

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 512 of 2005

1. Upasi S/o Nanka, Caste- Gond, aged about 36 years, R/o Village Bhangitola, Police Station Kukdur, District Kabirdham, Kawardha (C.G.).

---- Appellant

Versus

1. State of Chhattisgarh, Through the District Magistrate, District Kabirdham, Kawardha (C.G.)

---- Respondent

For Appellant	:	Shri Shivendu Pandya, Advocate.
For Respondent/State	:	Shri Rahul Jha, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

16/10/2020

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 24/05/2005 passed by Additional Sessions Judge (F.T.C.) Kabirdham (Kawardha) (C.G.) in Session Trial No. 44/2003; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 304 (Part-II) of Indian Penal Code (in short "IPC")	Rigorous Imprisonment for 4 years.

- 3) Case of the prosecution in brief is that on 09/02/2003 at 16:45 hours Jugri Bai W/o Birju Baiga lodged FIR Ex. P-19 at Police Station Kukdur, Kawardha against Upasi Gond, Heera Gond and Dhaniram alleging that accused Upasi and Heera assaulted her husband with axe on his head and accused Dhaniram assaulted him with club on his back as a result of which her husband fell down and the accused persons fled from the spot. Based on this

report offence under Section 307/34 of IPC was registered against accused persons. However, during treatment injured Birju died on 10/02/2003 and merger intimation Ex. P-21 was lodged at Police Station Pandariya, District Kawardha by Shiv Kumar under zero number. Thereafter, on 11/02/2003 numbered merger intimation was registered vide Ex. P-22 by Rajkumar. During investigation it has come in the statement of the witnesses that some of the villagers including the deceased of village Putputa had illegally encroached upon the Government forest land and constructed Hut on it. On 09/02/2003 the forest Department conducted eviction proceedings against the encroachers. On the said date, at about 03:00 PM deceased Birju and his brother Bhadu had quarreled with the accused persons as they were suspecting that the accused persons were responsible for removal of their Hut constructed on the forest land. On the memorandum of accused Upasi (Ex. P-1) one axe having blood stains was seized vide Ex. P-2. Memorandum of accused Heera Singh Ex. P-3 led to recovery of iron axe having blood stains vide Ex. P-4. On the memorandum of accused Dhaniram Ex. P-5, one club having blood stains was seized vide Ex. P-6. Spot map Ex. P-7 was prepared by I.O. PW-14 S.N. Sidar. Inquest on the body of the deceased was prepared vide Ex. P-9 in presence of witnesses. Postmortem of the deceased was conducted on 10/02/2003 by PW-10 Dr. V.P. Jaiswal vide Ex. P-11 where the Doctor noticed the following injuries:-

- (I) Echymosis of left eyelids and around.
- (ii) lacerated wound 4x1x1 cm over left parital region.
- (iii) lacerated wound 4x1x1 cm over head low above left ear.
- (iv) Swelling of face left side and both side of forehead

In his opinion, the cause of death was shock caused by cerebral compression and skull fracture due to head injury and the death was homicidal in nature. As per Ex. P-18 blood stains clothes of the deceased were seized. From the place of

occurrence plain and blood stained soil were seized vide Ex. P-20. The seized articles were sent to FSL for chemical examination and as per FSL report Ex. P-27 blood was found on the clothes of the deceased, axe seized from accused Upasi and axe seized from accused Heera Gond. However, the blood found on the axe was not sufficient for serological examination. After recording the statement of witnesses and completing investigation charge sheet was filed against accused persons under Section 307, 302/34 of IPC.

- 4) The Trial Court framed charges under Section 302, in the alternative 302 read with Section 34 of IPC against the accused persons which were denied by them and they prayed for trial.
- 5) The prosecution in support of its case examined as many as 14 witnesses namely PW-01 Charan, PW-02 Lamtu, PW-03 Phulbai, PW-04 Bhadu, PW-05 Titru, PW-06 Bhaddu Singh, PW-07 Jugribai (complainant), PW-08 Matibai, PW-09 Gehuram (Patwari), PW-10 Dr. V.P. Jaiswal (Medical Officer), PW-11 Dr. B.L. Raj (Medical Officer), PW-12 A.R. Thakur (S.I.), PW-13 D.K. Sisodiya (T.I.) and PW-14 S.N. Sidar (S.I. at the relevant time). The statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No witness was examined by the accused in their defence.
- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para 2 of this judgment. However, co-accused Heera Singh and Dharniram were acquitted by the Trial Court by giving them benefit of doubt.
- 7) Learned counsel for the appellant submits that in this case no any independent witness supported the prosecution case nor any motive proved by the prosecution. Looking to the contradiction and omission in the statements of the eye

witnesses, learned Trial Court wrongly convicted the appellants. No human blood was proved on the articles seized nor memorandum and seizure is proved beyond all reasonable doubt. Therefore, the learned Trial Court wrongly convicted the appellant and he deserves to be acquitted of the charge leveled against him.

- 8) He further submits that in this case on the same set of evidence, the other co-accused Heera Singh and Dhaniram were acquitted of all the charges but appellant is wrongly convicted by the learned Trial Court.
- 9) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) PW-11 Dr. B.L. Raj first medically examined deceased Birju Baiga on 09/02/2003 vide Ex. P-17 wherein he noticed lacerated wound of size 4x1x1cm over left parietal region, lacerated wound of size 4x1x1cm about 10 cm above the left ear and echymoses over left eye with swelling at both sides of forehead. According to the Doctor the injuries were caused by hard and blunt object. This witness has duly proved the MLC vide Ex. P-17 of the deceased. After primary treatment the deceased was referred to Primary Health Centre, Pandariya. However, on the way to Hospital the deceased expired. PW-10 Dr. V.P. Jaiswal conducted postmortem on the body of the deceased on 10/02/2003 vide Ex. P-11 and noticed injuries as mentioned in the preceding paragraph. He has duly proved the postmortem report vide Ex. P-11. As per Ex. P-9 inquest was prepared in presence of witnesses who found certain injuries over head and around the eye. As per the autopsy surgeon, the cause of death

was due to shock caused by cerebral compression and skull fracture due to head injury and the death of homicidal in nature. The above fact has not been disputed by the learned counsel for the appellant. Thus, from the above, homicidal death of the deceased stands proved beyond all reasonable doubt.

- 12) PW-01 Charan has stated in para 5 of his deposition that the incident of Marpeet had already been taken place before he reached the spot and he found deceased Birju lying of unconscious. He states that Jugribai, Sauribai and other persons informed him that the deceased was assaulted by Upasi and Heera with axe and Dhaniram assaulted with club.
- 13) PW-06 Bhaddu Singh has also admitted in his para 4 of his deposition that he has not seen the incident and that he came to know about the incident from other persons.
- 14) PW-07 Jugribai, complainant/wife of deceased has admitted in her deposition para 19 of her deposition that initially the accused persons were assaulted Bhadu and when the deceased intervened in the matter, Upasi assaulted the deceased with axe on his right temporal region. She further states that accused Heera assaulted with axe on the head of the deceased whereas accused Dhaniram assaulted the deceased with club on his back. As a result of this assault, the deceased fell down and the accused persons fled from there.
- 15) PW-03 Phulbai has admitted in para 10 of her deposition that no quarrel or hot talk took place between accused Upasi and the deceased in her presence. In para 19 she admits that at the time of incident only Bhadu and Birju were present.
- 16) PW-05 Titru, brother of the deceased has stated that accused Upasi and Heera assaulted the deceased with axe on his head and accused Dhaniram assaulted the deceased with club on his head and ear. According to this witness he was present at the time of incident, did not make any effort to rescue his brother deceased from the accused persons.

- 17) PW-08 Matibai has stated in para 11 that first incident took place between Bhadu and Upasi. In para 12 she states that accused Upasi assaulted Bhadu with axe and when the deceased intervened he was also assaulted by Upasi with axe.
- 18) From the perusal of deposition of PW-03 Phulbai, PW-05 Titru, PW-07 Jugribai and PW-08 Matibai it is found that there are many contradictions and as such they cannot be taken as eye witnesses to the incident. However, it is an admitted fact that as the huts of the deceased and Bhadu were removed by the Forest Department, dispute arose between accused Upasi and Bhadu. In the said incident accused Upasi also sustained simple injuries and a counter case was registered at the instance of accused Upasi. Looking to the nature of injuries found on the body of the deceased and duly proved by the Doctors PW-10 Dr. V.P. Jaiswal (Medical Officer) and PW-11 Dr. B.L. Raj (Medical Officer), it cannot be said that accused appellant Upasi assaulted the deceased in exercise of right of private defence when the deceased intervened in the quarrel between the appellant and Bhadu.
- 19) PW-11 Dr. B.L. Raj did not notice any injury on the back, hand or leg of the deceased. Therefore, the evidence of PW-04 Bhadu, PW-03 Phulbai, PW-07 Jugribai and PW-08 Matibai that accused Dhaniram assaulted the deceased with club on his back do not get support from the medical evidence.
- 20) From the evidence available on record it is seen that accused appellant Upasi assaulted the deceased from the back side of the axe upon a sudden quarrel in the heat of passion and did not act in a cruel or unusual manner. The evidence goes to show that there was no intention on the part of accused appellant to cause death of the deceased and he assaulted the deceased as the deceased was trying to save Bhadu with whom the accused appellant was quarreling.

- 21) On the basis of aforesaid discussions, this Court is of the opinion that the Trial Court has rightly convicted and sentenced the accused appellant under Section 304 (Part-II) of IPC.
- 22) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. As per Jail Report of Superintendent, Central Jail Durg (C.G.) dated 11/10/2020, the appellant has been released from jail on 18/10/2017 after remission and completion of the sentence. Therefore, there is no need to pass any further order.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant