

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 994 of 2012

1. Gurubaru Nagvanshi S/o Punaram Nagvanshi, aged about 30 years, occupation – Agriculturist, R/o Dumarkona (wrongly mentioned in the impugned judgment as Dumarbhona) (Kachhar) Police Station – Patthalgaon, District Jashpur, CG

---- Appellant

Versus

1. State of Chhattisgarh through the Police Station Patthalgaon, District Jashpur, CG

---- Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate
For Respondent/State	:	Shri Anupam Dubey, PL

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri C.B. Bajpai

Judgment on Board by Pritinker Diwaker, J

23/09/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 28.09.2012 passed by Additional Sessions Judge Kunkuri, District Jashpur in Sessions Trial No. 21/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 5,000/-, plus default stipulation.

2. Name of the deceased in the case in hand is Babulal – elder brother of the accused/appellant. As per the case of prosecution, on 23.01.2011 in between 6 and 7 AM the accused/appellant went to the house of deceased Babulal, scuffled with him and on an intervention of Jagarnath (PW-1), Hariram (PW-2) and Chhatra Mohan (PW-5) he returned to his house. At about 7.30 AM the

accused/appellant again came there carrying axe in his hand and caused number of injuries to Babulal as a result of which he died on the spot. Merg Ex. P-2 was recorded on the same day at 10.20 AM at the instance of Jagarnath (PW-1) – the son of the deceased. At 10.30 AM on the same day FIR Ex. P-3 came to be recorded against the accused/appellant for the offence punishable under Section 302 IPC. After making inquest vide Ex. P-3, the dead body was sent for postmortem examination which was conducted by Dr. Shakuntala Nikunj (PW-9) who gave her report Ex. P-13. On completion of investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 09 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Section 302 and at the most his act would fall under Section 304-I or 304-II IPC.

(ii) That the accused/appellant has been falsely implicated in the case and most the witnesses are the relatives of the deceased and therefore, are bound to state against the accused/appellant.

(iii) That the accused/appellant is in jail since 24.1.2011 and in these circumstances by convicting him u/s 304 Part-I or 304-II IPC he may be sentenced to the period already undergone.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that looking to the statements of five eyewitnesses namely Jagarnath (PW-1), Hariram (PW-2), Ram Pyari (PW-3), Jyoti (PW-4) and Chhatra Mohan (PW-5) where they have categorically spoken against the accused/appellant describing as to how he opened assault on the deceased with the help of axe, his conviction under Section 302 IPC appears to be fully justified and requires no interference by this Court.

7. Heard counsel for the parties and perused the material available on record.

8. Jagarnath (PW-1) – the son of the deceased and lodger of FIR (Ex.P-1) has stated that on the date of incident when he along with his father (deceased), Hariram (PW-2) and Chhatra Mohan (PW-5) was basking under the sun, accused/appellant started quarreling with the deceased. However, with their interference the quarrel between the deceased and the accused came to a temporary halt. Sometime thereafter the accused/appellant again came there brandishing axe and showered blows on the deceased, but this time their efforts to pacification, went in vain as he jolted aside all coming in between. Accused/appellant, according to this witness, dealt as many as five blows on the back side of head and front side of neck as a result of which he died instantaneously. He is also the

witness to memorandum of the accused/appellant Ex. P-7 and seizure of axe and shirt of the accused made under Ex. P-8 and Ex. P-9 respectively. He remained firm in his cross-examination also stating the same thing as in the examination-in-chief. Hariram (PW-2) – another eyewitness to the incident has stated that on the date of incident when he along with PW-5 and the deceased was sitting in the courtyard, accused/appellant came from behind and touched the head of the deceased on account of which some dispute arose between the two, though it stood subsided with their interference. About half an hour thereafter the accused/appellant again appeared on the scene carrying axe in his hand and assaulted the deceased with it. He is also the witness to memorandum of the accused/appellant Ex. P-7 and seizure of axe and clothes of the accused made under Ex. P-8 and Ex. P-9 respectively. Cross-examination of this witness is also consistent and carries the same thing as in the examination-in-chief. Ram Pyari (PW-3) – wife of the deceased has also stated almost the same thing as put forth by PW-2 that after the initial quarrel between the accused and the deceased came to a momentary halt with the help of people present there, the accused again came there about half an hour thereafter and attacked her husband (deceased) with the axe brought with him from his house on account of which he died on the spot. In cross-examination also she remained consistent to what is stated by her in the examination-in-chief. She has added that the accused/appellant lost his temper and opened an indiscriminate assault on the deceased with axe. Jyoti (PW-4) and Chhatra Mohan (PW-5) are two other eyewitness to the incident who too have fully supported the case of the prosecution stating that after the initial dispute between the deceased and the accused

ceased for a while with the interference of the persons already present there, the accused turned up again carrying axe and made assault with it which led to his on-the-spot death. Cross-examination of these two witness also contains the same thing as stated by them in the examination-in-chief. Sujit Kumar Paul (PW-7) is the police constable who took the dead-body for postmortem examination. Ravindra Singh Marawi (PW-8) is the investigating officer who has duly supported the case of the prosecution. Dr. Shakuntala Nikunj (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave her report Ex.P-13 stating that she noticed the following injuries:

- (i) Incised wound about 6 cm x 1 cm over lateral aspect of the neck.
- (ii) Incised wound 8 cm x 4 cm deep to cleical bone and clotted blood present around the incised wound.
- (iii) Incised wound 10 cm x 5 cm x deep to cleical bone, left lateral aspect of the neck.
- (iv) Fracture of C3 & C4 cervical vertebre.
- (v) Incised wound about 6 cm x 3 cm x bone deep present over right side of skull.
- (vi) Lacerated wound 15 cm x 10 cm present on posterior aspect of skull.
- (vii) Multiple abrasions present over left elbow.

Cause of death, according to her, was head injuries, spinal injuries due to fracture of C4 & C3 cervical verterbre, and the mode was homicidal in nature.

9. This Court has gone through the material available on record including the evidence of the witnesses, in particular the five eyewitnesses to the incident – PW-1 to PW-5. All the eyewitnesses have categorically stated in the same tone that after the initial fued between the accused and the deceased came to a momentary cessation, the accused again appeared on the spot carrying axe in

his hand and opened an assault on the deceased causing number of injuries on his body including the vital part like head which led to his death on the spot. That apart, on the memorandum of accused Ex. P-7 seizure of axe was made under Ex. P-8. The witnesses to memorandum and seizure have also supported the case of the prosecution in unambiguous term. In addition to this, the doctor (PW-9) conducting postmortem examination on the body of the deceased has lent full support to the case of the prosecution stating that she noticed number of incised and lacerated wounds on the skull of the deceased including fracture of C4 & C3 cervical vertebrae. This Court has thus no hesitation to hold that the accused/appellant dealt premeditated axe blows on the body of the deceased with an intention to eliminate him. Prosecution has proved its case beyond all reasonable doubt and so also the Court below has taken note of each and every thing before it with utmost care and caution while arriving at the conclusion holding the accused/appellant guilty of the offence punishable under Section 302 IPC. No illegality or infirmity is there in the judgment impugned calling for interference by this Court. Findings of the Court below are thus affirmed and the appeal preferred by the accused/appellant stands dismissed being without any substance. Accused/appellant needs no order to be sent to jail etc. as he is already behind the bars.

10. Appeal thus dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge