

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 890 of 2019**

- Shivratan Dhanuhar S/o Anjor Sai Aged About 40 Years R/o Panchdhar, Tuman, Police Station Katghora, District Korba Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Katghora, District Korba Chhattisgarh.

---- Respondent

For Applicant	:-	Shri C. R. Sahu, Advocate
For State	:-	Shri Neeraj Mehta, PL

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Gautam Chourdiya, JJ.**

Order On Board**By****Prashant Kumar Mishra, J.****29/07/2019**

1. Heard.
2. With the consent of the learned counsels for the parties, the appeal is heard finally.

3. Appellant has been convicted for committing murder of his friend / deceased Antram at about 8-9 PM on 26.05.2018.
4. As per the prosecution case, the appellant and the deceased had consumed *Ganja* and thereafter consumed liquor at the appellant's house. On some dispute, the appellant inflicted repeated axe blows on the person of the deceased, which was witnessed by his daughter PW-5 Radhika and PW-4 Smt. Chhat Bai, mother of deceased. The FIR (Ex-P-2) and the merg intimation (Ex-P-1) were recorded by the Police on the information of Samar Sai (PW-1) at about 9:30 PM and 9:35 PM, respectively.
5. The autopsy was conducted by PW-9 Dr. B. R. Ratre, who has found six incised wounds on the person of deceased, out of which incised wound Nos.1, 2 and 3 were over neck along with cut of spine and spinal chord, whereas incised wound Nos. 4, 5 and 6 were on scapula along with cut of scapular bone. The deceased had also sustained fracture of 6th and 7th rib corresponding to incised wound No. 6 over right scapular bone. The death was caused on account of above injuries and the mode of death is syncope due to cut of vital organs and main arteries of neck. Nature of death is homicidal.
6. During further investigation, axe was recovered from the

appellant vide Ex-P-6 consequent to his memorandum statement (Ex-P-5), both recorded on 27.05.2018.

7. The prosecution case is thus based on the eye-witnesses account rendered by PW-4 Smt. Chhat Bai and PW-5 Radhika as also on the evidence of recovery of weapon from the appellant soon after the incident. The trial Court has found the prosecution case fully proved and has convicted the appellant for committing offence under Section 302 of I.P.C.
8. Learned counsel for the appellant, Shri C.R. Sahu, would submit that the statement of PW-5 Radhika is full of contradiction on material terms and similarly complete reading of statement of PW-4 Chhat Bai would discern that she is not an eye-witness, therefore, both the witnesses are not reliable and the trial Court has committed an error in convicting the appellant.
9. Per contra, Learned State counsel, Shri Neeraj Mehta, would submit that both the eye-witnesses are reliable and trustworthy, therefore, coupled with the seizure of weapon, the prosecution case is fully proved.
10. We shall first discuss the statement of PW-5 Radhika, aged about 10 years. This witness is the daughter of appellant Shivratan. In examination-in-chief, she states that at the

time of occurrence, deceased Antram and his father appellant Shivratan were in her house. During further examination-in-chief, she denies to have any knowledge about the incident but has admitted the presence of the deceased in her house again in paragraph 4 of her cross-examination. She thereafter admits in paragraph 7 that she had given statement to the Police vide Ex-P-8, that his father had given axe blows to the deceased. She also admits that she had informed that because of the assault made by the appellant, deceased Antram fell on the ground and blood was oozing from his neck. Though in the next breath, she says that she has not seen the incident but her admission in the earlier part of the statement that she has given her statement (Ex-P-8) to the Police, there is no doubt that she is an eye-witness and had informed the Police about the incident. It is settled law that statement of a hostile witness is not to be thrown out in its entirety but such part of the statement which corresponds and supports the prosecution case can always be looked in as admissible piece of witness.

11. Now coming to the statement of PW-4 Chhat Bai, she states that at the time of occurrence, she was in her house which is at about 2-3 houses away from the place of occurrence i.e. the house of the appellant. When she was suggested that

her house is about 100 meters away, she says that it would be less than that. She also says that when any person shouts loudly from the house of the appellant, it would be heard in their house. With this description about the location of her house to the location of the house of the appellant, she says that when she went to the house of the appellant, she witnessed that the appellant was giving axe blows to the deceased. There is no mention in her examination-in-chief that she went to the appellant's house after hearing the shout but that part of the event is stated by PW-1 Samar Sai, who would say that when the appellant started giving axe blows to the deceased, her daughter shouted requesting the appellant not to assault the deceased. According to PW-1 Samar Sai, hearing this shout his wife PW-4 Chhat Bai rushed to the appellant's house and thereafter returned crying and narrated the incident to him. Thus PW-4 Chhat Bai reached the spot first in point of time than PW-1 Samar Sai and having seen the occurrence and death of her son, she immediately rushed back to her house to inform her husband PW-1 Samar Sai.

12. Considering the statement of PW-4 Chhat Bai and putting it juxtaposition to the statement of PW-1, we are of the considered view that PW-4 is also an eye-witness. In addition to the above evidence, it is also to be seen that the

memorandum statement (Ex-P-5) and seizure of axe vide Ex-P-6 were recorded on the very next date of incident. Samar Sai (PW-1) is a witness to both the documents and has fully supported the prosecution, therefore, not only the memorandum statement but also the seizure of blood stained axe and corresponding F.S.L. report finding blood also corroborates the eye-witness account rendered by PW-4 Radhika and PW-5 Chhat Bai. It is also worth mentioning that the dead body was found in the house of the appellant having sustained injury as described by PW-9 Dr. B. R. Ratre. Thus, taking a cumulative view of all the evidences, as discussed above, we have no hesitation in holding that the prosecution has proved its case beyond reasonable doubt. The appellant has rightly been convicted for committing offence under Section 302 of I.P.C.

13. There is no substance in this appeal. It deserves to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

Ayushi