

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1599 of 2015**

- Chain Singh S/o Shatrughan Singh Kanwar, aged about 30 years, R/o village Khamhera, Police station Dongargaon, Civil & Revenue District Rajnandgaon (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through : The Police Station Dongargaon, Civil and Revenue District Rajnandgaon (Chhattisgarh)

---- Respondent

For Appellant.	:	Ms. Sareena Khan, Advocate.
For Respondent.	:	Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board**By Pritinker Diwaker, J****02/05/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 25.10.2007 passed by the Sessions Judge, Rajnandgaon, in S.T. No.95/2007 convicting the accused/appellant under Section 302 IPC & and sentencing him to undergo imprisonment for life with fine of Rs.2000/-, in default of payment of fine amount to further undergo S.I. for six months.

02. In the present case, name of the deceased is Amrit Bai W/o Dhansai, who is younger brother of the appellant. As per the prosecution case, the partition of the family property between Dhansai and the appellant had already taken place and they were living

separately. On 27.06.2007 when Dhansai was working in his field, the accused/appellant committed murder of the deceased by causing injury on her head by iron door plate. Hiru Ram (PW/2), who witnessed the entire incident, immediately asked his son to pass on the said information to Dhansai, who in turn, immediately after coming to know about the incident reached the spot. At the instance of Dhansai (PW/1), un-numbered merg Ex.P/2 was recorded on 27.06.2007 at 10.30 am, on same day at 10.45 am dehati nalisi Ex.P/1 was recorded and numbered merg was also recorded vide Ex.P/17. Based on merg intimation (Ex.P/17), F.I.R. Ex.P/18 was registered on 27.06.2007 itself under Section 302 IPC against the accused/appellant. On 27.06.2007, inquest on the body of deceased was conducted vide Ex.P/7 and dead body was sent for postmortem to Primary Health Center, Dongargaon where postmortem examination on the body of deceased was conducted by Dr. S. S. Devdas (PW/10) who gave his report Ex.P/15 and found following injuries:-

- i. Lacerated wound of 6 cm x 1 cm x bone deep on right occipital region.
- ii. Lacerated wound of 2 cm x 1 cm x bone deep on left occipital region.
- iii. Lacerated wound of 3 cm x 1/2 cm x bone deep on lower part of occipital region.

The autopsy surgeon opined that the injuries were antemortem in nature and cause of death of deceased was due to shock resulting from intracranial hemorrhage.

03. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was

framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he has taken specific defence that while hunting birds all of a sudden the deceased sustained injury on her head and, thus, according to his defence, he had no intention to kill the deceased.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under :

- (i) That the accused/appellant had no intention to cause the death of deceased and accidentally the deceased suffered injury.
- (ii) That the accused/appellant has already remained in jail since 28.06.2007 and has almost completed 10 years of jail sentence.
- (iii) That even if the entire prosecution case is taken as it is, the offence under Section 302 IPC is not made out against him.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He further submits that there is no evidence on record to show that the deceased suffered injuries accidentally.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Dhansai (PW/1) - husband of the deceased has stated that on the

date of incident he had gone to his field. At about 8.00 am one Nammu came to him and told that accused/appellant Chain Singh has committed murder of his (this witness) wife. He has further stated that his wife deceased sustained injuries over back of head. At the place of occurrence, Surtiya Bhabi, Puniya Bai, Hiru, Shyam kalyan, Basanti etc were present and Hiru (PW/2) had told him that the accused/appellant caused injuries to his wife by iron door plate.

10. Hiru Ram (PW/2) is eye-witness to the incident. While supporting the prosecution case he has stated that on the date of incident at about 8.00 am he was standing near lane along with Shyam Kalyan (PW/3) and Gopi Ram (PW/11). At the relevant point of time, he saw the accused/appellant assaulting deceased by iron door plate as a result of which she sustained injuries over her head. Immediately, he (this witness) and PW/11 caught hold the accused/appellant and thereafter wife of PW/3, his younger daughter-in-law Basanti, Gangabai and others also reached to the place of occurrence. He has further stated that he asked his younger son Nammu to inform Dhansai - husband of the deceased about the incident. In cross-examination, no relevant question has been put to this witness and he remained intact.

11. Shyam Kalyan (PW/3) has stated that on the date of incident at about 8.00 am, Hiru (PW/2), Gopi (PW/11) and this witness were sitting on the porch of Heeraman then they heard the sound “दौडो दौडो मार दिया है”, thereafter, they reached to the place of occurrence and saw the accused/appellant standing near the body of deceased holding iron door plate in his hand. Dr. S.S. Devdas (PW/10) conducted the postmortem on the body of deceased and gave his report Ex.P/15 opining the cause

to deceased to be shock due to intracranial hemorrhage. Gopi Ram (PW/11) was also present at the time of occurrence. He has stated that he saw the accused/appellant holding iron door plate in his hand. Sewak Ram Dhruv (PW/14) is Investigating Officer who has duly supported the prosecution case. Though on the memorandum of the accused/appellant (Ex.P/10), one iron door place was seized, however, there is no F.S.L. report on record. In the statement recorded under Section 313 of Cr.P.C., the accused/appellant has taken specific defence that when he was hunting birds, all of a sudden deceased sustained injuries. But for this statement there is nothing on record to counter the statements of PW/2, PW/3 and PW/11, who saw the accused/appellant standing there holding iron door plate in his hand.

12. Close scrutiny of the evidence makes it clear that on 27.06.2007 it is the accused/appellant who killed the deceased by causing injuries on her head by iron door plate. Hiru Ram (PW/2)- eye witness to the incident, in para 1, has stated that he saw the accused/appellant assaulting deceased by iron door plate on her head. In para 4 of his cross-examination, this witness remained very firm and reiterated the same thing. The version of this witness is well corroborated by the evidence of Shyam Kalyan (PW/3), Gopi Ram (PW/11), Dr S.S. Devdas (PW/10) and postmortem report Ex.15. The evidence of these witnesses is sufficient to infer that it is the accused/appellant who has caused death of deceased and we have no reason to disbelieve the statements of these witnesses. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially the fact that the

accused/appellant has not committed murder of deceased. The defence taken by the appellant in his statement recorded under Section 313 of Cr.P.C. that while hunting birds the deceased suffered injuries has no force at all as no defence witness has been examined to substantiate this fact and not a single word has been uttered by the prosecution witnesses too in this regard. We also do not find any force in the argument of counsel for the appellant that in the given facts and circumstances of the case, the accused/appellant cannot be convicted under Section 302 IPC. The evidence on record makes it abundantly clear that the appellant while assaulting the deceased on her vital part head with an iron plat was not only having intention to kill her but also had the knowledge that such bodily injury would certainly result in her death. Being so, his conviction under Section 302 of IPC cannot be faulted with.

13. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

14. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE