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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 947 of 2012**

(Arising out of judgment & order dated 06.06.2012 in Sessions Trial No. 60 of 2011 passed by the Learned Sessions Judge, Sessions Division, Jashpur, District Jashpur, Chhattisgarh)

- Manu @ Mansu, S/o Bulchu Nagesiya, aged about 51 years, Occupation- Agriculture, R/o Village Tukutoli, P.S. Sanna, District Jashpur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through District Magistrate, Jashpur, District Jashpur (C.G.)

---- Respondent

For Appellant	:	Shri Mahendra Kumar Chauhan, Advocate
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer

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

Judgment On Board By Justice Pritinker Diwaker**09/09/2017**

1. This appeal arises out of the judgment of conviction and order of sentence dated 06.06.2012 passed by the Sessions Judge, Sessions Division, Jashpur (C.G.) in Sessions Trial No. 60/2011 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs. 1,000/- with default stipulation.

2. In the present case, the name of the deceased is Suresh Gupta. On 20.03.2011, in the midnight, a First Information Report (Ex.P/1) was lodged by PW-1, Pramod Kumar Gupta, son of the deceased and the eye-witness to the incident alleging in it that on 20.03.2011 at the eve of holi-festival, in the night number of

relatives were present in his house. His father Suresh Gupta (deceased) left the house by saying that he would return after sometime and when he did not return, he (PW-1) and his maternal uncle Shiv Kumar Gupta (PW-3) had gone to search him (deceased) and then near the fence of Huna (DW-2), they saw the accused/appellant beating the deceased by a *tangi* and Axe. He has stated that after hearing the cries of Shiv Kumar (PW-3), accused fled away from the spot. Based on this F.I.R., offence under Section 302 of IPC was registered against the accused/appellant. Immediately thereafter merger intimation (Ex.-P/2) was recorded on 21.03.2011. Inquest on the dead body was conducted vide Ex.-P/3 on 21.03.2011 and the body was sent for postmortem. The postmortem examination was conducted by PW-2, Dr. C.D. Bakhla, who noticed following injuries on the body of the deceased:-

- (i) Incised wound in size of 7 ½ x 2 x 5 cm on the left lower mid fronto-parieto region, there was a fracture of fronto-parieto, brain tissue out sided and the blood clot was present around the region;
- (ii) Incised wound in size of 5 x 1.5 x 3.5 cm on the right mid frontal region transversely fractured and the blood clot was present around the region;
- (iii) Incised wound in size of 4 x 2.5 x 3 cm on above downward on the left mid cheek with blood clot;
- (iv) Incised wound in size of 2.5 x 1.5 x 1 cm on the right angle of mouth; and
- (v) Incised wound in size of 2 x 1 x 1.5 cm behind the right ear and the blood clot was present.

The Autopsy Surgeon has opined that the cause of death was hemorrhage due to head injuries and the death was homicidal in nature.

3. After investigation, the charge-sheet was filed against the accused/appellant under Section 302 of IPC and while framing the charges, the trial Judge framed the

charge against the accused/appellant under Section 302 of IPC.

4. So as to hold the accused/appellant guilty, the prosecution has examined 9 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.

5. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned above, hence this appeal.

6. Counsel for the appellants submits that the PW-1, Pramod Kumar Gupta and PW-3, Shiv Kumar Gupta have been though projected as eye-witnesses to the incident, but in fact, they had not seen the incident and the appellant has been falsely implicated. He further submits that as per FSL report (Ex.-P/17), blood has been found on the seized Axe but in absence of serological report, the said seizure loses its significance.

7. On the other hand, counsel for the respondent/State supports the judgment impugned. It is has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

8. We have heard the counsel for the respective parties and perused the evidence on record.

9. PW-1, Pramod Kumar Gupta, one of the eye-witness to the incident while supporting the prosecution case, has stated that the deceased was his father, on the date of incident, his maternal uncles PW-3, Shiv Kumar Gupta and PW-7, Dilip Kumar Gupta came to his house as it was the eve of holi. At about 7.30 pm., his father had gone to the village and when he did not return, he and his uncles had

gone to search him (deceased) and during that he heard some sound and when he reached there, he saw the accused/appellant assaulting the deceased by an Axe. He states that after hearing their cries, the accused/appellant fled away from the spot. His father was in a pool of blood, and thereafter the report was lodged. In cross-examination, he remained firm and nothing could be elicited.

10. PW-3, Shiv Kumar Gupta, is the other eye-witness to the incident while supporting the prosecution case, has stated that at the eve of holi, he had gone to the house of the deceased. At 7.00 pm, the deceased left the house by saying that he is going towards the Tukutoli village and when he did not return, he (this witness) and PW-1 had gone to look for him, then he saw the accused/appellant causing an Axe injuries to the deceased. However, after seeing him and PW-1, the appellant fled away from the spot. Thereafter he (PW-3) saw the deceased on the floor in an unconscious condition.

11. PW-2, Dr. C.D. Bakhla conducted the postmortem on the body of the deceased. He noticed the above five incised wounds on the body of the deceased and opined that the cause of death was hemorrhage due to head injuries and the death was homicidal in nature. PW-6, Mohd. Farukh Javed, is a witness of memorandum (Ex.-P/9) of accused/appellant and seizure of Axe (Ex.-P/10). He has duly supported the prosecution case. As per FSL report (Ex.-P/17), blood was found on the seized Axe. PW-9, Prabhat Tiwari is the investigating officer who investigated the matter.

12. DW-1, Nando Bai has stated that at the eve of holi, the deceased came to her house in a drunken condition and had tried to outrage her modesty, upon hearing her cries, DW-2 came there and then the accused/appellant fled away from the spot.

13. DW-2, Huna has stated that upon hearing cries of DW-1, when he reached

there, he saw that the accused/appellant was trying to outrage the modesty of DW-1. To support DW-1 and DW-2, the statements have been made by DW-3, Genda Ram and DW-4, Pyara Ram.

14. Close scrutiny of the evidence makes it clear that on 20.03.2011 the deceased was killed by the accused/appellant. The incident has been witnessed by the two eye-witnesses namely PW-1, Pramod Kumar Gupta and PW-3, Shiv Kumar Gupta and both of them have supported the prosecution case. Their statements have also been supported by the postmortem report of the deceased (Ex.-P/6) which has been duly proved by the PW-2. On the memorandum of the accused (Ex.-P/9), seizure of the Axe was made vide Ex.-P/10 and the FSL report (Ex.-P/7) confirms the blood on the said Axe. True it is that no serological report is on record but in a case which is based on statements of eye-witnesses, such seizure of the weapon and FSL report can be treated as additional evidence.

15. After appreciating all the facts and circumstances of the case, we are of the view that the trial court was fully justified in holding the accused/appellant guilty for committing the murder of the deceased Suresh Gupta. We find no illegality or infirmity in it for interference.

16. In the result, the appeal fails and is, accordingly, dismissed. As the appellant is in jail, no further order is required.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge