

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 150 OF 2013**

Santosh Purena son of Udhoram Purena, aged about 35 years,  
Resident of Village Sundravan, Present Address Boirdeeh, Police  
Station Palari, District Baloda Bazar, Bhatapara (C.G.)

**---- Appellant**

**Versus**

State of Chhattisgarh, through Police Station Palari, District  
Raipur Now Baloda Bazar, Bhatapara (C.G.)

**---- Respondent**

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|----------------------|---|--------------------------------|
| For Appellant        | : | Smt. Monika Dey, Advocate      |
| For Respondent/State | : | Shri Adil Minhaj, Panel Lawyer |

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**Hon'ble Shri Justice Pritinker Diwaker &  
Hon'ble Shri Justice Sanjay Agrawal**

**Judgment On Board**

**15/03/2018**

**Per Sanjay Agrawal, J.**

1. This criminal appeal has been preferred by the accused/appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') against the judgment dated 10/12/2012 passed by the learned First Additional Sessions Judge, Balodabazar, District Raipur (C.G.) in Sessions Trial No. 205/2011, whereby the

accused/appellant has been convicted and sentenced as under :-

| <u>Conviction</u>                             | <u>Sentence</u>                                                                                              |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| U/s 302 of Indian Penal Code (in short 'IPC') | Life imprisonment with fine of Rs.500/-, in default of payment of fine amount, additional R.I. for 2 months. |

2. Briefly stated, the case of the prosecution is that on 18/09/2011, at about 4 - 5 A.M., the appellant Santosh Purena went to the house of one Leela Bai (PW-4), where his wife Nainbai was sleeping and given several blows on her head with an axe, as a result of which, she fell down with pool of blood and died. It is alleged by the prosecution that the appellant used to quarrel with his wife as he always suspected of her illicit relationship with one Rakhi Satnami of the same village, leading to the commission of the alleged crime.
3. Based upon the aforesaid incident, First Information Report (Ex. P-17) was lodged by appellant's daughter, namely, Premabai (PW-16) on 18/09/2011 at about 8.15 A.M. against her father before the Station House Officer, Palari, District Raipur under Section 307 of IPC by submitting *inter alia* that her grandmother Punibai (PW-5) has informed that her father Santosh Purena had assaulted her mother with an axe on her head, as a result of which, she fell down with pool of blood and was admitted into the Community Health Center, Palari, District Raipur, from where, she was shifted to Dr. Bhimrao

Ambedkar Hospital, Raipur. She, however, succumbed to injuries on 20/09/2011 at about 7.00 A.M. The unnumbered merger intimation (EX. P-16) was lodged on 20/09/2011 at about 9.30 A.M., based upon which, the numbered merger intimation (EX. P-12) was registered on 28/09/2011 at 18.20 hours. Inquest on the dead body was prepared on 20/09/2011 vide Ex. P-10. After inquest, the dead body of deceased Nainbai was sent for autopsy, where Dr. Shivnarayan Manjhi (PW-14) has conducted the postmortem examination and submitted his report vide Ex. P-15 by opining that the cause of death was due to cardio respiratory failure, as a result of head injury and their complications and, the death was homicidal in nature. Disclosure statement (Ex. P-2) of the appellant led to the recovery of the blood stained axe.

4. After usual investigation of the matter as such, the offence punishable under Sections 302 IPC was registered against the appellant Santosh Purena by the Station House Officer, Palari, District Raipur, who submitted its final report on 22/11/2011 before the Judicial Magistrate First Class, Balodabazar and thereafter, it was committed to the First Additional Sessions Judge, Baloda Bazar, District Raipur (C.G.) for its trial.
5. After considering the *prima facie* materials available on record, charge under Section 302 IPC has been framed against the appellant, who has pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to be tried.

6. In order to bring home the guilt of the accused, the prosecution has examined as many as 18 witnesses, while none was examined by him in his defence.
7. The trial Court, after considering the evidence led by the prosecution, has convicted and sentenced the appellant Santosh Purena as aforesaid in relation to the crime in question.
8. Being aggrieved, the appellant has preferred this appeal. Smt. Monika Dey, learned counsel appearing for the appellant submits that the judgment under appeal as passed by the trial Court is apparently contrary to law as the same has been passed without considering the evidence in its proper perspective.
9. On the other hand, Shri Adil Minhaj, learned Panel Lawyer appearing for the State/respondent has supported the impugned judgment by submitting *inter alia*, that it has been passed upon due and proper appreciation of the evidence of the prosecution witnesses, and therefore, does not require to be interfered.
10. We have heard learned counsel appearing for the parties and perused the entire record carefully.
11. Leela Bai (PW-4) is an eyewitness in whose house the deceased was sleeping, has stated in her evidence that on the fateful day, the deceased Nainbai came to her house in the

morning at about 5 O'clock and her husband Santosh Purena had followed her. She further stated that the appellant while picking up axe from her house, has given several blows on the head of the deceased Nainbai, and at the relevant time, her mother Punibai (PW-5) was also present in her house. In her cross-examination, she was firm with minor deviation and her version was duly corroborated by mother of the deceased, namely Punibai (PW-5), the another eyewitness to the incident who has stated very specifically in her statement that the appellant has assaulted her daughter with an axe on her head, as a result of which, brain materials of her came out and she was immediately admitted into the Community Health Center, Palari, District Raipur and from where, she was shifted to Dr. Bhimrao Ambedkar Hospital, Raipur. According to her statement, she (deceased Nainbai) succumbed to the injuries in the hospital. This witness was firm in her cross-examination. Thus, both these eyewitnesses have duly supported the prosecution's case.

12. Raju (PW-12) is a witness, who resides nearby the house of said Leela Bai (PW-4) and has stated in his statement that on the fateful day, he has seen the accused coming out from the house of Leela Bai (PW-4) and at the relevant time, she (Leela Bai) was shouting that the deceased Nainbai has been assaulted by her husband/accused. He further stated that he has seen the injuries on the head of the deceased who was

lying unconscious in her house. This witness has thus supported the version of the said Leela Bai's (PW-4) statement, in whose house the alleged crime was committed.

13. Dr. Shivnarayan Manjhi (PW-14), the doctor who has conducted the postmortem of the deceased Nainbai, has noticed the following injuries:-

(i) Contused lacerated wound with crushing effect at margins on right frontal region measuring 4.5 cm long sagittally having 5 intact stitches on opening bone deep all around dark red to brownish colour ecchymosis present.

(ii) Dark red to brownish colour ecchymosis present on vertex region measuring 5 x 6 cm sagittally diffused.

(iii) Dark red colour to brownish ecchymosis present on right parietal region measuring 6 x 6.5 cm coronal present ecchymosis diffused.

Skull- shows fractures at the site of ecchymosis i.e. depressed comminuted fracture present on right frontal bone over coronal suture of 5.5 x 6 cm coronally, fractured bone depressed in wound at multiple small pieces, about 2 mm inwards coronal suture separated 0.5 cm

gapping at vertex region also present, depressed fracture on right parietal bone of 5 x 5.5 cm coronally with small broken pieces, 3 mm inverted another depressed comminuted fracture present on right frontal region, 3 cm dia & 0.5 cm dia area. Underneath fracture extradural hemorrhage present on brain lacerated and coming out from depressed fracture lacerated contusion present on brain at right parietal lobe of 5 x 5 cm sagittally, massive subdural hemorrhage present on right fronto-parieto temporal lobe of 16 x 11 cm sagittally with 2 mm. clots width, sub-arachnoid hemorrhage present all over right side brain.

(iv) Contused lacerated wound with stitches present on left parietal region of 3 cm long with 3 intact stitches underneath dark red to brownish ecchymosis present.

(v) Contused lacerated wound on right parieto temporal region of 7 cm long having 7 intact stitches sagittally bone deep underneath bone depressed measuring 6.5 x 3 cm area.

(vi) Contused lacerated wound on parietal

measuring 5 x 2 cm sagittally with 5 stitches.

All injuries are shown dark red to brownish colour ecchymosis.

Head injury is sufficient to cause death in ordinary course of nature.

After noticing the aforesaid injuries, he submitted its postmortem report (Ex. P-15) by opining that the cause of death was due to cardio respiratory failure as a result of head injury and their complications and, the death was homicidal in nature.

14. Girdhari (PW-1) is the brother of the deceased who came to know about the alleged incident from Leela Bai (PW-4) that the appellant has assaulted the deceased with an axe and ran away. Upon hearing so, he went to her house and saw that the deceased was lying on the floor unconsciously and blood was spreading over there. This witness is thus hearsay witness and has turned hostile subsequently without supporting the prosecution's case.
15. Mohan Das (PW-2) is a village *Kotwar* and the witness of the disclosure statement (Ex. P-2) of the appellant, by which, the alleged used weapon "axe" was recovered vide seizure memo (Ex. P-3). He is also the witness of seizure memo (Ex. P-4) by which, the blood stained soil was recovered from the place of

occurrence.

16. Dr. B.S. Dhruv (PW-3) is a Medical Officer at Community Health Center, Palari who has submitted its MLC report (EX. P-6) after examining the injuries of the deceased on 18/09/2011, in which, it was found that the alleged injuries were serious in nature which could be caused by the said weapon "axe".
17. Chowaram (PW-6) is a Farmer, who has not supported the case of the prosecution and has turned hostile. Narendra Shrawan Borse (PW-7) is a *Patwari* who prepared the spot map (*Nazri Naksha*) vide Ex. P-8. Tulsiram Verma (PW-8) is the witness of disclosure statement (Ex. P-2) of the appellant, which led to the recovery of the axe vide seizure memo Ex. P-3. This witness thus, has supported the prosecution's case.
18. Suklal Tandan (PW-9), Narhari Hota (PW-10), Ramgopal Soni (PW-11), S.R. Chandrawanshi (PW-15) and Top Singh Diwan (PW-18) are the formal witnesses. Ashwani Kumar (PW-13) and Premabai (PW-16) have turned hostile without supporting the prosecution's case. Anoop Nag (PW-17) is the Investigating Officer, who has assisted the prosecution.
19. A close scrutiny of the aforesaid evidence particularly, the statements of the eyewitnesses, namely, Leela Bai (PW-4) and Punibai (PW-5) coupled with the postmortem report (Ex. P-15), it is evident that on the fateful day i.e., on 18/09/2011, at about

4.00 AM, the appellant had assaulted his wife namely Nainbai with an axe on several times on her head, as a result of which, blood started oozing and she fell down unconsciously and expired two days thereafter i.e. on 20/09/2011 in the hospital owing to the alleged assault.

20. Consequently, we do not find any substance in this appeal. The appeal is therefore, liable to be and is hereby dismissed. The judgment under appeal as passed by the trial Court convicting and sentencing the appellant for the offence punishable under Section 302 IPC is hereby affirmed.

Sd/-

(Pritinker Diwaker)  
**Judge**

Sd/-

(Sanjay Agrawal)  
**Judge**