

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 225 of 2015**

- Lakhanlal Khande S/o Late Samaru Khande, aged about 56 years, R/o Tiwari Para, village Saida, P.S. Chakarbhatha, District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : P.S. Chakarbhatha, District Bilaspur (C.G.)

---- Respondent

For Appellant	:	Shri Rajesh Jain, Advocate
For Respondent.	:	Shri Anand Verma, Dy. G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt Justice Rajani Dubey

Judgment on Board**Per Rajani Dubey, J****25.03.2019**

1. This appeal arises out of the judgment of conviction and order of sentence dated 19.12.2014 passed by the 1st Additional Sessions Judge, Bilaspur (C.G.), in S.T. No.125/2012 whereby and whereunder, the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced as described below:-

Conviction	Sentence
Under Section 302 IPC	Imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine amount to undergo additional R.I. for one month.

2. In the present case, appellant Lakhanlal Khande is father-in-law of the deceased.

3. The prosecution story, in brief, is that on 09.04.2012,

unnumbered FIR in Ex.P/1 was lodged by Santosh Kumar (PW/1), son of the appellant, alleging in it that on that very day, when he was discharging his duty as coolie at Bilaspur railway station, at about 3.00 PM, he received a call from his younger brother that his father (the appellant) has assaulted his wife and is lying in unconscious condition. After receiving the information, he immediately went to the house and saw his wife lying in unconscious condition, to whom he took to the CIMS Hospital, Bilaspur where she died on that very day between 7-10 PM. It has been further alleged that the appellant was having grudge against the deceased and him (PW/1) as they were following "Isai" religion and earlier also there were quarrel in this regard, therefore, the appellant axed the deceased resulting in her death. On the same day, numbered FIR in Ex.P/14 was recorded. Inquest on the body of deceased was conducted in Ex.P/5 and body was sent for postmortem examination, which was conducted by Dr. Dharmendra Kumar (PW/7) who gave his report in Ex.P/23 noticing (i) stitched wound in the size of 3 cm x 4 cm over left temporal parietal region, (ii) Skull bone of right temporal region was fractured having 4 cm large x bone deep and (iii) clotted blood was found all over brain region. The Doctor gave opinion regarding cause of death to be coma due to head injury.

4. On 10.04.2012, memorandum of the accused/appellant was recorded vide Ex.P/14, based on which, one axe was seized vide Ex.P/11. The said axe was sent for FSL, however, there is no FSL report on record to confirm presence of blood thereon. After filing of the charge sheet, the trial Court framed the charge against the accused/appellant under Section 302 IPC.

5. So as to hold the accused/appellant guilty, the prosecution examined as many as 18 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment. Hence, this appeal.

7. Learned counsel for the appellant submits :

(i) That the evidence of child witness Ku. Haseena (PW/1), whose statement has been made basis for convicting the appellant, is not reliable as she appears to be tutored witness.

(ii) That in a heat of passion and in sudden quarrel the accused/appellant gave single blow to the deceased by axe resulting in unfortunate death of the deceased during the course of treatment in the hospital.

(iii) That even if the entire prosecution case is taken as it is, at best the accused/appellant is liable to be convicted under Section 304 Part-II IPC.

Learned counsel for the appellant placed reliance on the decisions of the Supreme Court in the matter of **Arbind Singh v. State of Bihar**¹, **Orsu Venkat Rao v. State of Andhra Pradesh**² -and **Bhagwan Singh and Ors v. State of M.P.**³.

8. On the other hand, supporting the impugned judgment it has been

1 1994 SCC (Cri) 1418

2 2004 CRI.L.J. 4656

3 2003 SCC Cri.) 712

argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

9. We have heard learned counsel for the parties and perused the material available on record.

10. Santosh Kumar (PW/1) is husband of the deceased and son of the appellant. He has stated in his evidence that he is coolie by profession and at the time of incident he was working at Bilaspur Railway Station. When he was discharging his duties, he received a call from one Santoshi Bai informing that his father (the appellant) assaulted his (this witness) wife by axe and is lying in unconscious condition. He has further stated that after information, he reached to his house and saw his wife in unconscious condition, thereafter, he took his wife to CIMS, Bilaspur where she died during the course of treatment.

Defence has cross-examined this witness at length but nothing has been elicited to discredit his testimony.

11. Bhagat Ram (PW/2) has stated that he has not seen the incident and even not heard anything about the incident. This witness has been declared hostile. Jitendra Kumar Khande (PW/3) is son of the appellant. This witness has not stated anything specific against the appellant and has been declared hostile. Santoshi Bai Jangde (PW/5) has stated that she saw the deceased in unconscious condition and is not aware as to who assaulted the deceased. This witness has also been declared hostile.

12. Chhedilal (PW/6) is the village Kotwar. He is the witness to seizure of axe made under Ex.P/11 and admits his signature thereon.

Ramesh Kumar Pandey (PW/7), Rajkumar Sai (PW/8), Mulchand Koushik (PW/10), Nahid Hussain (PW/12), Ms. Mamata Dubey (PW/13) and Madanlal Yadav (PW/16) are the constables who have assisted in the investigation. Yunus Khan (PW/9) is the witness to seizure of axe made under Ex.P/11 and admits his signature thereon. He has stated that the appellant himself brought the axe from his room and handed over to the police. In para 9 of his cross-examination, a suggestion was given to this witness that on 09.04.2012 no seizure proceeding was carried out, to which he (this witness) has denied.

13. Ku. Hasina (PW/11) is the child witness and daughter of the deceased and grand daughter of appellant. The trial Court, after satisfying itself, whether the child witness is able to answer the questions put to her, rationally, has examined her. She has stated that at the time of incident, she along with her brother Rupesh, was present in the house. Her grand father (the appellant) and grand mother were also present. She has further stated that when appellant was assaulting her (this witness) mother by axe, her mother-in-law had caught hold of deceased and was saying the appellant to kill the deceased. This witness has also stated that she and her brother Rupesh had seen the appellant assaulting the deceased by axe. She informed the incident to her brother Sanjay and sister-in-law (Bhabhi) Malati over telephone. This witness has been cross-examined in detail. In para 6 of her cross-examination, she has stated that her mother was lying inside the house. When her father came to house at night, she informed him about the incident. This witness has admitted that 3-4 times her father (PW/1) brought her to the Court and used to keep her along with him. She

further admits that her father told her that the entire case is dependent upon her (this witness) evidence, her mother has died and her grand father (the appellant) has to be punished. Further, in para 9, she admits suggestion that she was tutored by her father that how to give statement. All that apart, no suggestion was put to this witness as to why this witness would lie.

From the statement of this witness, the picture what emerges is that while the assault was being given to the deceased by the appellant, she was present there.

14. Anil Kumar Raj (PW/15), Patwari, has prepared the spot map, vide Ex.P/2 and proved his signature thereon.

15. Dr. Dharmendra Kumar (PW/17) conducted postmortem on the body of deceased, prepared postmortem report in Ex.P/23 and opinion was given with regard to cause of death to be coma due to head injury. This witness has noticed one injury on left tempo parietal region of 4 cm x 3 cm including fracture of skull bone of right tempo parietal region 4 cm deep. This witness has further stated that the weapon of offence, axe was produced before him for examination and has proved his report Ex.P/25, wherein he has stated that the injury sustained by the deceased could have been caused by the said weapon.

16. Vishnu Pratap Chouhan (PW/18) is the Investigating Officer who has duly supported the prosecution case.

17. Close scrutiny of the evidence makes it clear that the appellant, who is the father-in-law of the deceased, was having grudge against deceased and her husband Santosh Kumar Khande (PW/1) as they were professing "Isai" religion and prior to the incident, some quarrel had

also taken place between them. On 09.04.2012, in the house of Santosh Kumar Khande (PW/1), some quarrel also took place between the appellant and the deceased in which the appellant gave solitary blow on the head of the deceased by axe resulting in death of the deceased in the hospital during the course of treatment. The entire incident is said to have been witnessed by child witness Ku. Haseena (PW/11) who has categorically stated as to the manner in which deceased was done to death by the appellant. The version of this witness is well corroborated by the evidence of Dr. Dharmendra Kumar (PW/17) and postmortem report (Ex.P/23) wherein only one injury over left tempo parietal region including fracture of skull bone was noticed and Autopsy Surgeon opined the cause of death to be coma due to head injury. Considering the statement of PW/11, coupled with the medical evidence, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt.

18. The evidence of Ku. Haseena (PW/11) is sought to be impeached on the ground that at the time of incident she was not present there and she is a tutored witness.

This witness, in examination-in-chief and in cross-examination, remained firm and has stated that she has seen the incident. In para 6 of cross-examination, she has clearly stated that on the date of incident, exam was going on in the school, therefore, after examination, she came to the house at 3.00 PM, which makes it clear that at the time of incident she was present there. So far as this witness being tutored is concerned, in para 6, though, she admits that her father PW/1 told her that how to give evidence and the appellant has to be punished as he killed her

mother, but has denied suggestion that her father was continuously telling her about the incident. Thus, we do not find anything adverse in the evidence of PW/11 which renders her testimony doubtful and we have no reason to disbelieve the evidence of PW/11. The case laws relied upon by the learned counsel for the appellant in the matter of **Arbind Singh, Orsu Venkat Rao** and **Bhagwan Singh (Supra)** being distinguishable on the fact are of no help to him.

18. The next question which arises for consideration before this Court is as to whether the act of the accused/appellant would fall under any of the Exceptions to Section 300 IPC.

19. From the evidence it appears that on a spur of moment, without premeditation, a quarrel took place between the deceased and the appellant in which the accused/appellant gave single blow by axe, which is commonly found in every house of village, and she died in the hospital during the course of treatment on that very day. Thus, considering the facts and circumstances of the case, nature of injury and the fact that deceased died after some time in the hospital, we are of the opinion that, though, the appellant had no intention of causing death of the deceased but taking into account the nature and extent of injury inflicted by him on the deceased, which led to her death, it can safely be inferred that the appellant had knowledge that the injury being inflicted by him on the deceased would result in her death. Being so, his act would be covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making him liable for conviction under Section 304 Part-II IPC.

20. In the result, the appeal is partly allowed. Conviction of the appellant under Section 302 IPC is altered to Section 304 Part-II IPC

and he is sentenced to undergo R.I. for ten years.

21. Appeal thus allowed in part.

Sd/-
(Manindra Mohan Shrivastava)
JUDGE

Sd/-
(Rajani Dubey)
JUDGE

Vijay