

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 121 of 2015

Reserve on : 31/07/2018

Delivered on : 14/08/2018

- Sukram @ Sukhram S/o Lachchhuraam, aged about 41 years, R/o Village Chilparas, Police Station & District Narayanpur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through – Police Station – Raoghat, District North Bastar, Kanker (C.G.)

---- Respondent

For Appellant : Shri Rakesh Pandey, Advocate

For Respondent/State : Shri Vaibhav A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

C.A.V. Judgment

Per Gautam Chourdiya, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 17.07.2014 passed by learned Additional Sessions Judge (FTC) North Bastar, Kanker (C.G.) in Sessions Trial No. 06/2013, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for life and to pay a fine of Rs. 100/- and in default of payment to further undergo rigorous imprisonment for six months

2. In the present case, the name of deceased is Dalsai Dugga. Case of the prosecution is that PW-1 Dalsu Dugga, brother of the deceased, had lodged morgue intimation (Ex.-P/1) on 20.10.2012 at about 12.30 PM. On the date of incident i.e. 19.10.2012, the deceased-Dalsai Dugga brother of PW-1, had gone to the field for guarding of paddy. In the evening at about 4:00 PM, Guddu Dugga (PW-2) came and told that he had gone with the deceased for fishing in *Huchadi* river. At that time, accused/appellant- Sukhram went near the deceased and

assaulted him with the help of axe on his neck and the deceased fell down on the ground. When Guddu was going to save the life of deceased, the accused/appellant also chased for assaulting him (PW-2), then he ran away from that place. After sometime, he went to the place of incident and saw the deceased dead. The deceased sustained injury on the neck by axe and the blood was oozing from the neck.

3. The First Information Report (Ex.-P/2) was lodged by Dalsu Dugga (PW1) on 20.10.2012 at about 4:40 PM. The Investigating Officer – Naveen Borkar (PW-10) left for the scene of occurrence and prepared spot map under Ex.-P/3. After giving notice to the *Panchas* (Ex.-P/4), inquest on the body of the deceased was prepared under Ex.-P/5. The body was sent for postmortem examination to Community Health Center, Antagarh. Blood stained soil and plain soil were seized under Ex.-P/6. Axe, one black coloured mobile with BSNL SIM were also seized vide seizure memo Ex.-P/9 and as per Ex.-P/10, the accused/appellant was arrested on 27.10.2012.

4. The postmortem examination was conducted by Dr. A.K. Dhruw (PW-6), who prepared his report Ex.-P/7. He noticed only one injury on the body of the deceased i.e. lacerated wound at back and below of the head (above at level of cervical vertebrae) in size of 3½ inch x 1 inch x 2½ inch. Doctor opined that the injury was antemortem in nature and the cause of death was neurogenic shock due to damage of nerves of spinal cord and the injury was caused by sharp and hard object. The death was occurred within 40 to 60 hours. PW-6 also examined the weapon of offence i.e. axe and observed that the iron portion of axe (*phaal*) was having 7.5" and edge of axe is 3.5". The wooden handle of the axe was 28" and width of 3.5". The doctor opined that injury found on the back side of the head of the deceased could be caused by the said axe. He gave his report Ex.-P/8.

5. After completion of the usual investigation, the charge-sheet was filed

against the accused/appellant under Section 302 IPC and while framing the charge, the trial Judge framed the charge against the accused/appellant under Section 302 IPC.

6. So as to hold the accused/appellant guilty, the prosecution, in all, has examined as many as 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Criminal Code of Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. There was no witness examined on behalf of the defence.

7. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant mentioned as para-1 of this judgment, hence this appeal.

8. Learned counsel for the appellants argued and the appellant has been falsely implicated in this case as there are two groups in the village and the members of other group have given false statements and the evidence against the appellant. He also submitted that the judgment of the trial Court is contrary to the facts and evidence available on record. He further submitted the statement of PW-6 - Dr. A.K. Dhruw regarding injury is contradictory to ocular evidence. Lastly, he argued that if the evidence and case of the prosecution is taken as it is, even then the offence under Section 302 of IPC was not made out against the accused/appellant for the reason that the appellant gave an axe blow to the deceased, therefore, the case of the appellant is covered under Exception IV of Section 300 of IPC. He also submitted that the accused/appellant had no intention or motive to cause death of the deceased, therefore, he may be convicted under Section 304 Part-II IPC.

9. On the other hand, learned Panel Lawyer appearing on behalf of the State opposed these arguments and supported the judgment of the trial Court. It has

been argued by the State counsel that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same. He submitted that only single blow was caused by the appellant on the vital part of the deceased and looking to the nature of injury, the case of the appellant is not covered under Exception IV of Section 300 of IPC.

10. We have heard the counsel for the respective parties and perused the evidence on record.

11. Prosecution case is based on evidence of eye-witness – Guddu (PW-2) and the postmortem report (Ex.-P/7).

12. PW-1 – Dalsu Ram Dugga is the brother of deceased-Dalsai who lodged the FIR (Ex.-P/2). He stated that his younger brother (deceased) had gone to field with Guddu (PW-2) and from field deceased had gone to *Huchhadi* river to drink water. At that time, accused/appellant- Sukhram killed his brother (deceased). After killing the deceased, Guddu (PW-2) came to home and narrated the incident as to how the deceased has been killed by the accused. Then he (PW-1) along with Somnath (PW-4) and other village people went to the place of incident and saw that deceased-Dalsai has been killed with the help of axe and the blood was oozing out. Thereafter, mourgue intimation (Ex.-P/1) and FIR (Ex.-P/2) were lodged by PW-1 – Dalsu Dugga and he has proved the same.

13. PW-2 – Guddu is the eye-witness of incident and brother of deceased. He stated that he and Dalsai-deceased both had gone for catching the fish from river. At that time, accused assaulted the deceased by axe on the head above the neck. After assaulting the deceased, accused was also chasing him for assault. Then he ran away from the place of occurrence. Thereafter, he came to the home and informed his younger brother-Dalsu Dugga (PW-1). Thereafter, they went along with Somnath (PW-4) and other village people to the place of occurrence.

14. PW-3 – Malsai is younger brother of the deceased. He stated that on the

date of incident, he had gone alongwith deceased and Guddu (PW-2) to river. He was informed by Guddu that the accused assaulted the deceased. When they reached the place of occurrence, they saw that the deceased was lying in dead condition.

15. PW-4 – Somnath stated that at about 4:30 PM when information was received from Guddu (PW-2) that the accused/appellant has murdered Dalsai (deceased), he along with other villagers reached the place of occurrence and found the deceased in dead condition and the deceased had sustained injury on the neck and blood was oozing from the neck.

16. PW-5 – Satter Singh stated that the incident of murder of deceased was informed by PW-1 – Dalsu and PW-2 – Guddu. PW-7 – Sukuram stated that he was informed by PW-2 – Guddu that deceased has been murdered by the accused with the help of axe. PW-8 – Damru Ram is seizure witness of axe, one black coloured mobile with BSNL SIM and has proved the Ex.-P/9.

17. It is stated that there were two groups in the village and the members of other group have given false statements against the accused/appellant. On the basis of *party-bandi* in the village, it cannot be considered as the defence of accused because there is no reason or any cogent reason to disbelieve the statements of the above witnesses and there is no contradiction or omission in the evidence of above witnesses including the evidence of the PW-2- Guddu.

18. We have scrutinized the evidence of prosecution witness- Guddu (PW-2) and material available on record. The evidence was sufficient to establish that he has seen the incident that the accused/appellant had assaulted the deceased with the help of axe on the head above the neck and the deceased fell down on the ground. When he (PW-2) went to protect the deceased, the accused was also chasing him for assault. Thereafter, he came to home and narrated the story to Dalsu Dugga and other village people. There is no reason to disbelieve the eye-witness- PW-2 of the incident because in his presence, accused assaulted the

deceased by axe. The evidence of PW-2 stands corroborated by the medical evidence.

19. As per postmortem report (Ex.-P/7), the deceased sustained one lacerated wound at back and below of the head (above at level of cervical vertebrae) and Doctor opined that the injury was antemortem in nature and the cause of death was neurogenic shock due to damage of nerves of spinal cord and the injury was caused by sharp and hard object. He also examined the weapon of offence i.e. axe and opined that injury found on the back side of the head of the deceased could be caused by the said axe. He gave his report Ex.-P/8. Dalsu Dugga-PW-1 proved the morgue intimation (Ex.-1), FIR (Ex.-P/2) and spot map (Ex.-P/3). Somnath-PW-4 proved the inquest (Ex.-P/5) and seizure of blood stained soil & plain soil (Ex.-P/6). Damru Ram – PW-6 proved the seizure of axe, one black coloured mobile (Ex.-P/9) and arrest memo of the accused (Ex.-P/10). As per inquest (Ex.-P/5), it is also proved that injury was found on the back side neck of deceased by axe. Therefore, the case of the accused/appellant is not covered under Exception IV of Section 300 IPC. We have gone through the entire evidence and material available on record which make it clear that it was the accused/appellant who assaulted the deceased on the back and below of the head by axe, and as such, come to the conclusion that the learned trial Court has rightly convicted the appellant/accused under Section 302 IPC.

20. We do not find any reason to interfere with the judgment of conviction and order of sentence passed by the trial Court. The appeal has no merits. The same deserves to be and is accordingly dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge