

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 333 of 2011

- Munna Lal, S/o Johan Kumar, aged about 35 years, resident of Jora Tarai, Kamar Dera, PS Mahasamund, District Mahasamund (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through PS Mahasamund, District Mahasamund.

---- Respondent

For Appellant	:	Shri Ashok Dixit, Advocate
For Respondent	:	Shri N.K. Mehta, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgement

Per P. Diwaker, J

27/8/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 11.2.2011 passed by the learned Sessions Judge, Mahasamund in S.T. No.62/10 convicting the accused/appellant under Sections 307 & 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 5 years with fine of Rs.1,000/- and RI for life with fine of Rs.1000/-, plus default stipulations, respectively.
2. As per case of the prosecution, on 14.8.2010 at about 9 in the morning the accused/appellant lifted injured Gayatri, 5 years old girl, and threw her on the ground and thereafter he armed with sword chased Hagru (deceased), aged about 80 years, and caused injuries on his head by axe as a result of which he fell down. Deceased was immediately taken to the hospital where he succumbed to his injuries. MLC of deceased was done by Dr.

Hemant Chandravanshi (PW-12) and noticed following injuries:-

- lacerated wound over right parietal region of scalp of 1x1cm x bone deep.
- lacerated wound 2" below Injury No.1 of 1x1cm x bone deep.
- Bleeding from right ear.

Intimation regarding death of deceased was given to the police vide Ex.P-9. On 14.8.2010 at 12.35 hrs FIR (Ex.P-10) was lodged by Ramesh Kumar (PW-6), grandson of deceased, under Section 307 of IPC against the appellant. Merg Intimation (Ex.P-16) was recorded at the instance of Rajkumar (not examined). Inquest (Ex.P-12) was prepared over the body of deceased on 14.8.2010. Dr. Hemant Kumar Nag (PW-12) conducted post-mortem on the body of deceased vide Ex.P-20 and noticed following injuries:-

- lacerated wound at left side of forehead of 2x1cm in size
- lacerated wound on left side of occipital region of 5x3 cm in size upto skull bone, margin irregular and hyperemic clotted blood present on wound.
- conjunctural haemorrhage over left side of eye.

The autopsy surgeon has opined that cause of death was coma due to haemorrhagic shock on account of head injury (fracture of parietal bone along with severe haemorrhage) and the death was homicidal in nature. Duration of death was 0-24 hours from the time of post-mortem examination. On the basis of memorandum (Ex.P-3) of accused/appellant, one iron axe was seized vide seizure memo Ex.P-1. Seized articles were sent for chemical examination to the Forensic Science Laboratory vide Ex.P-22, but there is no FSL report on record.

3. After investigation, charge sheet against the accused/appellant herein was filed under Sections 307 & 302 of IPC and accordingly the charges under

those sections were framed against him by the trial Court. The prosecution in order to bring home the charges levelled against the accused/appellants examined 12 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.

5. Counsel for the appellants submits that;-

- conviction of accused/appellant is based on the testimonies of eyewitness Shati Bai (PW-2) & Shyam Sundar (PW-5), but their evidence is not trustworthy and reliable.
- from the nature of injury mentioned in MLC report (Ex.P-19) of injured Gayatri it cannot be inferred that accused had the intention to cause her death. The doctor, who medically examined her, has denied the suggestion that the injury noticed on her person was dangerous to her life. Thus, the conviction of appellant under deserves to be converted from Section 307 of IPC to Section 323 of IPC and resultantly, the sentence imposed upon him is also deserves to be reduced.
- even if the entire prosecution case is taken as it is, the appellant cannot be held guilty under Section 302 of IPC and at best, he can be convicted under Section 304 Part I of IPC. the appellant is in custody for the last 8 years and therefore while converting his conviction under Section 304 Part I of IPC, he be sentenced to the period already undergone.

6. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that the conviction of appellant under

Sections 302 & 307 IPC and the resultant sentences are just and proper and no interference therewith is warranted.

7. Hem Singh (PW-1) is the witness of seizure memos of Ex.P-1 to P-4, however, he did not support the prosecution case and turned hostile.
8. Shati Bai (PW-2), granddaughter of deceased Hagru and an eyewitness to the incident. She has deposed that at the time of occurrence accused/appellant lifted injured Gayatri and threw her on the ground. Seeing this, her husband rushed near her and brought her to his old house where brother of her husband has been residing. Thereafter the accused came inside her house from other side of her house and started quarrelling with her grandfather (deceased) and when her grandfather ran towards the kitchen garden, the accused chased him and assaulted on his head with axe as a result of which he fell down and blood started coming out of his head. The villagers took her grandfather to the hospital where he died during the course of treatment. This witness has been cross-examined at length by the defence, but nothing incriminating could be elicited from her so as to make her testimony unreliable or untrustworthy.
9. Leeladhar Dadsena (PW-3) is the Patwari who prepared the spot map vide Ex.P-5. Jeevan Singh (PW-4) is the Constable who assisted in the investigation. Dr. J.P. Soni (PW-5) is the person who gave intimation regarding the death of Hagru to the Police Station City Kotwali, Mahasamund vide Ex.P-9.
10. Ramesh Kamar (PW-6), husband of PW-2, has deposed that on the date of incident he was in his house. On coming to know that accused had thrown a girl on the floor, he rushed there and took the said girl to the house of her sister-in-law. He has further deposed that when he returned home he learnt from his wife that accused had cut the deceased with axe. Thereafter, he went near the kitchen garden situated in front of his house

and found the deceased lying dead on the ground. Injury on his head was present.

11. Shyam Sunder Kumar (PW-7) has stated that upon hearing cries that accused had thrown Gayatri on the floor and killed the deceased, he rushed there and found Gayatri lying unconscious, whereas deceased was lying dead in his courtyard. He is also a witness to map Ex.P-13, memorandum (Ex.P-3), seizure memo (Ex.P-1 & P-2). However, he has not fully supported the prosecution case and as such declared hostile.
12. Kokderam Minj (PW-8) & Panchanan Das (PW-9) have assisted in the investigation. Raja Ram Yadav (PW-10) is the investigating officer who has duly supported the prosecution case.
13. Dr. N.K. Mandape (PW-11) is the doctor who conducted post-mortem on the body of deceased and noticed the injuries as described above. He has opined that cause of death was shock and haemorrhagic shock due to head injury (fracture of parietal bone) and excessive bleeding and that the death was homicidal in nature.
14. Dr. Hemant Chandrawanshi (PW-12) is the person who did MLC of deceased Hagru & injured Gayatri vide Ex.P-18 & P-19.
15. Close scrutiny of the evidence on record makes it clear that it is the accused/appellant who not only attacked and assaulted injured Gayatri but also killed the deceased by causing grievous axe injuries on vital part of his body i.e. head, resulting in his death. Incident was witnessed by Shati Bai (PW-2), who has categorically stated that on the fateful day when she was standing at her house along with her child, she saw that accused/appellant had thrown injured Gayatri on the ground and thereafter he gained entry in her house from other direction, quarrelled with her grandfather (deceased) and when her grandfather tried to save himself by running towards kitchen garden, the accused chased him and

dealt a blow with axe on his head as a result of which he fell down there and started bleeding. Evidence of this witness not only finds corroboration from the promptly lodged FIR (Ex.P-10) but also from the medical evidence. According to autopsy surgeon (PW-11), the cause of death of deceased was coma and haemorrhagic shock due to head injury and death was homicidal in nature. The query put to autopsy surgeon (PW-11) as to whether the injuries found on the body of deceased could be caused by axe seized from the possession of accused/appellant has been answered by him in affirmative vide Ex.P-24. Nothing could be brought on record by way of cross- examination of Shati (PW-2) to show that she had any interest in falsely implicating the accused/appellant or she had any axe to grind against him.

Admittedly, there is no FSL report as regards the presence of blood on the weapon of offence, axe, seized at the instance of accused/appellant, but present being a case of eyewitness account where she has deposed about the incident in a clear and lucid manner, the same is not of much consequence. Thus, considering the overall evidence, ocular and medical, on record, we are of the opinion that the prosecution has been able to successfully prove the complicity of accused/appellant in the crime in question.

16. As regards the conviction of accused/appellant under Section 307 of IPC, the accused/appellant had admittedly not used any kind of weapon while assaulting injured Gayatri. PW-2 Shati Bai has also stated that accused/appellant lifted and threw her on the ground. Perusal of MLC (Ex.P-19) reveals that injured Gayatri was in altered sensorium and no external injury was present anywhere in her body. In view of injury report and absence of user of any dangerous weapon, which would normally be used in such a situation where there is an intention to cause death a

person, it can be safely inferred that the accused/appellant had no intention to cause death of injured Gayatri. However, in the given facts and circumstances of the case, he cannot escape his conviction under Section 323 of IPC for voluntarily causing hurt to the injured.

17. We find no substance in the argument of counsel for the accused/appellant that in the facts & circumstances of case the accused/appellant is liable to be held guilty under Section 304 Part-I of the IPC. The manner in which offence is said to have been committed, weapon of offence i.e. axe, the part of body (head) on which assaults were made and the force with which the assaults were made causing fracture of parietal bone, leading to his instantaneous death, it is evident that the accused/appellant had intention to cause death of the deceased and had every knowledge that the injuries being inflicted by him on the deceased were sure to result in his death.

18. Accordingly, the appeal is partly allowed. Conviction and sentence of the appellant under Section 302 IPC are hereby maintained. However, while converting his conviction under Section 307 of IPC to Section 323 of IPC, he is sentenced to undergo RI for 1 year. Accused/appellant is already in custody, therefore, no order regarding his surrender etc. is needed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Smt. Rajani Dubey)
Judge

roshan/-