

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 20 of 2013****Reserved on 09.12.2017****Pronounced on 16.01.2018**

(Arising out of judgment/order dated 26.09.2012 in Sessions Trial No.43/2011 of the learned Sessions Judge, North Bastar, Kanker)

- Asim Mandal @ Kotai S/o Shri Amal Mandal, aged about 23 years, Occupation Agriculturist R/o P.V.21 Durgapur, Police Station, Pakhanjur, District Kanker (C.G.) ---- **Appellant**

Versus

- State Of Chhattisgarh through : Station House Officer, Police Station : Pakhanjur, District Uttar Bastar Kanker (Chhattisgarh) ---- **Respondent**

For Appellant	:	Shri Govind Ram Miri with Shri Basant Kaiwartya, Advocate
For Respondent/State	:	Shri Anil S. Pandey, Government Advocate

**Hon'ble Shri Gautam Bhaduri &
Hon'ble Shri Sanjay Agrawal, JJ**

CAV Judgment / Order**Per Sanjay Agrawal, J.**

- This is an appeal preferred by the appellant Asim Mandal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) assailing the judgment dated 26.09.2012 passed by the learned Sessions Judge, Kanker, District North Bastar in Sessions Trial No.43/2011 whereby he has been convicted and sentenced for offences punishable under Sections as under:

Conviction	Sentence
Under Section 302 of the Indian Penal Code (for short 'the IPC')	Life imprisonment and fine amount of Rs.1000/- and, in default of payment of fine amount, further Simple Imprisonment for 3 months.

Under Section 324 of the IPC	RI for one year and fine amount of Rs.500/- and, in default of fine amount, further Simple Imprisonment for one month.
Both sentences to run separately.	

2. The prosecution story, briefly stated, is that on 16.06.2010, the deceased Sanatan Mandal had returned to P.V.21 (Durgapur) from Pakhanjur weekly market by the Jeep owned by one Anant Sana in the evening around 5.00 pm and got down from the vehicle and, as soon as he proceeded towards his home, was assaulted, all of a sudden, by the appellant Asim Mandal with an axe. At the relevant time, the appellant, who had illicit relation with his wife Maleena, had come from his backside with the axe and assaulted him on his neck and has given several blows by axe on his back with an intention to eliminate him. As a result of which, he fell down and was taken to the Hospital but after sometime, he expired in the Hospital.
3. Based upon the aforesaid incident, the First Information Report (Ex.P.2) and merg intimation (Ex.P.1) have been lodged by one Shyamal Mandal, the uncle of the deceased, on the same day at 19:45 hours (07:45 pm). In pursuance to the said information, matter has been investigated and offence punishable under Section 302/201 of the IPC has been lodged against the appellant by the Station House Officer, Pakhanjur, District Kanker, by submitting its final report on 10.02.2011 before the Judicial Magistrate First Class, Pakhanjur. After finding the prima facie material available on record, the charge under Section 302 of the IPC has been framed against the appellant on 30.07.2011 and subsequently on 28.10.2011 another charge under Section 324 of the IPC has been framed. The

appellant has pleaded not guilty in connection with the aforesaid charges, as framed and claimed to be tried.

4. In order to prove the guilt of the appellant/accused, the prosecution has examined as many as 15 witnesses, while none was examined by the appellant in his defence.
5. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellant with regard to the offences punishable under Sections 302 and 324 of the IPC and sentenced him as aforesaid.
6. Being aggrieved, the appellant has preferred this appeal. Shri Govind Ram Miri, learned counsel for the appellant submits that the judgment under appeal as passed by the trial Court is perverse and illegal, inasmuch as, it did not appreciate the evidence in its proper perspective. He submits further that even if the entire prosecution story is to be believed, the appellant, at the most, would be convicted under Section 304 Part-II of the IPC and not under Section 302 of the IPC as held by the trial Court. He submits further that even in absence of any cogent and reliable evidence, the appellant has been convicted under Section 324 of the IPC, therefore, the judgment under appeal is liable to be set aside.
7. On the other hand, Shri Anil S. Pandey, learned Government Advocate for the State has supported the impugned judgment by submitting, inter alia, that it has been passed upon due and proper appreciation of the evidence, and therefore, does not require to be interfered.
8. We have heard learned counsel for the parties and perused the entire

record carefully.

9. Shyamal Mandal (P.W.1), who had lodged the F.I.R. (Ex.P.2) and merged intimation (Ex.P.1) immediately upon the occurrence of the alleged incident on 16.06.2010, stated that there was illicit relation between the appellant Asim Mandal and the wife of the deceased Maleena (P.W.6) and since deceased Sanatan has become an impediment between their relations, therefore, the appellant has killed him. In his cross-examination, he has denied the fact that there was no illicit relationship between them. The statement of this witness has been supported by Sachin Mandal (P.W.2) and Dilip Mistri (P.W.4), who also stated that since the deceased Sanatan has become an impediment between their illicit relationship, therefore, he was eliminated by the appellant.
10. Vikas Talafdar (P.W.3) was an injured eye witness and was the helper of the Jeep, by which, the deceased had returned from the weekly market of Pakhanjur. It is stated by him that on 16.06.2010, they were returning by the Jeep from Pakhanjur-weekly market to P.V.21 (Durgapur) and stopped the vehicle in front of one Dukhiram's house where he was collecting fare from some of the passengers. At that particular time, the appellant Asim Mandal, all of a sudden, came with an axe and assaulted the deceased on his neck, left shoulders and back side. As a result of which, Sanatan (deceased) fell down on the floor. He caught hold of the axe and tried to snatch it from him and during snatching of the axe, he received injury on his right hand elbow. He deposed further that after assaulting the deceased, the appellant ran away from the spot and the deceased has received injuries on his neck and blood was oozing owing to the said injuries.

He further deposed that they took him to the Hospital but he expired after sometime. This witness deposed further that he came to know subsequently about the alleged illicit relationship of the appellant with the deceased's wife. The statement of this witness could not be rebutted in his cross-examination.

11. The aforesaid statement has been supported by P.W.10 Tapas Sarkar as he has also seen the deceased Sanatan lying on the road and the appellant Asim Mandal running away from the spot. This witness stated further that he has been informed by Vikas Talafdar (P.W.3) that the appellant assaulted the deceased with an axe, as a result of which, he fell down. Although this witness has not seen the appellant assaulting the deceased but has seen the appellant running away from the spot. Thus, the statement of eye witness Vikas Talafdar (P.W.3) is duly corroborated by this witness.
12. Smt. Maleena Mandal (P.W.6), deceased's wife, stated that on the date of the incident, she was at home and preparing food at about 5:00-5:30 pm and, all of a sudden, she heard hue and cry near the house of Dukhiram. She came out from the house and saw that her husband was lying on the road. She asked him as to what happened, then he (deceased) told her that the appellant Asim Mandal assaulted him with an axe and demanded water. It is stated further by her that she was not in conscious, therefore, she did not know who has brought her husband to the Hospital. The said dying declaration of the deceased to her could not be rebutted in her cross-examination.
13. Dr. Sukhdev Shende (P.W.8), who has conducted the post-mortem on the dead body of Sanatan Mandal, has found the following incised

injuries:

01. Left shoulder – 10 cm x 4 cm x 3 cm deep. Left shoulder's stem & muscle was cut off, bone is visible of shoulder joint.
02. Left side of neck – 10 cm x 4 cm x 3 cm deep. Fracture of left clavicle proximal end.
03. On back – 10 cm x 2 cm x 2 cm deep. Rigor mortis was present.

14. After examining the aforesaid injuries, it was opined by him as under:

“मेरे मतानुसार अत्यधिक रक्तश्राव के परिणाम स्वरूप हेमरेजिक शॉक के फलस्वरूप मृतक की हत्या हुई थी । मृत्यु हत्यात्मक स्वरूप की थी जो मेरे परीक्षण अवधि के लगभग 19 से 20 घंटे की थी । मेरी रिपोर्ट प्र०पी०१० दो पन्नों में है जिस के अ से अ भाग मेरे हस्ताक्षर हैं”

15. A close scrutiny of the aforesaid evidence, vis-a-vis, the aforesaid opinion, it is clear that the appellant/accused had given the blow with an axe not only on the neck of the deceased but has also inflicted him badly upon his shoulders and back portion of his body with an intention to kill him and has thus committed an offence punishable under Section 302 of the IPC. The findings so recorded by the trial Court in this regard deserve to be and are hereby affirmed. However, we do not find any evidence on record that the injury caused to Vikas Talafdar (P.W.3) was voluntarily in nature. In fact, it was caused when he intervened the appellant from assaulting the deceased. Therefore, it cannot be held that the alleged injury caused to said Vikas Talafdar was voluntarily in nature so as to constitute an offence punishable under Section 324 of the IPC. Accordingly, the finding so recorded by the trial Court holding that the appellant is liable to be punished under Section 324 of the IPC deserves to be and is hereby set aside.

16. Consequently, the appeal is allowed in part and the appellant is liable to be and is hereby convicted for an offence punishable under Section 302 of the IPC. We, therefore, by modifying the impugned judgment, convict the appellant under Section 302 of the IPC while affirming the sentence as awarded by the trial Court to the appellant in this regard.

Sd/-
(Gautam Bhaduri)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE