

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1164 of 2012**

1. Ram Das alias Bhagat S/o Nanka Ram, aged about 41 years, Occupation – Agriculture, R/o Village Dignagar, PS Rajpur, District Surguja, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Rajpur, District Surguja, CG

---- Respondent

For Appellant	:	Shri Rishi Rahul Soni, Advocate
For Respondent/State	:	Shri Dhiraj Wankhede, GA

Hon'ble Shri Justice Pritinker Diwaker &**Hon'ble Shri Justice Sanjay K. Agrawal****Judgment on Board by Pritinker Diwaker, J****24/05/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 21.10.2009 passed by the Sessions Judge Surguja (Ambikapur) in Sessions Trial No. 19/2008 convicting the accused/appellant under Sections 302 and 307 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/- u/s 302 and RI for 10 years with fine of Rs. 500/- under Section 307 IPC plus default stipulations.

2. According to the case of the prosecution, on 22.11.2007 a Pooja ceremony was held in the house of Lal Sai which was attended by the accused/appellant, his family members and also by the deceased. After attending the said ceremony the accused/appellant returned to his house and started pressing the neck of his son Sushil for sacrifice. This act of the

accused/appellant was objected to by his wife Kalawati who immediately called Lal Sai and his wife Khukharhin. It is said that when Lal Sai and Khukharhin tried to stop the accused/appellant from such heinous act, he gave a blow with battle-axe on the neck of Khukharhin and also caused injuries to Lal Sai (PW-1) with it, and all this happened at 11-12 PM. At the instance of Bharat Ram (PW-2) - the nephew of the accused and the deceased, Dehati Nalisi Ex. P-2 was recorded on 23.11.2007 at 10.40 AM followed by FIR Ex. P-3 registered against the accused/appellant at 10.50 AM for the offences punishable under Sections 302 and 307 IPC. After inquest Ex. P-7, the body of the deceased was sent for postmortem examination which was conducted by Dr. Rajesh Bhajgawali (PW-7) who gave his report Ex. P-18. Injured Lal Sai (PW-1) was also medically examined by the same doctor who gave his report Ex. P-17. On *challan* being laid by the police, the Court below framed the charge against the accused/appellant under Sections 302 and 307 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 07 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. Hence this appeal.

5. Counsel for the accused/appellant submits that Lal Sai (PW-1)

and Panchuram (PW-3) have falsely implicated the accused/appellant in this case. He submits that even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Section 302 IPC as he gave only a solitary blow on the neck of the deceased. According to the counsel for the accused/appellant, the witness to extra-judicial confession namely Balram (PW-4) has also implicated the accused/appellant in an absolutely false case. According to him, as the incident took place on sudden provocation, the accused/appellant can at the most be convicted under Section 304 (Part-I or Part-II) and not under Section 302 IPC.

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.

7. Lal Sai (PW-1) - the husband of the deceased has stated that on the date of incident at about 12 in the midnight wife and son of the accused/appellant namely Kalavati and Shiv Prasad respectively knocked his door and on same being opened, it was informed by Kalavati that the accused/appellant was pressing the neck of her son. Thereupon, this witness along with his wife Khukharhin went to the house of the accused/appellant and saw him pressing the neck of his son Sushil and when his wife asked him as to why he was doing so, he gave a battle-axe blow on her neck. Accused/appellant is stated to have assaulted him also with the said weapon causing injuries on his face and near the left eye and ear as a result of which he became unconscious and fell down, and after regaining consciousness in the hospital, he came to know about the death of his wife. In cross-examination also, this witness has remained firm

to what has been stated by him in the examination-in-chief and nothing could be elicited by the defence to the contrary. Bharat Ram (PW-2) is the witness who lodged the report and took the deceased and injured to hospital on tractor. Panchuram (PW-3) is the eyewitness to the incident who supporting the case of the prosecution has stated that on the date of incident when he was sleeping in the house of Lal Sai, in the midnight wife and son of the accused/appellant knocked the door and on same being opened, Kalavati informed him that the accused/appellant was pressing the neck of her son for sacrifice, and also asked him to accompany her to her house. According to this witness, when he along with Lal Sai and his wife Khukharhin went there, accused/appellant was pressing the neck of his son with one hand and was holding a battle-axe with the other. He has further stated, that when Khukharhin asked the accused as to why he was doing like that, he dealt a battle-axe blow on her neck. When Lal Sai asked the accused as to why he assaulted his wife, he assaulted him also with the said weapon causing injuries on his cheek which were bleeding profusely. When this witness tried to pacify the accused, he threatened him also of life in case he deposed against him. Thereafter, this witness shifted the deceased and injured to the hospital and it is where he informed Lal Sai about his wife being assaulted by the accused/appellant. Balram (PW-4) is the witness before whom the extra-judicial confession was made by the accused/appellant regarding commission of murder of Khukharhin. He is also the witness to inquest Ex. P-7 and seizure of plain and blood stained soil made under Ex. P-10. He however has stated that the *lungi* of the accused was not seized in his presence and at this stage he has been declared hostile. Lurjhut Ram (PW-5) is the

Patwari who prepared spot map Ex. P-1. A. Toppo (PW-6) is the investigating officer who has duly supported the case of the prosecution. Dr. Rajesh Bhajgawali (PW-7) is the witness who conducted postmortem examination on the body of the deceased vide Ex. P-18 and also medically examined the injured (PW-1) vide Ex. P-17. He noticed one incised wound in the size of 10 x 4 cm over left side of neck with the depth of 4 cm and blood was found in the nostril. Cause of death, according to him, was syncope due to severe blood loss and the death was homicidal in nature. Likewise, he noticed one incised wound on the face – above the nose to left ear, of injured Lal Sai in the size of 15 x 2 cm.

8. We have given our thoughtful consideration to the entire material collected by the prosecution, in particular, the evidence of the injured witness Lal Sai (PW-1) and the eyewitness Panchuram (PW-3). From the evidence of (PW-1) it is apparent that on being called by the wife of the accused/appellant he went to her house along with his wife and when his wife asked the accused/appellant as to why he was pressing the neck of his son, he assaulted her with the battle-axe and caused injury on her neck. Not only this, when PW-1 asked as to why he assaulted his wife, the accused/appellant assaulted him also with the said weapon causing injury on his face and nose for which he was shifted to the hospital and it is where he came to know about the death of his wife on account of the injuries inflicted by the accused/appellant. Likewise, Panchuram (PW-3) – the eyewitness to the incident has stated that when wife of Lal Sai asked the accused as to why he was pressing the neck of his son, he assaulted her and when her husband asked him as to why he assaulted his wife, he (accused) assaulted him also with the same weapon. Even PW-3 was threatened by the

accused of life if he deposed anything against him. Moreover, there is a witness to extra-judicial confession also namely Balram (PW-4) before whom the accused/appellant had disclosed about assaulting the deceased and her husband. True it is that the extra-judicial confession is a very weak type of evidence but if it is voluntary, made in a fit state of mind and gets corroboration from the other evidence on material particulars, can be relied upon by the Court - **(2009 AIR SCW 752 - Mohd. Azad @ Samin v. State of West Bengal & 2009 AIR SCW 3730 - Baldev Singh v. State of Punjab)**. In the case in hand, there is nothing to the contrary to cast a doubt on the veracity of statement of PW-4 before whom the extra-judicial confession was made by the accused/appellant himself. In addition to this, on the memorandum of the accused/appellant Ex. P-8 seizure of battle-axe has been made and as per FSL report Ex. P-20 presence of blood thereon has been duly confirmed. Brutality of the accused/appellant is further manifest from the medical evidence showing an incised wound on vital part like neck of the deceased. Injury on nose of the injured (PW-1) has also been proved by the medical evidence. Once there is unambiguous statement of the witnesses regarding the heinous act of the accused/appellant in committing the murder of the deceased for none of her fault except trying to avert the killing of his own son, this Court is not in agreement with the submission of the counsel for the appellant for convicting the accused under Section 304 (part-I or Part-II) in place of 302 IPC. Looking to the severity of blow, the part of the body i.e. neck chosen by the accused for rendering the same and the weapon like battle-axe used for doing so, it is a clear cut case of conviction under Section 302 and therefore the submission of the counsel for the appellant that the

act of the accused/appellant falls within the purview of section 304 (Part-I or Part-II) is outrightly rejected. Material collected by the prosecution is well enough to hold the accused/appellant guilty under section 302 IPC for committing the murder of the deceased and under Section 307 for causing injuries to her husband (PW-1). There appears nothing which could make this Court interfere with the well reasoned findings recorded by the Court below in holding the accused/appellant guilty under Sections 302 and 307 IPC.

9. In the result, this Court does not see any illegality or infirmity in the judgment impugned and being so it is hereby maintained and the appeal meets the fate of dismissal. Accused/appellant is already in jail and therefore no order regarding his arrest etc. is necessary.

Sd/-
(Pritinker Diwaker)
Vacation Judge

Sd/-
(Sanjay K. Agrawal)
Vacation Judge