

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 980 of 2019**

- Sanjay Lakda S/o Amar Sai Lakda Aged About 22 Years R/o Village - Dagbhouna, Police Station Kapu, District Raigarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Kapu, District Raigarh Chhattisgarh.

---- Respondent

For Appellant : Shri Pawan Shrivastava, Advocate.
For Respondent/State : Shri R.S. Baghel, Deputy AG.

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

Judgment On Board By Prashant Kumar Mishra, J**21/08/2019 :**

1. The appellant has been convicted for committing offence under Section 302 of the IPC and sentenced to undergo RI for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo RI for 30 days vide judgment dated 28.11.2018 passed by the Additional Sessions Judge, Gharghoda, District Raigarh in ST No.36/2018, for committing murder of his elder mother (बड़ी माँ) Guni Bai by inflicting one axe blow at about 7 pm on 25.8.2017.
2. Merg intimation (Ex.-P/1) and the FIR (Ex.-P/2) have been lodged

by (PW-1) Mohar Sai, husband of the deceased Guni Bai at 9.30 pm and 9.45 pm respectively, informing that at about 7 pm his daughter-in-law informed that Sanjay Lakda, his mother Muni Bai have raised quarrel with Amar Sai in an inebriated condition. Informant Amar Sai went there to intervene and separate them. At this point of time, Sanjay demanded one axe from his mother, which was provided to him by Muni Bai, seeing which Amar Sai run out of the place and his wife deceased Guni Bai was also leaving the house of Amar Sai. The appellant saw his wife Guni Bai through torch light, chased her and caused one axe blow over her head due to which she fell on the ground and died instantaneously.

3. The appellant was taken into custody and his memorandum statement was recorded vide Ex.-P/7 whereas memorandum statement of co-accused Muni Bai (now acquitted) was recorded vide Ex.-P/8. From possession of the appellant, blood stained axe was recovered vide Ex.-P/9. Another axe was recovered from the appellant vide Ex.-P/10. Postmortem was conducted by (PW-10) Dr. B.L. Bhagat, who submitted his report (Ex.-P/21) finding one incised wound over upper part of left side of fronto occipital region in the size of 8x5 cm and part of cerebral matter come out. The autopsy surgeon opined that the deceased died due to coma as a result of head injury. Death is homicidal in nature. Seized axe was sent for FSL examination, which was found positive for presence of blood, but the same was disintegrated, therefore, origin of blood could not be determined.

4. Learned trial Court has convicted the appellant on the basis of eyewitness account rendered by Mohar Sai, the accused's confessional statement vide Ex.-P/7 and consequent recovery of axe from his possession.
5. Learned counsel for the appellant would argue that the appellant had no intention to commit murder, as initial quarrel/altercation was with his father Amar Sai, therefore, he cannot be held guilty of committing murder of deceased Guni Bai.
6. Per contra, learned State Counsel would support the impugned conviction.
7. For an offence committed at about 7 pm, mere intimation and FIR have been lodged within less than 3 hours, therefore, the FIR is very prompt and there is no possibility of tutoring or framing the case against the appellant. (PW-1) Mohar Sai has deposed the same which he had informed the police in his FIR. He would clearly state that initially the appellant and his mother Muni Bai were in altercation with his father Amar Sai in an inebriated condition, therefore, his daughter-in-law came to inform about the incident and to separate them. Mohar Sai went and separated the appellant and his mother from Amar Sai, but the appellant requested his mother to provide axe and thereafter he rushed to the place where deceased Guni Bai was standing and caused axe blow over the head of the deceased. There is no material contradiction or omission or embellishment in the statement of eyewitness (PW-1) Mohar Sai, which finds necessary corroboration from the medical opinion rendered by Dr. B.L.

Bhagat (PW-10), who has found one incised wound over fronto occipital region. Moreover, the appellant's memorandum statement has been proved by (PW-3) Govind Prasad, who has supported the case of the prosecution in his statement.

8. From the nature and quality of evidence available, it is fully proved that the appellant has caused axe blow resulting in homicidal death of the deceased.
9. At this stage, we are required to examine as to whether the act committed by the appellant would amount to commission of murder or it would amount to culpable homicide not amounting to murder.
10. The Hon'ble Supreme Court in the matter of **Lavghanbhai Devjibhai Vasava Vs. State of Gujarat** {(2018) 4 SCC 329} has referred to its earlier decision in the matter of **Dhirendra Kumar Vs. State of Uttarakhand** {2015 SCC OnLine SC 163} to delineate the parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 or under Section 304 of the IPC. The said parameters are reproduced hereunder:-

- “(a) The circumstances in which the incident took place;
- (b) The nature of weapon used;
- (c) Whether the weapon was carried or was taken from the spot;
- (d) Whether the assault was aimed on vital part of body;
- (e) The amount of the force used;
- (f) Whether the deceased participated in the sudden fight;
- (g) Whether there was any previous enmity;
- (h) Whether there was any sudden provocation;
- (i) Whether the attack was in the heat of passion;

and

(j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.”

11. In the case at hand, the evidence available would clearly suggest that the appellant and his mother Muni Bai were in altercation with Amar Sai. There was no dispute with deceased Guni Bai. Therefore, there is no question of pre-meditation to commit murder of deceased Guni Bai. It may be possible that the appellant who was in a state of intoxication was annoyed with Mohar Sai who separated the mother from his father Amar Sai when they were in altercation, but when Mohar Sai left the place of occurrence, the appellant found his wife Guni Bai. Therefore, she was assaulted by giving one axe blow. The incident occurred in a heat of passion without realizing that blow would cause death of the deceased. Thus, it is a case of having knowledge that the assault would cause death of the deceased but there was no intention to commit murder.

12. In view of the above, the Appeal succeeds in part. Conviction imposed upon the appellant under Section 302 of the IPC is set aside and instead the appellant is convicted under Section 304 Part-II of the IPC and sentenced to undergo RI for 5 years. It is made clear that the sentence of fine amount with default stipulation shall remain intact.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge