

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 404 of 2017

- Laxman Singh S/o late Shri Sambhar Singh, Caste – Gond, aged about 40 years, R/o Dullapur, P.S. Lormi District – Bilaspur (C.G.)

---- Appellant

Versus

- State Of C.G. Through – Police Station – Lormi, District Bilaspur, (CG).

---- Respondent

For Appellant	:	Shri Rishi Kant Mahobia, Advocate
For Respondent/State	:	Shri Vivek Sharma, Government Advocate

**Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ**

Judgment on Board by Justice Pritinker Diwaker

29.01.2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.04.2005 passed by the 2nd Additional Sessions Judge (F.T.C.), Mungeli (C.G.) in Sessions Trial No.269/2004 convicting the appellant under Section 302 of IPC and sentencing him to life imprisonment with fine of Rs.1000/- plus default stipulation.

2. As per the prosecution case, on 09.04.2004 at about 2:30 pm, the accused/appellant killed the deceased Nazur Singh after causing injuries to him by battle axe. Immediately after the incident at 4:25 pm, merger intimation (Ex.P.3) was recorded at the instance of Gopal Prasad (P.W.3), son of the deceased Nazur Singh. Soon thereafter, at 4:30 pm,

F.I.R. (Ex.P.2) was registered against the appellant under Section 302 of IPC. After conducting inquest on the dead body, the dead body was sent for post-mortem examination to Community Health Center, Lormi, where Autopsy Surgeon Dr. G.S.Dau (P.W.15) conducted post-mortem examination on 10.04.2004 vide Ex.P.10. As per the post-mortem report, the deceased sustained the following injuries:-

1. Incised wound in the size of 25 x 2 x 12 cm cutting the occipital bone from behind right ear to 10 cm of left ear. Brain material came out and blood clots are present.
2. Incised wound in the size of 22 x 1 x 3 cm cutting the parietal bone obliquely. Brain material came out.
3. The Autopsy Surgeon has opined the cause of death to be shock due to excessive hemorrhage because of injuries to major blood vessels of brain and coma due to direct injury to vital part of brain and death was opined to be homicidal in nature.
4. Accused/appellant was arrested on 09.04.2004. On 09.04.2004, disclosure statement of the accused/appellant was recorded vide Ex. P/5 and on the strength of Ex.P.5, battle axe was seized from the accused/appellant vide Ex.P.4. Seized articles including weapon of offence were sent to Forensic Science Laboratory for its examination vide Ex.P.14 and FSL (Ex.P.16A) report on record confirms presence of blood on the seized axe, however, there is no serologist report to show origin of the blood so found. After filing of charge sheet, the trial Court framed charge against the appellant under Section 302 of IPC.
5. So as to hold the accused/appellant guilty, the prosecution examined as many as 17 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C., in

which, he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

6. After considering the evidence of the prosecution witnesses, the trial Court, vide its impugned judgment, has convicted and sentenced the appellant as mentioned in para 1 of this judgment. Hence, this appeal.

7. Learned counsel for the appellant submits:

(i) that there are two eye-witnesses to the incident, namely, Sitaram (P.W.2) and Sita Bai (P.W.10), however, their evidence is not reliable;

(ii) no motive has been proved by the prosecution;

(iii) even if the entire prosecution case is taken as it is, at best, the appellant would be convicted under Section 304 Part-I or Part-II of IPC; and further considering that the appellant is in jail for the last about 14 years, after converting his conviction from Section 302 of IPC to Section 304 Part-I or Part-II, his sentence may be reduced for the period already undergone.

8. On the other hand, it has been argued by the learned State Counsel that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same. He further submits that considering the statements of Sitaram (P.W.2) and Sita Bai (P.W.10), the trial Court has rightly convicted the appellant under Section 302 of IPC.

9. We have heard learned counsel for the parties and perused the entire record carefully.

10. Sitaram (P.W.2) is son of the deceased Nazru Singh and eye-witness to the incident. He has stated that while he was taking his father/deceased to his house, on the way, he met the appellant, who was carrying battle axe in his hand and that he was hiding the same. He requested the accused/appellant to accompany his father to his house. However, immediately thereafter he saw the accused/appellant assaulting his father by battle axe on his head and backside. He has further stated that he informed about the incident to village Kotwar and also to his family members and at the instance of his brother, namely, Gopal Prasad (P.W.3), merger intimation and F.I.R. have been registered vide Ex.P.2 and Ex.P.3. In his cross-examination, he remained firm and nothing could be elicited from him by the defence to make his evidence doubtful or untrustworthy. Sita Bai (P.W.10) is another eye-witness to the incident. She is daughter-in-law of the deceased. Though the diary statement of this witness was recorded after about 20 days, i.e., on 28.04.2004, however, she has stated that she was questioned by the Police after some days of the incident. While supporting the prosecution case, she has also categorically stated as to the manner, in which her father-in-law was done to death by the appellant. In her cross-examination, she also remained firm. PW-15 Dr. G.S.Dau (P.W.15) conducted post-mortem examination on the dead body of deceased, found two incised wounds on the

vital part of the deceased, as mentioned above, resulting into death of Nazur Singh. The Autopsy Surgeon has opined the cause of death to be shock due to excessive hemorrhage because of injuries to major blood vessels of brain and coma due to direct injury to vital part of brain and death was opined to be homicidal in nature. PW-17 Mr. L.C.Mohle, investigating officer, has also supported the prosecution case.

11. Vide Ex.P.4 seizure was effected on the memorandum of the appellant (Ex.P/5), by which, one battle axe was seized and as per F.S.L. report (Ex.P.16A), blood was found on the weapon of offence.

12. Close scrutiny of the evidence makes it clear that on the date of incident i.e. 9.4.2004 it is the accused/appellant who assaulted the deceased with battle axe which led to his instantaneous death. Eyewitnesses to the incident PW-2 Sitaram and PW-10 Sitabai, who are son and daughter-in-law of the deceased, have duly supported the prosecution case and stated as to the manner in which the deceased was assaulted by the appellant which led to his death. The above ocular evidence further finds corroboration from the medical evidence of autopsy surgeon PW-15 Dr. G.S.Dau who noticed corresponding injuries on the body of the deceased and opined that the cause of death was shock due to excessive hemorrhage because of injuries to major blood vessels of brain and coma due to direct injury to vital part of brain and that death was homicidal in nature. This apart, on the disclosure statement of

the appellant (Ex.P/5), the weapon of offence battle axe was seized (Ex.P/4) and as per FSL report blood was found on it. True it is that there is no serological report, but considering the un rebutted evidence of two eye-witnesses, namely Sitaram (P.W.2) and Sita Bai (Ex.P.10) duly corroborated by the medical evidence, non-production of serological report in this case is in no way fatal to the prosecution case and the FSL report (Ex.P.16A) can be treated as an additional evidence against the appellant. Thus, complicity of the accused/appellant in commission of the crime in question stands proved beyond all reasonable doubt.

13. As regards the argument of the appellant that at the most the appellant in the given facts and circumstances of the case is liable to be convicted under Section 304 Part-I or II of IPC, the same is not acceptable to us. Considering the fact that the appellant with a premeditated mind duly armed with a deadly weapon-battle axe assaulted the deceased on his vital part neck and head with such a force leading to his instantaneous death, it can safely be inferred that he had the intention of causing such bodily injuries to the deceased as would result in his death and at the same time was also having knowledge that infliction of such injuries would cause his death. Being so, his case falls under none of the exceptions to Section 300 of IPC and his conviction under Section 302 of IPC is fully justified.

14. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. Since the appellant is

reported to be already in jail, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/
(Pritinker Diwaker)
JUDGE

Sd/
(Sanjay Agrawal)
JUDGE

Khan