

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 612 of 2014**

- Tejram, S/o Koli Rathiya, Aged About 50 Years, R/o Vill. Danaot, P.S. Chkradhar Nagar, Distt. Raigarh, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh, Through In-Charge Police Station Chakradhar Nagar, Distt. Raigarh, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Vikas Shrivastava, Advocate
Ms. Madhunisha Singh, PL

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Prashant Kumar Mishra J.****22/07/2019**

1. The matter is listed on PUD, which is a letter sent by the accused for early hearing of his appeal. Since the paper book is already prepared and learned counsel for the parties would consent for hearing the matter today itself, we heard them finally.
2. Appellant has been convicted for committing murder of deceased Dokri Rathiya at about 2:30 am in the intervening night of 20th and 21.04.2013.
3. As per the prosecution case, the family of the accused and the deceased are related. They had subsisting land dispute and a controversy had arisen at the time of threshing of paddy. At the

time of incident, PW-1 Harihar Rathiya, PW-2 Rajaram and one Hari Prasad were sleeping in the courtyard (*Parchhi*) of their house. The deceased entered their house armed with an axe and started giving axe blows to the deceased over his neck. On hearing the screaming of the deceased, PW-1 Harihar Rathiya, PW-2 Rajaram and Hari Prasad awoked and witnessed the incident. When Harihar Rathiya tried to intervene, he was also assaulted by the appellant over his right hand, due to which he sustained serious incised wound, as has been found by PW-4 Dr. Sharad Awasthi in his MLC report (EX-P-10). Soon after the incident, Rajaram and Hari Prasad overpowered the appellant and snatched away the axe from his hands. PW-1 Harihar Rathiya was taken to the hospital in a Sanjeevni 108 Ambulance. The FIR (Ex-P-3) was lodged at about 7:15 am on 21.04.2013 and thereafter the autopsy was conducted by PW-3 Dr. Tarachand Patel, who submitted his report vide Ex-P-9.

4. Based on the statement of eye witnesses as well as the autopsy report and the MLC report, the prosecution filed charge-sheet for commission of offence under Sections 302 and 307 of IPC and on the basis of the evidence adduced by the prosecution, the appellant has been convicted for both the offences.
5. Learned counsel for the appellant would argue that the incident happened in the midnight and nobody could have seen the assailant, however, because of the old enmity, the appellant has been falsely implicated.
6. Per contra, learned State counsel would submit that in view of the

eye witness account in the shape of statements of PW-1 Harihar Rathiya and PW-2 Rajaram, the prosecution has proved its case and the judgment of conviction does not call for any interference.

7. We have seen the record including the deposition and the exhibits.
8. PW-1 Harihar Rathiya has clearly stated that an electric bulb was alighting in the verandah where the incident happened. This witness was sleeping along with PW-2 Rajaram and one Hari Prasad. He awoked after the deceased started screaming due to assault made by the appellant over his neck. The appellant was immediately caught by PW-2 Rajaram and Hari Prasad on the spot with axe in his hands. PW-2 Rajaram has also supported the case of the prosecution narrating the same story as has been stated by PW-1 Harihar Rathiya. Moreover, Harihar Rathiya has sustained three incised wounds over his right hand, as stated in Ex-P-10, his MLC report submitted by PW-4 Dr. Sharad Awasthi. Thus, his presence on the spot is otherwise corroborated by medical evidence.
9. The autopsy surgeon PW-3 Dr. Tarachand Patel has clearly stated that the deceased had sustained two incised wounds over his neck and the death has taken place due to hemorrhage/loss of blood due to the incised wound over neck and the death was homicidal in nature. There is nothing in the cross-examination of any of the prosecution witness, which would discredit the prosecution case or draw an inference that there is slightest effort on the part of the prosecution to frame the accused in the false case.

10. In view of clear unimpeachable evidence on record, the Trial Court has rightly convicted the appellant. There is no substance in this appeal. It deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge

Nirala