

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 873 of 2016**

1. Shivkumar Yadav S/o Jotram Yadav, aged about 38 years,
R/o Village - Padarmuda, Police Station Malkharauda,
District Janjgir Champa, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer,
Police Station Dabhra, District Janjgir Champa CG

---- Respondent

For Appellant : Sudhir Bajpai, Advocate
For Respondent/State: Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board by Pritinker Diwaker, J

20/06/2018

This appeal has been filed against the judgment of conviction and order of sentence dated 05.09.2011 passed by Additional Sessions Judge, Sakti, District Janjgir Champa in Sessions Trial No. 96/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 1000/-, plus default stipulation.

2. Name of the deceased in the present case is Ganpat Yadav - father-in-law of the accused/appellant. Case of the prosecution in short is that on account of cruelty meted out to Balkunwar Bai (PW-2) by her husband - the accused/appellant herein, she left his house and went to the house of her father -

the deceased herein with her children. On 15.2.2010 the accused/appellant also went to the house of his father-in-law and at about 4 AM when the father-in-law came out of the house for answering the call of nature, the accused/appellant inflicted several axe blows on the vital parts of his body such as head, chest etc. and thus committed his murder. On that day itself, Brijlal (PW-3) - nephew of the deceased lodged the First Information Report (Ex.P-1) against the accused/appellant for an offence under Section 302 IPC. After drawing inquest Ex. P-6, dead body was sent for postmortem examination which was conducted by Dr. G.L. Miri (PW-8) who gave his report Ex. P-8, which would be discussed later. After completion of investigation, police filed the *challan* against him u/s 302 IPC followed by framing of charge accordingly by the Court below.

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.

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 accused/appellant has been falsely implicated by the witnesses as they wanted to grab his property.
- (ii) That the Court statements of the eyewitnesses are not

reliable as the same are replete with exaggerations.

(iii) That though an axe has been seized at the instance of the accused/appellant, in the absence of FSL and serological reports such seizure is of no significance in the eye of law.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that apart from son and wife of the accused/appellant (PW-1 and PW-2), other witnesses (PW-4 and PW-5) have also supported the case of the prosecution. State counsel further submits that there was no occasion for the eyewitnesses to falsely implicate the accused/appellant.

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

8. Hemlal Yadav (PW-1) - son of the accused/appellant has stated that on account of being maltreated by his father (the accused) he, his mother and brothers used to live in the house of his maternal grand-father. He has stated that on the fateful day at about 4 AM when he along with his maternal grand-father came out of the house to answer the call of nature, accused/appellant killed his maternal grand-father by causing number of injuries with the help of axe. According to this witness, after assaulting the deceased, the accused chased him also but somehow he ran to safety. Barring some minor

contradictions and omissions, this witness stood firm in the cross-examination also speaking consistently on material particulars that the accused/appellant caused fatal axe injuries to the deceased. Balkunwar Bai (PW-2) - wife of the accused has also supported the case of the prosecution stating that as the accused used to suspect her fidelity, she along with her children lived in the house of her father. She has stated that the accused used to visit her father also and pick up quarrel with him. According to this witness, on the fateful day at about 4 in the morning when her father and son (PW-1) went out of the house for answering the call of nature, accused/appellant assaulted her father with axe causing number of injuries on vital parts of his body like chest, head, hands etc. In cross-examination also, this witness remained firm to what she stated in the examination-in-chief. Brijlal (PW-3) - the lodger of FIR has also supported the case of the prosecution. Bhagirathi Patel (PW-4) has stated that he saw the accused sitting in front of the house of the deceased carrying axe in his hand and that when he returned after answering the call of nature, Ganpat Yadav was lying dead. Lila Bai (PW-5) is the neighbour of the deceased and an eyewitness to the incident who has duly supported the case of the prosecution stating that on hearing the cries of the deceased, she came out of the house and saw the accused assaulting the deceased with axe. Sundarlal (PW-6) and Chitrasen (PW-7) are the witnesses to inquest Ex. P-6 and seizure made under Ex. P-4. Dr. G.L. Miri (PW-8) is the witness

who conducted postmortem on the body of the deceased and gave his report Ex. P-8 stating that he noticed number of incised wounds on upper portion of brain, occipital portion of scalp, lacerated wounds on chest (sternum portion) amongst others. Cause of death, according to this witness, was fracture of right occipital and left side of skull bone and rupture of brain. He has stated that mode of death was shock due to excessive internal and external haemorrhage. Death is opined to be homicidal in nature. R.C. Sao (PW-14) is the investigating officer who has duly supported the case of the prosecution.

9. There are three eyewitnesses to the incident being PW-1, PW-2 and PW-5 who have categorically stated that they saw the accused/appellant assaulting the deceased with axe which eventually led to his death. PW-1 clarifies that on the date of incident at about 4 AM when he and the deceased went out of the house for answering the call of nature, accused/appellant already present outside the house, pounced upon the deceased and dealt number of axe blows on his vital parts. Likewise PW-2 - wife of the accused/appellant who was staying with her parents on account of quarrelsome nature of her husband - the accused herein, has also stated the same thing as her son PW-1 that when her father went out of the house along with her son, accused/appellant assaulted the deceased with axe leading to his instantaneous death. PW-5 - another eyewitness has also stated that on hearing the cries of the deceased when he came out, accused/appellant was assaulting the deceased with axe. PW-4 states that while she

was going to answer the call of nature in the morning hours, accused was sitting in front of the house of the deceased and after she returned, he was lying dead. Doctor PW-8 conducting postmortem examination has also noticed number of injuries on the vital parts of the body of the deceased such as head, chest, hands etc including fracture of right occipital and left side of skull bone and rupture of brain. Furthermore, an axe has been seized under Ex. P-12 at the instance of accused/appellant and according to the doctor (PW-8) the injuries present on the body could be caused by the said axe. Defence has not been able to lead even a single evidence in rebuttal in order prove innocence of the accused/appellant and being so the findings recorded by the Court below holding the accused/appellant guilty for killing his own father-in-law by inflicting countless axe injuries on vital parts are well founded and therefore need no interference by this Court.

10. Appeal thus being devoid of any substance is liable to be dismissed and it is hereby dismissed. Judgment impugned is affirmed. Being already inside, no order in respect of arrest etc. of the accused is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge