

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1117 of 2015**

- Umend Singh S/o Shri Ratiram Paikra, Aged About 30 Years, R/o Village Paturiyadanda, Chowki Morga, Police Station Bango, District Korba, Chhattisgarh

----Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Station- Bango, District- Korba, Chhattisgarh

---- Respondent

For Appellant	Shri R.K. Pali, Advocate.
For Respondent/State	Shri Vikas Shrivastava, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Prashant Kumar Mishra****01/07/2019**

1. The appeal is listed for hearing on application (I.A. No.1/19) for suspension of sentence and grant of bail. However, with the consent of learned counsel for the parties, we have heard them finally.
2. The appellant stands convicted under Section 302 of IPC for committing murder of Amit Kumar, aged about 7 years, and sentenced to undergo life imprisonment and fine of Rs.1000/- with default stipulation vide judgment of conviction

and order of sentence dated 25.07.2015 passed in ST No.86/14 by Additional Sessions Judge, Katghora, C.G.

3. Merg intimation Ex.P-9 was registered on the basis of information received from PW-1 Sukhmaniya Bai who visited the concerned Police Chowki along with her husband Ramdular, Roop Singh and Indra Kumar to the effect that at about 9:00 am she was sitting over cemented platform outside her house. At that time deceased Amit Kumar came to her after quarrel between him and appellant's son. Soon thereafter Umend Singh came over the place with *Tangi* in his hand and started giving Axe blows to Amit Kumar causing injuries on right shoulder, right neck and right ribs and over back. She immediately informed the incident to Ramdular, Roop Singh, Ram Kishun and Indra Kumar. The FIR Ex.P-10 was registered at about 16:35 hours on 25.07.2014 on similar lines as is mentioned in the merg intimation. During postmortem examination the autopsy surgeon found several injuries including multiple fractures of skull bone right parietal region, incised wound on right side of neck etc. The postmortem report Ex.P-19 opines the cause of death to be severe hemorrhage and fracture of skull bone and damage to brain cell and hemorrhagic shock to all vital organs due to forceful attack by hard, sharp, heavy weapon like Axe and the nature of death is homicidal. After completing the investigation by obtaining memorandum

statement and making seizure of articles, charge sheet was filed against the appellant.

4. In course of Trial, prosecution examined PW-1 Sukhmaniya, PW-2 Ramkishun, PW-3 Roop Singh, PW-4 Indra Kumar, PW-5 Santosh Kumar Sahu, PW-6 Bhawan Singh Kanwar, PW-7 K.S. Tiwari, PW-8 Rajendra Kumar Kela and PW-9 Dr. Deepak Singh whereas the accused examined DW-1 Rati Ram in his defence. Relying on the eyewitness account of PW-1 Sukhmaniya, the Trial Court has convicted the appellant.
5. It is argued by learned counsel for the appellant that in the absence of proof of memorandum and seizure from the appellant, the appellant cannot be convicted merely on the basis of statement of PW-1. It is also argued that there is no FSL report, therefore, there is no corroboration to other evidence.
6. Learned State counsel would support the impugned judgment.
7. Heard learned counsel for the parties and perused the record.
8. The incident took place at about 9 am i.e. at broad day light when the appellant came nearly chasing the deceased aged about 7 years and having found him standing near the

cemented platform (Chabutra) in front of the house of PW-1 Sukhmaniya, he attacked and gave repeated Axe blows to the deceased causing multiple injuries over vital parts of his body i.e. skull, neck, back, scapula, ribs etc. Prosecution case is fully supported by the eyewitness PW-1 Sukhmaniya. She has been cross-examined effectively but she has not budged an inch from her earlier version without diluting her statement in any manner.

9. True, it is that the witnesses to the memorandum and seizure namely PW-2 Ram Kishun and PW-4 Indra Kumar have not fully supported the prosecution as after admitting their signature over the memorandum statement Ex.P-6 and the seizure memo Ex.P-7, they have turned hostile but it is a settled law that where the prosecution case regarding commission of murder is proved by the eyewitness account whose presence on the spot is not in doubt, failure of the prosecution to prove seizure of the weapon would not dilute the prosecution case.

10. Similarly, the argument that the appellant and Sukhmaniya Bai have soured relation, therefore, Sukhmaniya has framed the appellant in the crime does not appeal to us for the reason that there is no clinching evidence as to the nature of their *inter se* dispute. Contrary to this, the prosecution case from the very beginning is that there was dispute between

the appellant's son and the deceased whereupon the deceased came running near the house of PW-1 Sukhmaniya and a little later the appellant reached there and started giving successive Axe blows to the deceased. Thus, the act of inflicting repeated Axe injuries on the deceased and the appellant's soured relation with Sukhmaniya have otherwise no connectivity. If the appellant's relation with Sukhmaniya was not good, appellant would assault Sukhmaniya and not her Nephew (Her Devar's Son). As such, there being no enmity between the appellant and deceased or his father, the defence put forth to this effect has no substance.

11. At this stage, learned counsel for the appellant would submit that there being no premeditation on the part of the appellant to commit murder of the deceased, the conviction deserves to be converted to one under Section 304 Part 1 of IPC.

12. To appreciate this submission, we have perused the evidence once again, however, we failed to persuade ourselves to agree with the submission made by learned counsel for the appellant. There is evidence to the effect that the appellant came chasing the deceased, aged about 7 years, and gave repeated Axe blows over vital parts of his body. Thus, the appellant took undue advantage of he being a mature grown up healthy adult against whom a child, aged

about 7 years, was pitted. The appellant had a motive and raging anger in his mind as there was quarrel between his son and the deceased. The premeditation was well within the appellant's mind who came chasing from some distance and immediately upon finding the deceased started assaulting him. It is not a case of sudden quarrel nor is a case where he chose a non-vital part of the body to inflict injuries and the death took place due to some other intervening factors and not as a direct result of injuries. It is also to be seen that the deceased died instantly on the spot.

13. For all these reasons stated above, the present appears to be a case fully covered within the definition of culpable homicidal amounting to murder and it cannot be converted to one under Section 304 part 1 of IPC.

14. In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge