

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 325 of 2015**

- Samaru Lal Dhanuhar S/o Samay Lal Dhanuhar, aged about 20 years, R/o village Sargond Chowki Belgahana, P.S. Kota District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : District Magistrate, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Dheerendra Pandey, Advocate.
For Respondent.	:	Shri Rahul Tamaskar, P.L.

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

Judgment on Board**By Pritinker Diwaker, J****07/03/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 28.06.2013 passed by the 1st Additional Sessions Judge, District Bilaspur (C.G.), in S.T. No.117/2012 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/-, in default of payment of fine amount to further undergo R.I. for one month.

02. In the present case, name of the deceased is Arjun Uraon. As per the prosecution case, on 07.03.2012 at about 8.30 pm, deceased Arjun Uraon and one Pradeep had gone to

the house of Samaylal where some dispute cropped up between Samaylal and Arjun Uraon. It is said that deceased Arjun had slapped Samaylal and upon seeing the said dispute, appellant Samaru Lal, son of Samaylal, picked up axe lying on the spot and gave solitary blow on the neck of the deceased resulting his instantaneous death. On 08.03.2012 at 8.50 am, unnumbered FIR (Ex.P/2) was lodged by Surajlal (PW/1), younger brother of the deceased followed by merg intimation (Ex.P/1) at 8.55 am. On the same day, inquest on the body of deceased was conducted vide Ex.P/16 and dead body was sent for postmortem examination to Primary Health Center, Belghana which was conducted by Dr. Anil Kumar Gupta (PW/5) who gave his report (Ex.P/8) noticing following injuries:-

- (i) Incised wound in the size of 7cm x 4cm x 5cm over left side of head, cutting left ear at middle part having red colour and dried blood clot was present over wound. Margins of wound were clear cuts and regular. Skin, subcutaneous tissue, muscles fascia and left carotid artery, carotid vein and branches of artery and veins of left neck has been completely cut.

Autopsy Surgeon opined the cause of death of deceased to be massive hemorrhage due to cutting of left carotid artery, carotid vein and mode of death was syncope and death was homicidal in nature.

03. On 09.03.2012, memorandum of accused/appellant was

recorded vide Ex.P/6, based on which, one axe, green black colour T-Shirt and pant were seized from his possession vide Ex.P/5. Seized articles were subjected to chemical examination and as per FSL report (Ex.P/28), presence of blood on the seized articles was confirmed. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellant under Section 302 IPC.

04. 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned above. Hence, this appeal.

06. Learned counsel for the appellants submits :

- (i) That the accused/appellant has been falsely implicated in the crime in question.
- (ii) That even accepting the prosecution case as it is, the incident occurred all of a sudden without there being any premeditation and the accused/appellant cannot be convicted under Section 302 IPC. It has been further argued that present is a case of culpable homicide not amounting to murder and,

therefore, at best the appellant is liable to be convicted under Section 304 Part-I or Part-II of IPC.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Pradeep (PW/3) is eye-witness to the incident. He has stated that it was the day of Holi. When he was going to enjoy the festival of Holi along with deceased Arjun, on the way Samaylal, father of the accused/appellant, called him saying that he would also join him and in the meanwhile some quarrel took place between deceased Arjun and Samaylal. At the same time, accused/appellant Samaru Lal reached there. As soon as he (this witness) tried to resolve the dispute, accused/appellant picked up the axe and caused injury on the neck of deceased Arjun resulting his death. In cross-examination, he remained firm and nothing could be elicited from him to discredit his testimony.

10. Dr. Anil Kumar Gupta (PW/5) conducted postmortem examination on the body of deceased and gave his report (Ex.P/8) opining the cause of death of deceased to be massive hemorrhage due to cutting of left carotid artery, carotid vein and mode of death was syncope and death was homicidal in nature.

11. Suraj Lal (PW/1) is lodger of merg intimation (Ex.P/1) and FIR (Ex.P/2).
12. Lakhan Lal (PW/2) and Chatru @ Chatur Lal (PW/4), are brothers of the deceased, who reached the place of occurrence after coming to know about the incident. They have stated that father and mother of appellant informed them that their son has killed the deceased.
13. Kunwar Singh (PW/7) is a witness to inquest made under Ex.P/16.
14. Jagdish Prasad Yadav (PW/8) is a Patwari who prepared spot map vide Ex.P/17.
15. Samay Lal (PW/9), father of accused/appellant, has turned hostile.
16. Tilak Ram (PW/10) is a witness to memorandum of accused/appellant (Ex.P/6) and seizure of axe, T-shirt and pant made under Ex.P/7.
17. Ram Bharos Dhruv (PW/11) - Constable, assisted in the investigation.
18. Ramti Bai (PW/12) turned hostile.
19. R.S. Mishra (PW/13) is Investigating Officer, who has duly supported the prosecution case.
20. Kishore Kale (PW/14), Radhyeshyam Marawi (PW/15) - Constables and Pardesi Ram Dhruv (PW/17) - Head Constables, assisted in the investigation.
21. Anjor Singh Markam (PW/16) - Sarpanch, is a witness to inquest made under Ex.P/16.

22. Close scrutiny of the evidence, in particular the statement of Pradeep (PW/3), make it clear that on 07.03.2013 some quarrel took place between the deceased and father of appellant namely Samaylal in which deceased slapped Samaylal and upon seeing this accused/appellant picked up the axe and gave solitary blow on the neck of the deceased resulting his instantaneous death. The incident was witnessed by PW/3 who has categorically stated that it is the accused/appellant who caused injury to the deceased by axe, and on the memorandum of the accused/appellant (Ex.P/4), one axe, T-shirt and pant of appellant have been seized from them vide Ex.P/5 and as per FSL report (Ex.P/28), presence of human blood was confirmed thereon. The defence has cross-examined PW/3 at length but has not been able to elicit anything in his cross-examination to discredit his testimonies especially on the point that the accused/appellant has not killed the deceased. Evidence of this eye-witness gets corroboration from autopsy surgeon Dr. Anil Kumar Gupta (PW/5) who gave his report (Ex.P/8) according to which injury on vital part i.e. neck of the deceased was noticed and the same was caused by hard and sharp cutting object. The Autopsy Surgeon in his query report (Ex.P/10) has opined that the injury sustained by the deceased could have been caused by axe. Considering the statement of eye-witness (PW/3) coupled with the medical evidence, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

23. The next question which arises for consideration before this Court is as to whether the act of the accused/appellant would fall under any of the Exceptions to Section 300 IPC.

24. On the date of incident, according to evidence of PW/3, some quarrel took place between the deceased and Samaylal, father of accused/appellant in which father of the accused/appellant was first slapped by the deceased and upon seeing this accused/appellant picked up the axe and gave solitary blow on the neck of the deceased.

25. From the evidence of prosecution witnesses, the picture emerges that it is only after Samaylal, father of the accused/appellant being slapped by the deceased, the appellant caused injury to him by axe. Thus, it is crystal clear that when appellant was provoked by the act of the deceased, accused/appellant gave solitary blow by axe leading to his unfortunate death. Thus, considering the facts and circumstances of the case giving rise to the incident where the appellant assaulted the deceased by axe resulting in his death, we are of the considered opinion that the act of the accused/appellant does not fall within the ambit of Section 302 IPC and it is covered by Exception 4 to Section 300 IPC. Further, considering the manner in which assault was made by deadly weapon on the vital part neck of the deceased as a result of which middle part of left ear, skin, subcutaneous tissue, muscles fascia, left carotid artery, carotid vein, branches of artery and veins of left neck were completely cut,

we are of the opinion that while inflicting such injury on the person of the deceased, the accused/appellant had the intention of causing such bodily injuries as is likely to cause his death. Being so, he is liable to be convicted under Section 304 Part-I IPC.

26. Accordingly, the conviction of the accused/appellant under Section 302 IPC is altered to Section 304 Part-I IPC and he is sentenced to undergo R.I. for ten years. As the accused/appellant is already in jail, no further order regarding his arrest etc is required.

27. The appeal is thus partly allowed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Sanjay Agrawal)
JUDGE

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