

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 890 of 2012**

- Motiram @ Bodhan @ Bhim Verma, aged about 40 years, S/o Late Sundar Lal Verma, R/o village – Pavani, Chowki - Silyari, P.S. : Dharsiva, District Raipur (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh Through : Station House Officer, P.S. Dharsiva, District Raipur (C.G.)

---- Respondent

For Appellant	:	Shri Hemant Gupta, Advocate.
For Respondent/State:		Shri Anupam Dubey, Dy.G.A.

**Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt Justice Rajani Dubey**

Judgment on Board**By Rajani Dubey, J****04/10/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 28.07.2012 passed by the Sessions Judge, Raipur (C.G.), in Sessions Trial No.261/2011 convicting the accused/appellant under Section 302 IPC & sentencing him to undergo imprisonment for life and also to pay fine of Rs.1,000/-, in default of payment of fine amount to further undergo R.I. for one month.

2. In the present case, name of deceased is Yashoda Bai, wife of Tejram Verma (PW/3). Appellant is brother-in-law (जेठ) of the deceased. It is said that there was an old dispute between the deceased and the appellant with regard to discharge of

water from the kitchen garden. Their kitchen gardens are adjacent to each other and both were facing water-logging problem. On 07.09.2011 at about 3.00 PM, it was raining, and a quarrel took place between them as to why the appellant did not break the mount of his kitchen garden to flush rainy water. Thereafter, deceased went for her work. On the same day at about 5.00 PM, when the deceased was returning to her house and talking to Ratan Sen (PW/1), the appellant came there, gave axe blow on the head of the deceased resulting in her death and fled away from the spot. After hearing the sound of quarrel, daughters of deceased Ku. Annapurna (PW/2), Ku. Chandani (PW/6) and Ku. Yogeshwari (PW/7) came out of their house and saw the deceased in the pool of blood. On the same day at about 06.45 PM, at the instance of Tej Ram (PW/3), FIR (Ex.P/3) was registered against the appellant on the allegation of commission of offence under Section 302 IPC followed by merg (Ex.P/2) at 06.55 PM. Inquest on the body of deceased was conducted on 07.09.2011 vide Ex.P/4 and body was sent for postmortem examination to Community Health Center, Tilda, District Raipur where Dr. A.A. Siddiqui (PW/9) conducted postmortem on the body of deceased and gave his report (Ex.P/9) noticing following injuries:-

- (i) Incised wound of 2 ½ " x 1" x 1 ½ " having reddish colour on left ear lobule and left mastoid part of neck.
- (ii) Incised wound of 2 ½ " x 1" x ½ " having reddish colour on left medially top of shoulder.

The Doctor opined that the cause of death of deceased

was syncope due to excessive hemorrhage and mode of death was homicidal in nature.

3. From the spot, bloodstained soil and plain soil were seized vide Ex.P/11. Clothes of the deceased was also seized vide Ex.P/7. Memorandum of the appellant was recorded vide Ex.P/12, based on which, axe was seized from the front side of the house of Kotwar, vide Ex.P/13. Seized articles were subjected to chemical examination, and as per FSL report (Ex.P/18), presence of blood was confirmed thereon, however, there is no serological report on record to confirm its group and origin. After filing of the charge-sheet, the trial Court framed charge against the accused/appellant under Section 302 IPC.

4. In order to prove complicity of the accused/appellant in the crime in question, the prosecution has examined 13 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied incriminating circumstances and pleaded innocence and false implication in the case.

5. Relying upon the evidence led by the prosecution, the Court below convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence, this appeal.

6. Learned counsel for the appellant submits that the accused/appellant has been convicted only on the basis of suspicion and so called eye-witnesses Ku. Annapurna Verma

(PW/2), Ku. Chandani Verma (PW/6) and Ku. Yogeshwari Verma (PW/7), daughters of the deceased, but their evidence do not inspire confidence nor trustworthy. Learned counsel further submits that other evidence against the appellant is his memorandum statement (Ex.P/12), based on which, one axe has been seized from front side of house of Kotwar vide Ex.P/13, and as per FSL report, blood was found thereon, but there is no serological report on record to confirm its group and origin and in absence of serological report, seizure of axe loses its efficacy. Learned counsel for the appellant has placed reliance on the decision of this Court in the matters of **Anand Singh V. State of Chhattisgarh** and **Laxman V. State of Madhya Pradesh (Now Chhattisgarh)**.

7. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

9. Ratan Sen (PW/1) has stated that when he was returning from his field, on the way, he saw the body of deceased in pool of blood and daughters of deceased were crying there, who informed him that it is the appellant who killed the deceased. At this stage, this witness has been declared hostile.

10. Ku. Annapurna (PW/2) is the daughter of the deceased.

She has stated that on the date of incident, it was raining and the appellant had blocked kitchen garden as a result of which rainy water entered in her house. She has further stated that when her mother returned from work, she objected to it, upon which, appellant started using filthy language and assaulted her mother by axe. At the relevant time, Ratan Sen (PW/1) and her younger sister Chandani were also there. In para 2 of her cross-examination, she has stated that at the time of incident, she was cooking food in her house and when she heard the noise of quarrel, she came out of her house and saw her mother in pool of blood. This witness has also stated that when she came out of her house, the appellant was not there. Ku. Chandani (PW/6) is the child witness and another daughter of the deceased. The trial Court, after satisfying itself that the child witness is able to answer the questions put to her rationally, has examined her. This witness has made almost similar statement as has been made by PW/2. In para 3 of her cross-examination, she has stated that she was in her house when her mother was expressing annoyance against the appellant as to why he did not break mount of his kitchen garden, due to which, there was water-logging in her kitchen garden. Further, in para 4, she has stated that when she came out of her house, she saw the body of her mother lying near the road side and went to call her father. Ku. Yogeshwari Verma (PW/7) is also daughter of the deceased. She has also made similar statement as has been made by PW/2 and PW/6.

11. Tejram Verma (PW/3) is the husband of the deceased and

lodger of FIR (Ex.P/2). He has stated that there existed a dispute with the appellant with regard to discharge of water from kitchen garden and many a times deceased had quarreled with the appellant on this issue. He has further stated that when he was returning to his house, on the way, his daughter Chandani (PW/6) came to him running and informed that the appellant has killed the deceased. When he reached the place of occurrence, he saw the body of deceased lying near the road. In para 4 of his cross-examination, he has stated that he had disclosed to police that there used to be quarrel with the appellant on discharge of water but if the same is not recorded either in his report Ex.P/2, P/3 or in his statement Ex.D/1, he cannot tell the reason.

12. Santosh Kumar Sen (PW/4) and Ravishankar Verma (PW/8) are the witnesses of seizure made under Ex.P/7. These witnesses have admitted their signature on the seizure memo. Tejram Verma (PW/5) turned hostile.

13. Dr. A.A. Siddiqui (PW/9) conducted postmortem examination on the body of deceased and gave his report Ex.P/9 opining the cause of death of deceased to be syncope due to excessive hemorrhage and mode of death was homicidal in nature. In para 6 of his cross-examination, he has stated the one axe was produced before him for examination, and as per his query report (Ex.P/10), the injuries sustained by the deceased could have been caused by the said weapon.

14. Pramod Singh Thakur (PW/10) is the Patwari who prepared spot map vide Ex.P/6. Dilip Verma (PW/11) is Sarpanch of the village. He has stated that he heard about the quarrel between two brothers (appellant and his brother PW/3) on the issue of discharge of water. He is also witness to memorandum of the appellant (Ex.P/12) and seizure of axe made under Ex.P/13. This witness has also admitted his signature on the memorandum and seizure.

15. T.P. Dwivedi (PW12) - Investigating Officer has duly supported the prosecution case. Ashok Kumar Tiwari (PW/13) - Head Constable, assisted in the investigation.

16. Close scrutiny of the evidence available on record, makes it clear that on 07.09.2011 at about 3.00 PM a quarrel took place between the deceased and the appellant on account of discharge of water from the kitchen garden and on the same day at about 5.00 PM, when the deceased was returning to her house, the appellant assaulted her on her neck by axe resulting in her death. The incident has been witnessed by Ku. Annapurna (PW/2), Ku. Chandani (PW/6) and Ku. Yogeshwari (PW/7), daughters of the deceased, who have categorically stated in examination-in-chief that it is the appellant who assaulted the deceased by axe resulting in her death. After the incident, PW/6 immediately went to her father Tejram Verma (PW/3) and informed the incident, who promptly lodged FIR (Ex.P/3) naming the appellant to be the accused. The trial Court, in para 15 of the impugned

judgment, recorded the finding that PW/2, PW/6 and PW/7 have not seen the actual occurrence but have admitted the fact of quarrel which took place twice between the deceased and the appellant. On careful examination of the evidence of PW/2, PW/6 and PW/7, it appears that in examination-in-chief they have categorically stated that they have seen the appellant assaulting the deceased by axe and in cross-examination they have given unrebutted evidence with regard to quarrel on the date of incident. The defence, on this point, neither cross-examined these witnesses nor any question was put to them and as such their versions to the extent that 'on the date of incident, they have seen the appellant quarreling with deceased twice' remained unchallenged. The evidence of these witnesses inspire confidence. That apart, evidence of these witnesses gets corroboration from medical evidence according to which two incised wounds on left ear and left top of shoulder were noticed. The Autopsy Surgeon, in para 6 of his cross-examination, has stated that the weapon of offence, axe was produced before him and he gave query report (Ex.P/10) opining that the injuries sustained by the deceased could have been caused by the said axe. Considering the statement of PW/2, PW/6 and PW/7 coupled with the medical evidence, the complicity of accused/appellant in the crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses. The case laws relied upon by learned counsel for the appellant in the matter of **Anand** and **Laxman (Supra)**,

being distinguishable on the ground of fact, is of no help to him.

17. We are not satisfied with the argument of counsel for the appellant that though the FSL report is positive but in absence of serological report, the seizure of axe on the memorandum of the appellant, loses its significance.

It has come in the evidence of PW/2, PW/6 and PW/7 that the appellant assaulted the deceased by axe and at the instance of appellant, the same was recovered and as per FSL report, blood has been found on the seized weapon axe but there is no serological report on record to prove its origin and group, but in the case of conviction based on evidence of eye-witness, this could be an additional link to point towards the guilt of the accused.

18. 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.

19. 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/-

(Manindra Mohan Shrivastava)

Judge

Sd/-

(Rajani Dubey)

Judge