

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 370 of 2013**

- Endra @ Mahendra Majhwar S/o Jhulur Majhwar Aged About 30 Years
R/o Parpatia, Haradhodhi Para, Ps Kamleshwarpur, Distt. Surguja C.G.
C.G. , Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Its Ps Kamleshwarpur, Distt. Surguja
C.G. , Chhattisgarh

---- Respondent

For Appellant : Shri Shailendra Sharma
For Respondent/State : Anand Verma, GA

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****04/02/2019**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 14-02-2013 passed by the Sessions Judge, Surguja at Ambikapur in Sessions Trial No.500/2010, whereby and whereunder the **appellant-Andra @ Mahendra** has been held guilty for commission of offence under Section 302 of IPC and sentenced, as described below:-

Section-302 IPC	Life Imprisonment and fine of Rs.2000/-, in default of payment of fine, the appellant has to undergo additional Rigorous Imprisonment for six month
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2. According to the prosecution story, FIR Ex.P1 was lodged by Vilom Sai, PW1. In the FIR it was disclosed that wife of Sitaram disclosed to the FIR

informant that when her husband was at home, the accused and one other person had come home quarreling and when they reached near their house, the appellant gave assault to Sitaram on his neck, resulting in cut injury, due to which, Sitaram fell down on the doorsteps and died. After recording morgue intimation and preparation of inquest over the dead body, it was sent for postmortem and postmortem was conducted by Doctor S.N. Bhoi, PW3, who after conducting the postmortem, prepared postmortem report in Ex.P9-A. Cause of death was stated to be shock due to bleeding as a result of cut injury in the neck. The appellant was put to trial. Learned trial Court mainly relying upon the eye witness account of Sukhani, PW5, wife of the deceased, held the appellant guilty of commission of offence.

3. Learned counsel for the appellant would argue that the evidence of Sukhani, PW5 is not reliable, because the manner, in which, she has stated regarding the incident, she actually was not an eye-witness and she appears to be a hearsay witness, because there was some kind of quarrel between the appellant and the deceased. A suggestion of enmity was also given to this witness.

Learned counsel for the appellant would further argue that even for the sake of argument, the evidence of Sukhani, PW-5 is accepted, the background, in which the incident happened, the present would be a case of only culpable homicidal not amounting to murder, because whatsoever was done, it was without any intention and in a sudden quarrel, without pre-meditation. He submits that only a single injury was said to be given by the appellant to the deceased on her neck. Therefore, in these circumstances, conviction of the appellant be altered to one under Section 304 Part II of IPC and sentence may be imposed for the period already undergone by the appellant. It is argued that the appellant has already undergone almost 9 years of imprisonment.

4. On the other hand, learned State counsel supports the impugned judgment of acquittal and order of sentence by submitting that the evidence of Sukhani, PW5 does not suffer from any material contradiction or omission and she being the wife of the deceased, has clearly stated that when she was inside the house along with her husband, the appellant came in, armed with axe like weapon and straightway gave blow on the neck, which is a vital part of the body, due to which, her husband sustained cut injury and died instantaneously. There is no material to show that she had any motive to falsely implicate the appellant. He would also submit that present is not a case to warrant alteration of conviction to 304 Part-II of IPC, because according to eye witness, the appellant came in and straightway gave assault and it is not a case that during quarrel, all of a sudden, without premeditation, single injury was given by an axe.

5. We have heard learned counsel for the parties and perused the records.

6. Homicidal death of Sitaram is not substantially in dispute. Doctor S.N. Bhoi, PW5, who conducted postmortem has proved his report in Ex.P-9-A. Following injuries were found by him, as deposed in the Court :-

4. मृतक के बाह्य परीक्षण करने पर निम्नलिखित चोट होना पाया था :-

(1) गले में बायें तरफ एक कटा हुआ घाव होना पाया गया जिसका आकार 5 x 1.5 x 2.5 से.मी. था ।

According to the doctor, cause of death was shock as a result of injury, homicidal in nature. The doctor has proved that Sitaram had sustained a cut injury in his neck, which led to bleeding and death.

7. The prosecution case stands on the sole eye witness account of Sukhani, PW-5, widow of the deceased. She has deposed that while she was inside the house along with her husband Sitaram, the appellant arrived in the house with an axe in his hands and straightway gave blow on the head of the

husband, due to which, he fell down. In her cross examination she has stated that Endra consumed liquor and he killed her husband after having consumed liquor. She has also stated that though her husband had also consumed liquor, but there was no quarrel. She has further deposed that Endra has gone to the fields, wherefrom, he came and assaulted her husband. In her further cross examination, Sukhani, PW-5 says that the appellant, Endra had first assaulted Kunti and Aandha, and thereafter, he came and assaulted her husband. Suggestion that she could not see as to who assaulted her husband as she herself was intoxicated, is denied. She has reaffirmed that the appellant assaulted her husband, which incident was seen by her.

The entire evidence of this eye-witness appears to be reliable, because nothing could be elicited to bring about any material contradiction or omission from her diary statement. Moreover, she happens to be wife of the deceased and there is no reason as to why, the wife of the victim would exonerate the real culprit and falsely implicate some other person.

8. Learned counsel for the appellant, however, raised an argument that present is a case, where Exception-4 to Section 300 of IPC could be attracted, because during quarrel, in a sudden heat of passion, without premeditation, a single injury was given by the appellant to the deceased. To support this argument, he would rely upon the contents of the FIR, statement of Dr. S. N. Bhoi, PW-3 and appellant's own memorandum of statement.

But for the statement of eye-witness account of Sukhani, PW-5, this Court would have been certainly inclined to accept the submission of learned counsel for the appellant, but, then, the contents of memorandum or hearsay evidence could not be accepted and relied upon against the specific eye-witness account of Sukhani, PW-5, who has stated that while she was inside the house along with her husband, the appellant came armed with an axe and straightway gave

an assault. She does not say that for the same reason, there was a quarrel between the appellant and the deceased and then, in a sudden heat of passion, assault was given. According to Sukhani, PW-5, the appellant straightway came inside the house and gave assault on her husband. Therefore, even if, we accept that earlier there was some quarrel between the appellant and the deceased and then, assault was given, there was a time gap between the quarrel and assault and it is not a case that during quarrel, assault was given. Where, in a given case, a single injury would be indicative of assault given without pre-meditation would essentially depend upon the facts and circumstances of every case and it cannot be laid down as invariable rule of universal application that in all cases of single injury, it would be a case of assault given without pre-meditation. In order to hold that it was a case of culpable homicidal not amounting to murder, the element of quarrel and sudden fight are essential element. The incident must have happened in the same transaction. In a case, where a quarrel took place and after a time gap, assault is given with preparation, it could not be said to be a case of assault given without pre-meditation. In this case, as the eye-witness states, while the deceased Sitaram was in his house, the appellant came with preparation, as he was holding an axe in his hand. It is not that after coming to the house, some altercation took place between the appellant and the deceased. According to the eye-witness, Sukhani, PW-5, the appellant straightway gave an assault on the vital part of the body i.e. neck. The assault given by an axe on neck, a cut injury, which was serious in nature resulted in instantaneous death. Therefore, intention and preparation of commission of offence are proved by the prosecution.

9. In these circumstances and on the basis of the evidence of eye-witness account, we find ourselves unable to accept the contentions of learned counsel

for the appellant that it is a fit case for alteration of conviction to that under Section 304 Part II of IPC.

10. In the result, this appeal has to be dismissed and is accordingly dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge