

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 424 of 2013**

- Vishnu Gond S/o Shivshankar Gond, aged 31 years, Profession - Agriculture, R/o village - Pasa, P.S. Jhilmili, District Surajpur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through : Station House Officer, Police Station - Jhilmili, Revenue District : Surajpur (C.G.), Civil District Sarguja (Ambikapur) (C.G.)

---- Respondent

For Applicant	:	Shri Ravindra Sharma, Advocate
For Respondent/State	:	Shri Suryakant Mishra, P.L.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board**09.04.2019****Per Manindra Mohan Shrivastava, J**

1. Heard.

2. This appeal is directed against the judgment of conviction and order of sentence dated 30.01.2013 passed by 1st Additional Sessions Judge, Surajpur, in Sessions Trail No. 533/2011 whereby and whereunder, the appellant has been held guilty of commission of offence under Sections 302 and 201 of IPC and sentenced as described below:-

Conviction	Sentence
U/s 302 of the I.P.C.	Imprisonment for life and fine of Rs. 50/-, in default of payment of

	fine amount to further undergo additional R.I. for 10 days.
U/s 201 of the I.P.C.	R.I. for seven years and fine of Rs. 50/-, in default of payment of fine amount to further undergo additional R.I. for 10 days.

3. The prosecution story is that a merg intimation in Ex.P/1 was lodged in the police station early in the morning of 04.11.2011 by Krishna Singh (PW/1), brother of the appellant and son of the deceased, that his father was murdered in the house. It followed recording of FIR also in Ex.P/2 immediately thereafter. The story revealed from the merg intimation and the FIR was that the deceased was residing in his house with his wife and sons. On the date of incident, when the informant came back home, initially his mother did not disclose anything but, later on, she disclosed that there was some quarrel between the father and the appellant and then the father was taken inside the room, thereafter, the appellant came out and the room was locked. Later on, when the room was opened, dead body of the father was found.

The inquest over the dead body was prepared and it was sent for postmortem, which was conducted by Dr. B.C. Paikra (PW/4), who conducted postmortem and reported that the deceased died due to injury on the occipital part of the head where fracture was found and the brain matter was damaged. He opined that it was homicidal in nature.

4. The investigation culminated in filing of the charge sheet against the appellant. Charges having been framed, the appellant abjured guilt

and was put to trial. The prosecution led the evidence of mother Parwatiya (PW/2) as the eye-witness of the case and the evidence of Krishna Singh (PW/1), the brother, who disclosed the circumstances when he reached his house after the incident. The appellant did not lead any defence evidence and denied all the incriminating evidence and the circumstances in his examination. The learned trial Court, relying upon the eye-witness account given by Parwatiya (PW/2) and other evidence on record, and that the dead body was found in the house, convicted the appellant.

5. Learned counsel for the appellant would argue that the evidence of Parwatiya (PW/2), appellant's own mother, is not reliable because her statement is in contradiction with what has been stated in the merge intimation and the FIR. He would argue that according to the contents of the merge and the FIR, which are proved by the prosecution from the evidence of Krishna Singh (PW/1), as also from the evidence of Krishna (PW/1), when Krishna reached house and found everyone sitting in utmost silence, he inquired and after lot of inquiry, he was asked to go inside the room where he found that the room was locked and he was not informed as to where the key was. His evidence is that when he broke open the door, found that his father was lying dead inside due to which he ran away out of fear and that his mother and sister were stating that Vishnu assaulted his father. Therefore, it is argued, that it is highly doubtful whether the appellant's mother had at all seen the incident or merely because her husband was found dead in the house, she suspected his own son, the appellant. The next submission of learned counsel for the appellant is that, though, Vinita, daughter of the deceased, is also said to be present in the house, the prosecution has not examined Vinita, therefore, this further renders the prosecution story doubtful. The

evidence of Parwatiya (PW/2) is highly unnatural and improbable because she does not state as to why the appellant would assault his own father. Her statement that all of a sudden the appellant assaulted his own father, for no reason, renders her evidence doubtful.

The last submission of learned counsel for the appellant is that even if it is held that the appellant had assaulted his father, the circumstances show that the appellant did not have any intention to kill his father because a single injury was found on the head, which only indicates that the assault, if any, was without any premeditation and all of a sudden, therefore, the criminal overt act alleged against the appellant would not travel beyond the scope of Section 304 Part-II IPC.

6. Learned state counsel, on the other hand, supporting the impugned judgment of conviction and order of sentence submits that present is a case of murder proved from the evidence of appellant's own mother Parwatiya (PW/2), who has clearly stated regarding the incident of assault by the appellant on his own father with the help of axe. He would argue that what has been stated by Krishna Singh (PW/1) and recorded in merg intimation and in the FIR, do not in terms contradict the statement of Parwatiya (PW/2). In the background of the incident, where the appellant assaulted his own father, the mother having seen the incident went in shock, but, later on, she disclosed this fact to Krishna also that the assault was given by the appellant to his own father. He would next submit that established and proved circumstance of the case also provides sufficient corroboration to the statement of Parwatiya (PW/2) that the body of deceased was found in his own house and it was locked. The appellant's presence is very

much stated in the house and there is no suggestion given to any of the prosecution witnesses that deceased could be assaulted by anyone else in the house.

7. We have heard learned counsel for the parties and perused the record.

8. The merg intimation and FIR, both have been lodged by Krishna Singh (PW/1). The story which is revealed from the merg intimation and FIR is that when this witness Krishna Singh reached his house, he found his mother and sister sitting in silence and shock and when initially he inquired about the matter, things were not disclosed, but, later on, his mother Parwatiya (PW/2) asked him to go inside the room but the room was locked. The doors were broken and the dead body of his father was found in the room and then the mother informed him that the appellant assaulted his father. The contents of the merg intimation and FIR show that initially the mother was hesitant, but, later on, she disclosed regarding the act of the appellant. In his Court statement also, Krishna Singh (PW/1) has stated regarding he having been informed regarding the assault given by the appellant to his father, from her mother Parwatiya (PW/2) and sister Vinita (not examined).

9. Parwatiya (PW/2), mother of the appellant and wife of the deceased, has clearly stated regarding the assault given by the appellant to his own father with the help of an axe and then keeping the body in the room and locking the room until it was broke open in the night at about 10.00 after arrival of his another son Krishna Singh

(PW/2). In the cross-examination, a suggestion that she has not seen the incident, has been denied. A suggestion that her husband had come injured in the house has also been denied. Suggestion that she was not at home has also been denied.

This witness is not only the mother of the appellant but also wife of the deceased, and we do not find anything from her statement as to why she would falsely implicate her own son. Her evidence is emphatic. Krishna Singh (PW/1) has also stated regarding disclosure of the incident by his mother.

10. The submission that as Vinita was not examined, the evidence of prosecution witnesses should be rejected and discarded as untrustworthy, is not liable to be accepted. When there is no doubt on the testimony of Krishna Singh (PW/1) and Parwatiya (PW/2), non examination of Vinita by itself, without anything more, would not render the testimony of PW/1 and PW/2 unreliable. The peculiar circumstance of the present case is that the deceased is the father of the appellant. PW/1 is the real brother of the appellant and PW/2 is his own mother. Therefore, the statements of these two persons cannot be discarded only because their sister was not examined.

11. The homicidal death is proved from the evidence of Dr. B.C. Paikra (PW/4), who has clearly stated regarding fracture on the occipital part of the head and damage to the brain matter.

12. The last submission of learned counsel for the appellant that in these circumstances, conviction may be altered to Section 304 Part II, is liable to be rejected because neither there is such defence taken that

during any quarrel, without any premeditation, the appellant assaulted his own father. There is no case of sudden grave provocation also. We also do not find that even from the prosecution case and evidence anything having emerged to make out a case that the appellant, without premeditation, assaulted his own father only in the heat of passion and sudden quarrel. Merely because there was single injury on the head, it cannot be concluded without anything more that it was a case of sudden quarrel and without premeditation assault was given. The part of the body where the assault was given was the head and the weapon used an axe. The force of the assault was so much so that there was fracture damaging brain matter. Therefore, we do not find present to be a case to alter the appellant's conviction under Section 304 Part-I or Part-II of IPC.

13. In the result, we do not find any merit in the appeal warranting interference by this Court. The appeal deserves to be and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge