

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1073 of 2012**

1. Dilbandhu Khadia S/o Dashmu Ram Khadia, aged about 30 years, occupation Agriculturist, R/o village Savatoli Kukurbhuka, Police Station Bagbahar, District Jashpur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Bagbahar, District Jashpur, CG

---- Respondent

For Appellant	:	Shri Arun Kumar Shukla, Advocate
For Respondent/State:		Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board by Pritinker Diwaker, J****20/08/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 29.10.2012 passed by Additional Sessions Judge, Kunkuri, District Jashpur in Sessions Trial No. 62/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 10,000/-, plus default stipulation.

2. Facts of the case in brief are that on 27.7.2011 at about 1 PM owing to some old dispute the accused/appellant went to the field where deceased Kamla Bai was present, and caused number of injuries to her with the help of axe carried by him as a result of which she died on the spot. Prompt FIR (Ex.P-1)

was lodged by Rajesh Kumar (PW-1) – son of the deceased, based on which offence under Section 302 IPC was registered against the accused/appellant followed by recording of *merg* Ex. P-2. After drawing inquest Ex. P-4, dead-body was sent for postmortem examination which was conducted by Dr. Ajit Kumar Minj (PW-15) who gave his report Ex. P-13. Seizure of axe was made under Ex. P-8 at the instance of the accused/appellant, which as per the un-exhibited FSL report was stained with blood. After completion of investigation, police filed *challan* against the accused/appellant u/s 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 15 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case. This apart, one Nand Kishore Singh (DW-1) has also been examined by the defence in support of its case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That the eyewitnesses to the incident namely Smt. Sarita (PW-2) and Smt. Gangi Bai (PW-3) being the interested ones, are not reliable.

(ii) That though PW-4 in examination-in-chief has made certain allegations against the accused/appellant, in cross-

examination he has not supported the case of the prosecution.

(iii) That as per the un-exhibited FSL report blood was found on the axe but as there is no serological report to prove its origin, FSL report does not have any significance.

(iv) That no motive has been proved by the prosecution.

(v) That even if the entire case of the prosecution is taken as it is, accused/appellant cannot be convicted under Section 302 and at best his act may entail conviction either under Section 304 (Part-I) or 304 (Part-II) IPC.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellant as described above are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that there are two eyewitnesses to the incident who have categorically supported the case of the prosecution stating that they saw the accused assaulting the deceased with the axe carried by him. Likewise, it is submitted that PW-4 has also supported the case of the prosecution, may be, in part. He further submits that Phul Kumari (PW-5), Manchan Ram (PW-6) and Sirjhan (PW-9) also saw the accused/appellant fleeing away carrying axe in his hand. Stating counsel thus submits that looking to the evidence of the witnesses, the act of the accused/appellant does not fall within any of the exceptions to Section 300 IPC and that the Court below has

rightly held him guilty under Section 302 IPC.

7. Heard counsel for the parties and perused the material available on record.

8. Smt. Sarita (PW-2) has stated that on the date of incident when the deceased and she herself were in the field, accused/appellant came there carrying axe in his hand and caused injuries with it on the head and back of the deceased. This witness has further stated that on seeing the accused assaulting the deceased, she called out Rajesh - son of the deceased and after he came there, water was offered to the deceased but by then she had died. In cross-examination also this witness stood firm to what she stated in the examination-in-chief. Smt. Gangi Bai (PW-3) - another eyewitness to the incident has stated that on the date of incident when the deceased was in the field, accused/appellant came there holding axe and caused injuries with it on her head and ran away. Same thing has been stated by her in the cross-examination also. Haldhar (PW-4) has stated in his examination-in-chief that he saw the accused/appellant assaulting the deceased and by the time he reached the spot, Kamla Bai was dead. However, in cross-examination this witness has resiled from his version as has come in the examination-in-chief. Smt. Phul Kumari (PW-5), Manchan Ram (PW-6) and Sirjhan (PW-9) are the witnesses who saw the accused/appellant running away from the spot carrying axe in his hand. Asim Xaxa (PW-10) is the *Patwari* who prepared spot

map (Ex. P-5). Mahendra Kumar (PW-11) has proved the seizure of axe and clothes made under Ex. P-8. P.S. Netam (PW-13) is the investigating officer who has duly supported the case of the prosecution. Sirjyus Tigga (PW-14) is the witness who assisted in the investigation. Dr. Ajit Kumar Minj (PW-15) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-13 stating that he noticed three lacerated wounds on the forehead, back of head, right side of head including fracture of skull bone. Cause of death, according to this witness, was shock due to brain haemorrhage, and it was homicidal in nature. Nand Kishore Singh (DW-1) has stated that on the date of incident the accused/appellant was not in the village and had gone out to drive the vehicle as usual.

9. There are two eyewitness to the incident being PW-2 and PW-3, and perusal of their evidence makes it crystal clear that when the deceased was working in the field, accused/appellant came there carrying axe with him and caused number of injuries to her leading to her on-the-spot death. PW-4 has also lent support to the case of the prosecution, may be, in part. That apart, PW-5, PW-6 and PW-9 have also supported the case of the prosecution stating that they all saw the accused/appellant running away from the spot carrying axe in his hand. Even the axe seized at the instance of the accused/appellant under Ex. P-8 was found stained with blood and the un-exhibited FSL report also confirms the same. Though serological report is not on record

yet looking to the other evidence speaking against the accused/appellant and non offering of any explanation by the accused in this respect, the FSL report can be treated as an additional evidence even in the absence of serological report. Medical evidence also makes it clear that the accused/appellant had caused several axe injuries on the body of the deceased including the vital part like head and fracture on skull. Thus looking to the weapon used in the commission of offence, the part of the body i.e. head where the injuries were inflicted, number and intensity of blows dealt, make this Court arrive at one and the only conclusion that the accused/appellant was pre-determined to eliminate the deceased. Absence of motive, as argued by the counsel for the appellant is meaningless because in the cases where other material consistently stands against the accused, it is not required to be treated as a serious lacuna in the case of the prosecution. Thus keeping in mind the unflinching evidence adduced by the prosecution, this Court is of the considered opinion that the heinous act of the accused/appellant where he came prepared being armed with axe and opened ruthless assault on the deceased, the trial Court was fully justified in holding the accused/appellant guilty of the offence punishable under Section 302 IPC. Submission of the counsel for the accused/appellant that looking the testimony of the witnesses the accused/appellant can be convicted either under Section 304 (Part-I) or 304 (Part-II) but not u/s 302 IPC does not convince the judicial mind and

accordingly it is rejected because such an argument is discordant with the evidence available on record.

10. In the result, the appeal being without any substance is liable to be dismissed and it is dismissed as such. Findings recorded by the Court below being based on the evidence on record, are hereby maintained. As the accused/appellant is already inside, no order in this regard is necessary.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Vimla Singh Kapoor)

Judge