

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 959 of 2013**

- Sukhraj S/o Harey Singh Baiga Aged About 21 Years R/o Village Pandripani, PS Kukdur, Distt. Kabirdham C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through PS Kukdur, Distt. Kabirdham C.G.

....Respondent

For Appellant	:	Shri Ajit Singh, Advocate
For State	:	Shri Subhash Yadav, Dy.G.A.

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

Judgment On Board by Manindra Mohan Shrivastava, J.**05.02.2019**

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 24.07.2013 passed by the Sessions Judge, Kabirdham, District-Kawardha (CG) in Sessions Trial No.16 of 2013, whereby and whereunder, the appellant has been held guilty of commission of offence as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 302 of IPC	Imprisonment for life and fine of Rs.5,000/- (in default of payment of fine, additional R.I. of 6 months)

2. According to the case of the prosecution, as revealed from the impugned judgment and records of the case, is that the deceased - Harey Singh came to the

house in drunken condition and it is said that he started quarreling with his wife, daughter and his own son. It is alleged that because of the quarrel, the wife and the daughter left the house and the appellant assaulted his father-Harey Singh with the help of an axe due to which, Harey Singh sustained fatal injury in the head and later on, succumbed to death. The post mortem report revealed one head injury and cause of death was said to be shock due to head injury. The police, after investigation, filed charge sheet alleging offence under Section 302 of IPC. The appellant abjured guilt and was put to trial. The appellant denied having committed offence.

3. The prosecution led the evidence of homicidal death as also the evidence of appellant's mother-Nankaiya Bai (PW4) and his sister-Sukartin Bai (PW5) that there was a quarrel due to which they ran away and the appellant was then found in the house along with the dead body of his father - Harey Singh and was holding an axe. Learned Trial Court, relying upon the circumstantial evidence of quarrel, appellants presence and his father found dead in the house and it being a homicidal death, held that it is the appellant who had assaulted his father and convicted him.

4. Learned counsel for the appellant would argue that the prosecution case could not travel beyond suspicious circumstances. He would argue that it is based only on the circumstances that the deceased had come to the house in drunken condition and started quarreling with his own wife, daughter and son (the appellant). He would argue that nobody has seen the incident. Next submission is that the evidence of Sukartin (PW5) - sister of the appellant, of appellant having given extra judicial confession before her, is highly doubtful because she did not remain firm on her statement. Lastly, he would submit that presence of human blood in the axe, allegedly recovered from the appellant, does not lead to

conclusion that the blood was that of the deceased only.

As an alternative submission, learned counsel for the appellant would argue that even if the entire case of the prosecution is accepted, even according to the prosecution, the dispute arose all of a sudden when Harey Singh-father of the appellant came to the house of the appellant in a drunken state and started quarreling with the appellant and other members of the family and it was during that quarrel that the appellant, in a sudden heat of passion, without pre-meditation gave an assault leading to his father's death. Therefore, in the circumstances, particularly when there is single injury on the head, conviction of the appellant would not travel beyond Section 304 of IPC.

5. On the other hand, learned State counsel supporting judgment of conviction and order of sentence, submits that even though there is no direct evidence, the evidence of Nankaiya Bai (PW4) and Sukartin Bai (PW5), the wife and daughter of the deceased respectively, clearly proves that in the house, there was a quarrel and both of them ran away from the house, leaving behind the deceased and the appellant and when they came back, they found Harey Singh in blood bath and appellant standing with an axe in his hand. The axe was found stained with human blood which the appellant has failed to explain. Therefore, it is the appellant and the appellant alone who must have killed his father because he has failed to explain how in his presence, the father sustained such fatal injury. Lastly, he would argue that as the appellant picked up an axe and gave an assault on the head, it cannot be said that it was without pre-meditation. Use of an axe as weapon and giving assault on the head proves intention. Therefore, the conviction of the appellant does not warrant any interference.

6. In the present case, though there is no direct evidence, the evidence of Nankaiya Bai (PW4) and Sukartin Bai (PW5) who are the wife and daughter

respectively of the deceased is important. Nankaiya Bai (PW4), wife of the deceased has deposed that in the evening, her husband and the appellant were present in the house and her husband was lying dead in the courtyard of the house and the appellant was also present. She was declared hostile because she did not fully support the case of the prosecution and upon examination of the prosecution, she has admitted that on the date of incident, in the evening at about 5 PM, Harey Singh had come in drunken state and started hurling abuses and also assaulted her daughter–Sukartin Bai (PW5) and Sukhraj (the appellant), whereafter, she and Sukartin ran towards the field and at that time, Sukhraj and Harey Singh was at home. She also deposed that when she came back, her husband's dead body was lying on the cot. Nothing could be elicited in the cross examination to disbelieve the part of the testimony of this witness that in the evening, Harey Singh had come to the house at drunken state, started abusing the appellant, Nankaiya Bai (PW4) and Sukartin Bai (PW5), whereafter, Nankaiya Bai (PW4) and Sukartin Bai (PW5) ran away from the spot along with the appellant and the deceased and when Nankaiya Bai (PW4) came back, she found Harey Singh lying dead on the cot and the appellant was also present in the house.

Sukartin Bai (PW5), who is the sister of the appellant and daughter of the deceased, has also supported the testimony of her mother by admitting that on the date of incident, her father had come in drunken state and he was hurling abuses and attempted to assault her, her mother as also the appellant, whereafter, she and her mother ran towards the field. She admits that at that time, only the appellant and the father were present in the house. Later on, when she came back home along with her mother, they saw that her father's dead body was lying on the cot in blood bath and the appellant was at home and when she asked the appellant, he stated that because of the abuses and assaults, he was enraged and in a fit of anger, he assaulted his father with an axe. In her cross-examination, however, she states that her brother did not disclose this fact regarding extra

judicial confession of he having assaulted his father. Thereafter, the Court put a specific question and then she stated that what she had stated in earlier point of time was true. The evidence show that she has clearly stated regarding quarrel and the appellant having given extra judicial confession before her.

7. The axe which was recovered has been found stained with human blood. True it is that the blood stains found on the axe was not proved to be of the group and origin of the deceased, non-explanation of the appellant of how the axe got blood stains, if taken together with the evidence of Sukartin Bai (PW5), this lend corroboration to the prosecution story. Therefore, there is no doubt that it is the appellant who had assaulted his father.

8. Next point which arises for consideration before us is whether conviction of the appellant deserves to be altered to that under Section 304 IPC in view of the submission that the proved circumstances of the case attract essential ingredients of Exception 4 of Section 300 IPC.

The evidence of Nankaiya Bai (PW4) and Sukartin Bai (PW5), who are none other than the wife and daughter of the deceased and mother and sister of the appellant, have deposed in their evidence that in the evening, when they all were at home, the deceased – Harey Singh came there and he was intoxicated and in this state, he started hurling abuses and also assaulted all of them including the appellant so much so that Nankaiya Bai (PW4) - the wife and Sukartin Bai (PW5)- daughter of the deceased respectively, had run away from the house leaving behind the appellant and his father. The extra judicial confession of the appellant given to his own sister - Sukartin Bai (PW5) proves that when the father in a state of intoxication was abusing the appellant and other members of the family including the wife and the daughter, the appellant in a fit of anger wielded the axe and assaulted, is also proved. The medical evidence and the post mortem report prove that there was a single incised wound on the head of the deceased.

Therefore, the totality of the circumstances and the evidence, as has come on record, lead us to the conclusion that the incident happened all of a sudden where the deceased in a drunken state was abusing and assaulting his own son, wife and the daughter, due to which, the wife and the daughter had to run away from the house and the appellant (the son) in a fit of anger, picked up axe and assaulted his father, which unfortunately led to his death.

9. We are, therefore, of the opinion that present is a case which would attract Exception 4 of Section 300 IPC because the incident happened all of a sudden. There was a sudden fight and the son in all probability, without pre-meditation, wielded the axe and assaulted his father resulting in single incised wound leading to his death. Therefore, present is a fit case where conviction is required to be altered to that under Section 304-II of IPC.

In the circumstances of the case, we impose a sentence of seven years on the appellant.

10. In the result, this appeal is partly allowed. The conviction of the appellant is altered to Section 304-II IPC and sentenced to undergo R.I. of seven years.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge