

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1136 of 2012

- Kogupati @ Khagpati, aged about 35 years, s/o. Balram Bhata, r/o. Village Sivinagudapara, Kaudavand, PS Nagarnar, District Bastar (CG).

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station – Kondagaon, District Bastar (CG).

---- Respondent

For Appellant	:	Mr. Ramakant Pandey Advocate.
For Respondent/State	:	Mr. Ajit Singh, Panel Lawyer.

Judgment on Board

11-5-2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29-8-2012 passed by the Session Judge, Bastar Jagdalpur in Session trial No. 116 of 2011 whereby the trial Court, after holding the appellant guilty for commission of offence, convicted the appellant under Section 304 Part-II of IPC and sentenced him to undergo R.I. for ten years and to pay fine of Rs. 5000/-, in default of payment of fine to undergo additional R.I. for four months.
2. The case of the prosecution, in brief, is that on 7-8-2011 Tulsiram had implanted mango plant in his field at village Sivinagudapara. The appellant, who was shepherd, was taking cattle through such field which caused damage to mango plantation. It was objected by deceased Tulsiram. Being enraged by his act, the appellant assaulted him by way of axe

on his neck as a result of which he sustained grievous injury and died. Subsequently, the appellant himself went to village Sarpanch and others and confessed the fact that he had killed Tulsiram. On hearing the same, the brother of Tulsiram went to the spot and saw the dead body of his brother Tulsiram lying in the field and thereafter he made a report to Police Station on the basis of which a case under Section 302 of IPC was registered against the appellant.

3. First information report was registered vide Ex.P/1, the merge was registered vide Ex.P/2, spot map was prepared vide Ex.P/3, panchnama was prepared on the spot vide Ex.P/6 and dead body of the deceased was sent for post-mortem vide Ex.P/12, thereafter axe was seized vide Ex.P/8, Scarf which was used by the appellant was seized vide Ex.P/10 and seized articles were sent for chemical examination to FSL, Raipur and FSL report was received vide Ex.P/21 wherein positive report indicates the presence of blood in the seized items i.e., soil on the spot, axe, Scarf used by the accused and the Scarf of deceased Tulsiram.
4. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed against the appellant and charge under Section 302 of the IPC was framed. The accused was examined under Section 313 of the Code, in which no explanation was given by him. During trial the appellant abjured guilt and claimed to be tried.

5. In order to bring home the guilt of the accused/appellant, the prosecution on their behalf examined Lachhim Kashyap (PW/1), brother of the deceased, Budhram, Sarpanch (PW/2), Smt. Bheembati, wife of the deceased (PW/3), Eshwar, independent witness (PW/4), Dr. SR. Koram (PW/5), who conducted postmortem, R. Ramaiah, Patwari (PW/6), Mohan Bake, Upsarpanch (PW/7), Gouri Shankar, independent witness (PW/8) and D.S. Gahlout (PW/9), Investigating Officer and Bujbal Sahu, Constable (PW/10).
6. After providing opportunity of hearing to the parties, learned trial Court after evaluating the entire evidence has convicted and sentenced the appellant as aforementioned.
7. Mr. Ramakant Pandey, learned counsel appearing for the appellant would submit that both the courts below have failed to appreciate the evidence in its proper perspective, there was no evidence available, no eye-witness was available to the incident and only on circumstantial evidence the appellant has been inculpated. He would further submit that in absence of any evidence, the appellant should have been acquitted. He would further submit that In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. He would further submit that the trial court while convicting and sentencing the appellant has not considered the relevant aspects of the matter and thereby committed illegality. Therefore, the

judgment of conviction and order of sentence dated 29-8-2012 passed by the trial Court be set aside.

8. On the other hand, learned State counsel opposes the appeal and would submit that the judgment of conviction and order of sentence passed by the trial Court are well merited which does not call for any interference.
9. I have heard learned counsel for both the parties and perused the judgment impugned including the record of court below and statements of the witnesses.
10. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the prosecution.
11. In the present case, first information report was marked as Ex.P/25 which was made by Lachhim Kashyap (PW/1). FIR purports that Lachhiom Kashyap (PW/1) made the report that present appellant on a dispute to take cattle through mango field of the deceased which caused damage to the mango plantation. The dispute arose in between the appellant and deceased Tulsiram as it was objected by deceased Tulsiram. On that the appellant caused injury by way of axe on the neck of the deceased which was admitted before Sarpanch Budhram (PW/2) by the accused. The brother of the accused Lachhim Kashyap (PW/1) though had not seen the incident, but he immediately after hearing the news went to the spot

and saw the dead body of Tulsiram lying in the field with an injury on his head.

12. Lacchim Kashyap (PW/1) in his statement has deposed that the incident was seen by Dashrath, Eshwar and Somdev. This witness has further stated that the aforesaid persons had seen the incident that while the appellant was assaulting the deceased. It was further deposed by those persons that while he was working at nearby field, at that time the appellant came there and dispute took place as the cattle were passing through the land of Tulsiram, wherein mango trees were planted. On that some altercation started and the appellant assaulted the deceased Tulsiram by way of axe. The statement of this witness is hear-say in nature. However, after the incident this witness.
13. Budhram (PW/2) Sarpanch had deposed that on the date of incident the appellant came to him at about 9.00 a.m and stated that he had killed Tulsiram by way of axe since he objected about passing of the cattle through his field which resulted into altercation and when deceased Tulsiram wanted to assault the accused by way of spade, then he assaulted Tulsiram. Subsequently, after hearing the same, he went to the spot where he saw the dead body of Tulsirm lying in the field. This witness has further stated that along with him brother of deceased Lacchim Kashyap (PW/1) also went there and saw the dead body of Tulsiram. Subsequently, the statement of this witness would reveal that at the instance of

the appellant, axe was seized on the basis of memorandum statement of appellant vide Ex.P/7 wherein signature of this witness is also marked which is proved. The document Ex.P/8 is about the seizure of axe which was seized from the house of the appellant. This was also seized in presence of Budhram (PW/2).

14. The statement of Budhram (PW/2) would further show that the appellant after killing Tulsiram went to Budhram and confessed his guilt before him. The same is further corroborated as chain of circumstances by Panchnama Ex.P/6 which was prepared on the spot. The Panchnama would show that dead body was lying in the field. The post-mortem report of the deceased is marked as Ex.P/12 which is proved by Dr. S.R. Koram (PW/5). According to Ex.P/2, cause of death was homicidal which was due to excessive bleeding. On a query being asked as to whether the axe which was seized which injury could have been caused. The Doctor had given the answer in positive. Thereafter, blood-stained garments and the axe were sent to FSL vide Ex.P/15. Perusal of Ex.P/15 would show that description of axe was shown and FSL report in this case is marked at Ex.P/26 which shows that axe marked as C was having blood stains. Likewise, scarf which was used by the appellant was also having blood stains along with plain soil. Therefore, taking into consideration the statement of Budhram (PW/2) wherein extra judicial confession is made, it is further corroborated by the evidence

of Dr. S.R. Koram (PW/5) and the postmortem report which shows nature of injury followed by the seizure of axe which proved to have blood-stained on it by FSL. Consequently, the evidence on record would show that after committing commission of offence, the appellant himself confession his guilt before Budhram (PW/2) thereby the prosecution was able to prove the fact by assault on the neck and deceased sustained injury and died.

15. Taking into totality of the facts of the case, the conviction which is made by the trial Court, cannot be faulted and the and available evidence on record. Coming to the sentence part, the appellant was convicted under Section 304 Part II of the IPC, considering the background of the case, as the incident happened in a village, when the deceased objected the appellant while taking cattle through mango plantation, on that trivial issue altercation started and appellant gave a single blow of axe on the neck of deceased Tulsiram and he died. The circumstances show that all of a sudden the incident happened when the appellant was on his way to graze the cattle, it was not pre-meditated or out-come of pre-planned motive. The back ground of the incident which happened at Jagdalpur can also be ignored. The appellant appears to be a member of Tribel and the incident happened in the village, the appellant after killing the deceased went to Sarpanch and confessed his guilt before him, thereafter he went to Police Station. Therefore, motive in this case appears to be absent.

16. Considering all the facts and circumstances of the case and further considering the fact that all of a sudden the incident happened and after commission of offence the appellant confessed his guilt before Budhram Sarpanch (PW/2), I am of the considered opinion that ends of justice would be served if the jail sentence of ten years RI awarded to the appellant is reduced to the period of seven years RI while maintaining the conviction under Section 304 Part II of the IPC and maintaining the fine amount of Rs.5000/-.
17. Consequently, the appeal is partly allowed. Now the appellant has been convicted under Section 304 Part II of the IPC and sentenced to undergo RI for seven years and to pay fine of Rs. Rs.5000/-, in default of payment of fine to undergo additional RI for four months.
18. The record reveals that the appellant is in custody and he has already served out the jail sentence more than 5 years, nine months and three days. He shall be set free after completion of the jail sentence imposed upon him by counting the period of set off for which he is legally entitled.

The order of sentence is modified to the extent indicated above.

Sd/-

(Goutam Bhaduri)
Judge

Raju