

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 279 of 2013

Judgment reserved on 22-9-2017

Judgment delivered on 8-11-2017

- Ranjeet Singh S/o Dakhal Say Gond Aged About 31 Years R/o Village Jagatpur, Ps Ramanujnagar, Distt. Surguja C.G.

---- Appellant.

Versus

- State of Chhattisgarh Through Sho, Ps Ramanujnagar, Distt. Surguja C.G.

---- Respondent

For Appellant : Ms. Pushpa Dwivedi, Advocate.

For Respondent/State : Mr. Rahul Tasmaskar, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 16-11-2010 passed by the 2nd Additional Sessions Judge (FTC) Surajpur, District Surguja CG), in Sessions Trial No. 154 of 2010 whereby the trial court after holding guilty for commission of murder of Devnath, convicted the accused/appellant under Section 302 of the IPC and sentenced him to undergo life imprisonment and to pay fine of Rs.1000/- with default stipulations.
2. The facts of the case, in brief, are that on 15-1-2010 at about 11.00 a.m., the deceased Devnath had gone to forest to bring the

wood and when he did not return, wife of the deceased asked his son Vikash Kumar to go and call his father and as per instructions Vikash Kumar along with his brother went to Madanpur forest where they found the dead body of their father with injuries over different parts of his body. On the basis of information to Police Station Ramanujganj by Vikash Kumar, merg intimation (Ex.P.1) was prepared, inquest of the dead body was done as per Ex.P/7, first information report was recorded vide Ex.P/2. During investigation stone and soil were seized from the place of incident and dead body of the deceased was subjected to post-mortem. During the course of investigation, statements of the witnesses under Section 161 of the Cr.P.C., were recoded, seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur and after completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Surajpur, who in turn committed the case to the court of Sessions. The trial Court framed the charge under Section 302 of the IPC against the appellant but he did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

3. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 20 witnesses before the trial Court.
4. Learned counsel appearing for the accused/appellant submits as under:

(i)	That the so called eye-witnesses namely Anita (PW/13), Meena (PW/14) and Lalo (PW/15) have not seen the incident and they are not real witness of the incident and are unreliable as it was winter and foggy atmosphere, there was complete darkness and it was very difficult to see the things from the distance.
(ii)	PW/10 Hukumsai has stated that Lalo (PW/15) had not stated anything regarding the incident to him and he had not conveyed to Police Station regarding the incident, therefore, version of Lalo (PW/15) is not to be relied upon.
(iii)	As per statement of witness Vikash Kumar, there was enmity between the deceased and the appellant as the appellant entered into the house of the deceased 2-3 months prior to the date of incident and for that son of deceased namely Vikas Ram assaulted the appellant, therefore, the appellant has been falsely roped in this case.
(iv)	That as per statement of Meena (PW/14) she has informed about the incident to one Bhojan but the said Bhojan has not been examined, therefore, version of the prosecution is suspicious. Even assuming that the appellant has caused injury to the deceased without

	premeditation, his case falls under Exception 4 of Section 300 IPC and he can be convicted under Section 304 Part II of the IPC and can be released as he has suffered more than seven years in jail.
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5. *Per contra*, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
6. We have heard counsel for the parties and perused the material on record.
7. To substantiate charge against the appellant, prosecution examined as many as 20 witnesses. Dr.Viswakharma (PW/10) conducted post-mortem of the deceased Devnath on 16-1-2010 brought by Contable Majoj Kurre No. 583 of PS Ramanujganjnagar and noticed the injuries as under:

i)	Lacerated wound size 3cm x 1cm x1.05cm on occipital region of scalp wound ante-mortem caused by hard and blunt object and duration is within one hour before death.
ii)	Lacerated wound in the size of 2cm x 1cm x .05 cm on occipital region caused by hard and blunt ante-mortem duration within one hour before death;
lii)	Lacerated wound in the size of 3cm x .05 cm x .05 cm left parietal region ante mortem caused by hard and blunt object duration within one hour before death.

iv)	Lacerated wound in the size of 3 cm x .05 cm over forehead caused by hard and blunt object, duration of time within one hour before death.
v)	Lacerated wound in the size of 2x1x.04 cm over front side face, antemortem and duration of time within one hour before death.
vi)	Lacerated wound in the size of 3x1x.05m over chin, ante mortem duration of time one hour before death.

He found the fracture in the backside of skull and found fracture of occipital, parietal region. Blood was oozing from brain and brain matter was torn. As per opinion of the expert, death is caused due to brain haemorrhage and due to injuries on brain and haemorrhage bleeding. He further opined that death is homicidal and death occurred since 18 to 36 hours of the examination. Version of this witness is unrebutted in cross examination and there is no other expert opinion in this regard. From the opinion of the expert, it is established that deceased Devnath died homicidal death.

8. Anita (PW/13) deposed that she had gone to forest to collect wood on the date of incident at about 9 -10 am and that time deceased Devath also collected wood and at the sametime appellant Ranjeet Singh came there, took a stone and assaulted on the head of the deceased due to which he fell down. Version of this witness is unshaken during cross examination and she remained firm and nothing could be elicited to help the defence side. PW/14 Meena

deposed that in the same way and version of this witness is also unshaken during cross examination. PW/15 Lalo deposed in the same way and version of this witness is also unshaken. Though all these three witnesses have been suggested that it was foggy day, but the fact remains and they have nowhere stated that they have not seen the incident.

9. During investigation they have stated in the same way while recording the statements under Section 161 of the Cr.P.C and these witnesses are stable. Since investigation to depose before the Court, there is nothing against their credibility. It is settled law that quality of the witness is weighed. Looking to the statement of all the three witnesses, we are convinced that they are real witnesses of the incident and there is nothing on record to brush aside their statements .
10. PW/1 Vikash Kumar is son of the deceased who saw the dead body of the deceased in Madanpur forest and thereafter merged intimation (Ex.P/1) and first information report (Ex.P/2) were recorded at his instance. Though there is some omission in his case diary statement, but the said omission is inconsequential. PW/2) Babulal is a person who has seen the dead body of the deceased and thereafter accompanied the son of the deceased for lodging report. He also deposed that the Police seized one stone, cloth and one shawl of the accused/appellant. PW/3 Ganpat Singh is a witness before whom stone and blood with soil were seized from the spot. PW/4 Bechuram is a witness of inquest. PW/5 Chhatrapal Singh is a witness of seizure of stone from the

appellant. PW/6 Sant Bilas is a witness of inquest. PW/9 Deepak is son of the deceased who has seen the dead body of his father in the forest. PW/12 Manijar Kurrey is a witness who assisted in the investigation. PW/16 Jaidev Kosle Sub-Divisional Officer, is a witness who investigated the matter. PW/17 Badam Singh Paikra is a Patwari who prepared the spot map, PW/19 Ramnarayan Asst. Sub Inspector and PW/20 C.R. Rajwade is a witness who assisted in the investigation.

11. Careful scrutiny of the evidence adduced by the prosecution makes it clear that the case of the prosecution is based on three eye-witnesses and there is nothing on record to disbelieve their version. From the post-mortem examination, it is established that the deceased was brutally killed and number of injuries were found in front of the head, back side of head, in occipital region and parietal region in face, in chest and there was fracture of skull and occipital and parietal region and brain matter was also torned.
12. Looking to the cruel manner in which the deceased was killed, we are of the considered view that case of the appellant does not fall in any of the exception under Section 300 of the IPC. Argument advanced on behalf of the appellant are not substantiated and not acceptable looking to the material placed on record. Case of the appellant falls under Section 300 of the IPC and the same is murder of deceased for which the trial Court has convicted the appellant and the same is not liable to be interfered.

13. Considering all the facts and circumstances of the case, evidence available on record and role of accused/appellant established in commission of murder of Devnath, this Court is of considered opinion that the findings recorded by the trial Court do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being without any force is liable to be and is hereby dismissed as such with the affirmation of the judgment impugned.
14. As the appellant is already reported to be behind the bars, no further order for arrest etc is necessary.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju