against the appellant under Section 302 of IPC at 5.10 pm. Immediately thereafter merger intimation Ex.P/16 was recorded. Inquest over the dead body was conducted on 6.1.2006 vide Ex.P/1. Postmortem of the decapitated body which was conducted on 6.1.2006 vide Ex.P/6 by PW-7 Dr. Shrikant Shukla who found incised wound on neck, neck was fully cut and incised wound at the center of collarbone with clear margin. In his opinion, the cause of death was shock due to excessive blood loss by cutting of neck vessels artery and vein and that the death appears to be homicidal one. After recovery of the severed head, its examination was separately done vide Ex.P/7 on 7.1.2006 by PW-7 who noticed that skin of face was intact and pale, blood present on face, both eyes closed, pupil dilated and soft, conjunctiva pale, tongue protruded, incised wound below thyroid cartilage, whole structure of neck was cut with clear margin, no bony injury on skull, brain matter pale. In his opinion, the injury found on the head and the injury found on the headless body co-relate with each other and hence it seems to be head of deceased Mukhtiram. He also opined that the nature of injury was homicidal. From the place of incident, bloodstained axe, plain and bloodstained soil were seized and sent for chemical examination to Forensic Science Laboratory. After completion of investigation, charge sheet was filed against the appellant under Section 302 of IPC followed by framing of charge by the trial Court accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined 14 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 convicted solely on the basis of his statement under Section 313 of CrPC which is not permissible under the law. He submits that excluding the inculpatory part of statement of the appellant, there is nothing on record to point towards his complicity in the crime in question.

06. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in it. He submits that in reply to Question No.3 the appellant in his statement under Section 313 of Cr.P.C. admitted to have cut the neck of the deceased with axe and likewise, he has also admitted other incriminating circumstances including PW-12 seeing him carrying away head of the deceased. He further submits that conviction is not based solely on the admission of the appellant, but there are other evidence in the form of ocular and medical evidence which lend due support to the prosecution case.

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

08. PW-1 Chhabilal Sidar has stated that he is acquainted with both the appellant and the deceased and while he was in market, he was informed by Damrudhar Patel and Kotwar that the appellant has killed Muktiram by axe. He states that the incident did not occur in the house of the deceased but in the house of Faguram where decapitated body of Muktiram was found and axe was also lying there. In cross-examination, though the defence tried to make the evidence of this witness doubtful as to identification of the dead body, but miserably failed in this effort as this witness categorically denied all such adverse suggestions.

09. PW-2 Amritlal came to know about the incident through Kotwar and then saw the headless dead body of Muktiram in the courtyard of Fagulal. He is a witness to inquest Ex.P/1. PW-3 Ganesh Ram is a witness to recovery panchanama of head of the deceased vide Ex.P/2. He has stated that on being interrogated by the police, the appellant informed the police that he cut the neck of Muktiram with axe, on account of which his kurta and lungi got bloodstained, which were seized by the police. The aforesaid fact was recorded in panchanama vide Ex.P/3, which bears signature of this witness. He is also a witness to seizure of bloodstained clothes of the appellant vide Ex.P/4. In cross-examination, he remained firm and nothing could be elicited by the defence from him to make his evidence doubtful or shaky.

10. PW-4 Rajesh is a witness to head recovery panchanama Ex.P/2. PW-5 Subhash and PW-6 Harishankar witnesses to Ex.P/5 whereby

clothes of the deceased were seized have turned hostile. PW-7 Dr. Shrikant Shukla conducted postmortem on the decapitated body on 6.1.2006 vide Ex.P/6 and noticed that there was incised wound on neck, neck was fully cut and incised wound at the center of collarbone with clear margin. In his opinion, the cause of death was shock due to excessive blood loss by cutting of neck vessels artery and vein and that the death appears to be homicidal one. He also examined the severed head vide Ex.P/7 on 7.1.2006 and noticed that skin of face was intact and pale, blood present on face, both eyes closed, pupil dilated and soft, conjunctiva pale, tongue protruded, incised wound below thyroid cartilage, whole structure of neck was cut with clear margin, no bony injury on skull and brain matter pale. In his opinion, the injury found on the head and the injury found on the headless body co-relate with each other and hence it seems to be head of deceased Muktiram. He also opined that the nature of injury was homicidal. He has also examined the axe seized from the spot and in his opinion, the injuries found on the person of the deceased could be caused by the said weapon.

11. PW-8 Rohidas Dhruv, Police Constable and PW-9 Hemsagar, Home Guard, assisted in the investigation. PW-10 Heeralal, son of the deceased, has stated that it is the appellant who killed his father by axe. He has stated that at the time of incident, he was in his house, there was *chhatti* ceremony in the house of Fagulal where his father Muktiram had gone and that he was informed by one Faguram that the appellant had beheaded his father by axe and took his head towards jungle whereas rest of the body was lying in the courtyard of Fagulal. Thereafter he went to the house of Fagulal and found headless body of

his father and the axe lying in the courtyard. He states that the incident was witnessed by Nankibai, Fagulal Binjwar and Bhola Bhinjwar. He has proved lodging of FIR (Ex.P/11). He is also a witness to inquest Ex.P/1, spot maps Ex.P/13 & P/14. PW-11 Fagulal has stated that the appellant is his brother in relation whereas deceased Muktiram is his maternal uncle in relation. Upon hearing about the incident he went to the house of Nankibai and found the headless body of deceased. He is a witness to inquest Ex.P/1, seizure memo Ex.P/15 & P/4 and panchanama Ex.P/3.

12. PW-12 Nankibai has stated that on the date of incident there was *chhatti* ceremony in her house which was attended by number of persons of Bhinjwar community including the appellant and the deceased. At about 2 pm she saw the appellant running away towards the lane with head of Muktiram in his hand and rest of the body of Muktiram was lying in her courtyard. The weapon of offence axe was also lying in the courtyard. She states that on her raising cry, Bhola came first and thereafter 6-7 villagers also came there. In cross-examination she has admitted the fact that she did not see the appellant cutting the head of the deceased but only saw him running away with the head of the deceased. She has categorically stated that it is the appellant who was seen running away with the head of the deceased in his hand.

13. PW-13 Bholaram states that upon hearing the cry of Nanki when he reached the courtyard he found there headless body of Muktiram and one axe was also lying there. He states that Nankibai informed him that it is the appellant who cut the head of the deceased. PW-14 SK

Tiwari, investigating officer, has duly supported the prosecution case.

14. Close scrutiny of the evidence makes it clear that on the date of incident i.e. 5.1.2006 the appellant and the deceased were present in the *chhatti* ceremony in the house of PW-12 Nanki and in her courtyard decapitated body of the deceased and bloodstained axe were found. PW-12 Nankibai has consistently and categorically stated that on the date of incident at about 2 pm she saw the appellant running away towards the lane with head of the deceased in his hand and on her raising cry PW-13 Bholaram and other villagers came there. PW-13 Bholaram also corroborates her evidence. During investigation, panchanama statement of the appellant was recorded vide Ex.P/3 wherein he admitted to have killed the deceased with axe in the courtyard of PW-12 and hidden his head in the jungle. Witnesses to this statement PW-3 Ganesh Ram and PW-11 Fagulal have duly supported the prosecution case. Moreover, the medical evidence also lend support to the prosecution case.

15. This apart, the appellant has also admitted certain proved incriminating circumstances in his statement under Section 313 of Cr.P.C. including he being seen by PW-12 running away with the head of the deceased in his hand on the date of incident. In reply to Question No.3 he answered that it is he who killed the deceased with axe. True it is that conviction of the accused cannot be based merely on his statement under Section 313 of Cr.P.C. which cannot be regarded as evidence, in absence of any other evidence connecting the accused with the commission of the crime. The Court may rely on a portion of the statement of the accused and find him guilty in

consideration of the other evidence against him led by the prosecution. Statements made under this section must be considered not in isolation but in conjunction with the evidence adduced by the prosecution. Answer given by the accused should be considered in conjunction with the other prosecution evidence.

16. Thus, considering the overall facts and circumstances of the case, we are of the opinion that the prosecution has successfully proved guilt of the appellant by adducing the evidence of PW-12 Nankibai, PW-3 Ganesh Ram, PW-11 Fagulal, PW-13 Bholaram as also medical evidence of PW-7 Dr. Shrikant Shukla and the said proved fact has further been admitted by the appellant in his statement under Section 313 of Cr.P.C. In these circumstances, the findings of guilt recorded by the trial Court are absolutely in accordance with law and deserve affirmation.

17. In the result, the appeal fails and is, accordingly, dismissed. Conviction and sentence of the appellant under Section 302 of IPC are hereby maintained. He is reported to be already in jail, therefore, no order regarding his arrest/surrender etc. is required.

Sd/

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/

(Pritinker Diwaker)
Judge