

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1072 of 2012**

(Arising out of judgment/order dated 17.04.2012 in Sessions Trial
No.58/2011 of the learned Sessions Judge, Jashpur)

- Bhuneshwar Ram, S/o Golsai Bhagat, Aged About 23 Years, R/o Village Patratoli, Ps - Jashpur, Distt. Jashpur C.G. ---- **Appellant**

Versus

- State Of Chhattisgarh Through Sho Jashpur, Distt. Jashpur C.G.

---- Respondent

For Appellant	: Shri U.R. Koshaley, Advocate.
For Respondent/State	: Shri Ravindra Agrawal, Panel Lawyer.

**Hon'ble Shri Justice Gautam Bhaduri &
Hon'ble Shri Justice Sanjay Agrawal**

Judgment On Board**09.12.2017****Per Gautam Bhaduri, J.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 17/04/2012, passed by the Session Judge, Sessions Division, Jashpur (C.G.) in Sessions Trial No.58/2011 wherein the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to life with fine of Rs.1,000/- and in default to pay fine to suffer additional R.I. for one month.

2. As per the case of the prosecution story, on 22.03.2011, the deceased Boleram and his wife Bipati Bai (P.W.1) were present in their house. At that time, grandson Bhuneshwar Ram, the present appellant, came there in a drunken condition and demanded for liquor and started quarrel and scuffle. When Bipati Bai, the grand mother, tried to pacify the accused and tried to separate her husband, from scuffle, at that time the present appellant picked up

an axe, which was lying nearby and assaulted on the head of Boleram several times. On account of which, he fell down on the spot and started bleeding and eventually died. The wife Bipati Bai thereafter informed her daughter Muli Bai and son-in-law Rajesh Kumar, who were residing in a nearby village Chadiya and also disclosed the incident to his neighbour Ramjan. Since after the incident happened time rolled by and it was night, on the next day, i.e., 23/03/2011 a report was made at Police Outpost Manora vide Ex-P1. The police, after receiving the information came to spot and sent the dead body for postmortem. Thereafter prepared the map of the site and apprehended the accused and thereafter at the instance of the accused/appellant, seized the handle of the axe which was kept and concealed under the straw. The clothes is the Jeans Pant, which the accused was wearing at the time of the incident, was also recovered and after registering the FIR, statements of the witnesses were recorded. The soil, which was recovered from the spot, and the clothes of the accused/appellant seized from the accused were sent to Forensic Science Laboratory and as per FSL report, presence of blood was confirmed in those articles. Thereafter, collecting the entire evidence, the charge-sheet was filed before the Court below under Section 302 of IPC against the appellant and trial commenced.

3. During the course of trial, the appellant abjured the guilt and claimed to be tried. The prosecution on its behalf had examined as many as 9 witnesses and primarily relied upon the evidence of eye-witness Bipati Bai (PW-1), wife of the deceased. The Court below, after evaluating the entire evidence led by the prosecution, convicted and sentenced the appellant as aforesaid. Hence, this appeal.

4. Learned counsel for the appellant would submit that the conviction of the appellant by the trial Court is without any evidence. It is contended that the statement of eye-witness Bipati Bai (PW-1) cannot be relied upon since she was an interested witness. He further submits that the recovery of the weapon was not made. Only on the basis of sole testimony of the eye-witness, the conviction of the appellant cannot be sustained. He therefore, submits that under the facts and circumstances of the case, the appellant may be acquitted of the charge of Section 302 of IPC.

5. The learned State counsel opposes the arguments of the appellant and stated that the judgment of the Court below is well merited, which does not call for any interference of this Court. Consequently, the appeal has no merit and deserves to be dismissed.

6. We have perused the record of the Court below, examined the statement of the witnesses and the evidence available on record.

7. Dr. Purushottam Singh, who had conducted the postmortem was examined as PW-9 in this case. This witness has stated that on 23/03/2011 dead body of Boleram aged about 60 years, was brought to the hospital for postmortem. Thereafter, he conducted the postmortem. According to the postmortem the deceased died because of the excessive loss of the blood on account of injury sustained on the head, which had caused Haemorrhagic shock and duration of death was 12:00 to 20:00 hours before the examination. The postmortem report was marked as Ex-P14 (A). Perusal of the Ex.P14 (A) would show that the right side of parietal bone was found to be fractured and death was reported to be haemorrhagic shock

due to rupture of vital organ, i.e., brain and death was shown to be homicidal in nature. Consequently, the death of Boleram has been established that it was homicidal in nature.

8. Now, with respect to the incident occurred between the appellant and the deceased, the statement of Bipati Bai (PW-1), who was the eye-witness to the incident, would be relevant. Reading of statement of Bipati Bai (PW-1) would show that the accused has been stated to be their grandson. Narrating the incident, it is stated that it was in the evening while she was in the house and her husband Boleram was also present. At that time accused/appellant came to their house and picked up the axe and assaulted her husband, due to which, he sustained injury on his head. Thereafter because of assault the blood started coming out. It was also stated that one of the eyes too came out due to the assault and subsequently he died. She further stated that she tried to save her husband from the clutches of the accused but the accused had given three blows on the head of Boleram. Thereafter, the accused fled away. It is further stated that she was not able to say the reason as to why her husband was murdered. On the next day, report was made at Police Outpost Manora (Jashpur) vide Ex-P1. Perusal of Ex-P1.

9. The FIR would show that it was made on 23/03/2011 showing the incident having occurred on 22/03/2011 at about 6:30 pm wherein the appellant has been named. The FIR (Ex-P1) also shows the same facts that the accused/appellant came to the house of his grandparents demanded liquor and thereafter entered into a dispute. After that, he assaulted Boleram by axe on his head, on account of

which, the deceased fell down then and there and eventually died. Therefore, no contradiction or omission exist with respect to the statement made before the Court below and the FIR that on account of assault made by the appellant/accused, the report was lodged mentioning the name of the appellant. Such lodging of FIR (Ex-P1) is corroborated by the evidence of Brijesh Kushwaha (PW7) who is the Investigating Officer and in-charge of the Police Outpost Manora. As per the statement of Brijesh Kushwaha (PW7), after such report was received, he rushed to the spot, seized soil from the spot and Panchnama of the dead body was also prepared vide Ex-P8.

10. The cross-examination of the Bipati Bai (PW1) would show that the suggestion to the effect that the accused was not present in the village at night was flatly denied. On the contrary it is stated that the incident occurred after third day of the Holi festival and the time of incident is stated to be in the evening. With respect to her presence on the spot at the time of incident, she is firm about her presence being an eye-witness. After scanning the entire examination-in-chief and cross-examination of the Bipati Bai (PW-1) we find that nothing has come on record to show that the appellant accused was not present on the spot and was at a different village rather the presence of the accused is established on the spot.

11. The record would show that after the accused was arrested, his memorandum was recorded on 23/03/2011 wherein it was stated that the assault was made by the handle of axe, which was kept under the straw. On the basis of such memorandum seizure was made with respect to the handle of the axe, which was kept under wooden-heap, vide Ex-P6. The said recovery was proved by the

Investigating Officer.

12. Kailash Ram Bhagat (PW4) has admitted his signature on such memorandum and the seizure but has not supported the seizure. Even if seizure is not proved, it would not come to rescue of the appellant since the clear categorical statement has been made by eye-witness Bipati Bai (PW1) about the assault and causing injury. The seizure, however, has been proved by Brijesh Kushwaha (PW7) and Investigating Officer. As per the evidence of Dr. Purushottam Singh (PW9) who conducted the postmortem, on query having been made, had given an opinion that, the injury could have been caused by such wooden plank or handle and specific opinion was given about it. The seizure of the Pant was made from the accused vide Ex-P7 and as per FSL report dated 30/05/2011, the blood was found on pant. Apart from it, the handle of the axe, which was marked as Article C, also contained the blood as per report of FSL.

13. Perusal of the statement of the accused recorded under Section 313 of the Code of Criminal Procedure 1973, would show that the accused has not offered any plausible explanation about the presence of the blood on such article or any explanation to his defence.

14. Considering the facts and circumstances of the case in its entirety, especially taking into consideration the evidence of eye-witness namely Bipati Bai (PW1), to the incident, we are of the considered opinion that the conviction and sentence of appellant recorded by the Court below cannot be faulted with and can be held justified.

15. In the result, the appeal has no merit. The same is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Sanjay Agrawal)
Judge