

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 407 of 2017

Kadati Aayatu S/o Khodiya, Aged About 60 Years R/o Village Ketulnar, Police Station Mirtur, District Bijapur, Chhattisgarh., Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through Police Station Mirtur, District Bijapur, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant	:	Shri Basant Dewangan, Advocate
For State	:	Shri Lalit Jangde, Dy. Govt. Advocate

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

Judgment On Board

28/07/2021

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 23.12.2016 passed by learned Sessions Judge, Dakshin Bastar Dantetwada (CG) in ST No.341 of 2011 whereby and whereunder the appellant has been held guilty of commission of offence punishable under Sections 302 IPC and sentenced to undergo life imprisonment with fine of Rs.100/- and in default of payment of fine, additional RI for 1 month.
2. The prosecution story, as unfolded from the records of the case is that on 7.5.2006, at about 7:00 pm in the evening, the appellant came to the house of Smt. Sukli Bai (PW1) and asked for food and when she denied stating that no food was left, it is alleged that the appellant assaulted deceased- Ganesh, son of Smt. Sukli Bai with the help of an axe on the neck resulting

in grievous injury, excessive bleeding and death. Matter was reported to the police station, on the basis of which, morgue in Ex.P-7 and FIR in Ex.P-8 were recorded at 12:30 noon on 8.5.2006. In the FIR, Smt. Sukli Bai (PW1) stated that the appellant came to the house in the evening, asked for food and when he was informed that no food was left, he assaulted her son Ganesh with the help of an axe resulting in deep neck injury and death of his son. After preparation of inquest over the dead body, the dead body, it was sent for postmortem where Dr.G.S. Dhruv (PW7) conducted postmortem and prepared postmortem report in Ex.P-5, wherein he opined that cause of death was excessive bleeding because of deep injury. Death was clearly stated to be homicidal in nature and time of death stated to be 15 to 30 hrs. prior to postmortem. The appellant was directly named by the FIR informant and eyewitness Smt. Sukli Bai (PW1). He was arrested and charge sheet was filed. Case was committed for trial. Appellant was charged of commission of offence under Section 302 IPC which he denied and, therefore, he was put to trial. In order to prove its case, the prosecution examined number of witnesses as eyewitnesses. Axe was seized from the spot and query report from Dr.G.S. Dhruv (PW7) was also obtained to the effect that injury could be caused by the said axe. Appellant was also examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him. The appellant denied having committed the offence. No defence witness was examined. Learned trial Court, relying upon the evidence led by the prosecution particularly the eyewitness account, nature of injury, held the appellant guilty of commission of offence of murder, leading to this appeal.

3. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would firstly argue that the prosecution case is doubtful because there was delay in lodging FIR. He would next argue that even if the evidence of prosecution witnesses who claimed to have seen the incident is accepted as it is, the scope and ambit of criminal overt act of the appellant would not travel beyond Section 304 IPC as the incident happened all of sudden when the appellant was not

provided food. He would argue that the evidence on record clearly shows that the appellant had sold his entire property and a part of it was also purchased in the name of deceased Ganesh and the appellant was dependent on deceased and his family and he used to take meals with them. The only reason for opening assault was anger because of denial to provide food and, therefore, it was an incident which happened all of sudden and the appellant was not with any premeditation. It was only one single injury caused on the deceased with the help of axe and the injury was not repeated. He would argue that this sudden act out of anger was without any intention to cause death. Therefore, the conviction of the appellant be altered to that under Section 304 Part-II and as the appellant has undergone 10 years of jail sentence by now, he may be released.

4. Per contra, learned counsel for the State would submit that the evidence of prosecution witnesses particularly the eyewitnesses makes it very clear that the appellant came to the house of the deceased, asked for food from the mother of the deceased Smt. Sukli Bai (PW1). As there was no food, he was informed regarding unavailability and then the appellant, who was holding an axe gave a blow on the neck of Ganesh and there was no altercation, dispute, fight or quarrel between them. This shows that whatever was done by the appellant was out of extreme anger as no food was given to him and, therefore, he intentionally assaulted Ganesh. Use of deadly weapon like broad edged sharp weapon like farsa (axe) and choice of the place of body being the neck which is very vital and sensitive part and the force with which the assault was given resulting in cutting of neck blood artery, excessive bleeding, the only intention to cause death could be gathered.
5. We have heard learned counsel for the parties and perused the records.
6. The FIR was lodged by Smt. Sukli Bai (PW1), the mother of the deceased, claiming to be an eyewitness, next day of the incident at about 12:30 in the afternoon. The incident happened a day before at around 7:00 pm.
7. One of the argument raised by learned counsel for the appellant is that there is delay in lodging FIR as the incident happened at around 7:00 pm

on 7.5.2006, whereas, the FIR has been lodged at about 12:30 afternoon on 8.5.2006. On the aspect of delay, what is revealed from the evidence of Smt. Sukli Bai (PW1) is that she and her daughter-in-law was present in the house with son Ganesh who was assaulted. At the time of incident, her husband was not present but he was sleeping in the *salwa zudum* camp and information was sent to him. In the evidence of S.L. Bandhe (PW8), it has been stated that FIR and morgue intimation was received in the police station on 8.5.2006 in Ex.P-7 and Ex.P-8 at around 12:30 pm. No suggestion has been given to eyewitness Smt. Sukli Bai (PW1), the FIR informant or Investigating Officer that some other person had assaulter the deceased, but on suspicion and to falsely implicate the appellant, report was lodged belatedly. But, this Court finds that there is delay in lodging FIR. Therefore, the evidence of the prosecution witnesses are required to be scrutinized carefully and cautiously.

8. Smt. Sukli Bai (PW1), FIR informant and mother of the deceased Ganesh has deposed in her evidence that the appellant was her nephew and the deceased was her son. She has deposed that while her son was taking meals in the house, the appellant came in and was holding an axe in his hands. He gave assault to her son twice due to which her son fell down and appellant ran away. In the cross-examination, it has been admitted that appellant was also residing in the same house and was getting food there only. The evidence of this witness also shows that there was no dispute between the deceased and appellant and further that appellant had also sold his entire land and a part of that property was purchased by Smt. Sukli Bai (PW1). Suggestion that entire consideration amount of land purchase was not paid to the appellant/accused has been denied. Suggestion that her son first attempted to assault the appellant with the help of axe and while appellant snatched the weapon, Ganesh sustained injury has been denied.
9. This witness is the mother of the deceased. The statement made by this witness clearly implicates the appellant as the assailant. From the suggestion given to this witness in her cross-examination, nothing is

elicited that she had any motive to falsely implicate the appellant.

10. Ordinarily a relative witness would not falsely implicate any one else and allow the real culprit to go scot-free. Ordinarily, relative witness would like to see that the actual culprit is punished.
11. The other witness Smt. Mude Bai (PW2) is the wife of the deceased Ganesh. Smt. Sukli Bai (PW1) has stated not only in the FIR but also in the Court statement that at the time of incident wife of deceased Ganesh was also present.
12. Smt. Mude Bai (PW2) has also clearly stated regarding appellant having assaulted the deceased with the help of axe. In her cross-examination, it has been suggested but denied that she has seen the appellant running away but this witness states that she had seen him assaulting. In later part of her cross-examination, she has admitted that when she came out leaving her child sleeping, she had seen the appellant running away. The entire evidence of this witness, creates some doubt whether she had actually witnessed the incident of actual assault, but she is definite that she was present in the house and she had seen the appellant running away from the house.
13. There are many other witnesses but the evidence of the aforesaid witnesses particularly Smt. Sukli Bai (PW1) proves beyond doubt that it is the appellant who assaulted the deceased. The medical evidence supported the prosecution case as Dr. G.S.Dhruv (PW7) who conducted postmortem has stated regarding one single neck injury which was deep in nature, resulting in cutting of left carotid artery. He opined that excessive bleeding caused by such injury was the cause of death.
14. A discrepancy has been highlighted by learned counsel for the appellant by stating that Smt. Sukli Bai (PW1) and Smt. Mude Bai (PW2) both have stated that two assaults were given to the deceased, whereas, only one injury has been found by the doctor. This is not very material because the nature of weapon and the place of the body where assault was given has been clearly stated by the witnesses. It is relevant to note that witnesses were examined

after about 7 years of the incident and slight variance is bound to occur in their statements. As long as such discrepancies are not material, the evidence of the witnesses can be relied upon.

15. We shall now deal with the submission of learned counsel for the appellant that the evidence of record and the genesis of dispute leading to assault by the appellant amounts to criminal overt act punishable only under Section 304 IPC and not 302 IPC. The evidence on record clearly shows that the appellant came in the house of deceased- Ganesh, he was holding an axe in his hand. The incident is said to have happened sometimes in the evening. The other evidence on record is that he asked for food but when Smt. Sukli Bai (PW1) denied stating that food was no longer available, the appellant assaulted Ganesh with the help of an axe. Clearly, this was an act of anger on the part of the appellant. Ganesh had no dispute or fight with the appellant. There was no quarrel going on between appellant and deceased -Ganesh. It is not a case that on some trivial dispute, Ganesh and appellant scuffled and a sudden fight resulted in some injury. The appellant got enraged when Smt. Sukli Bai (PW1), his aunt and mother of Ganesh stated that food was not available. At this juncture doing nothing, the appellant gave a fatal blow on the neck of deceased- Ganesh. The appellant instantaneously developed intention to kill the deceased because the deceased who was not even fighting with the appellant, having no weapon in his hand, was suddenly assaulted by the appellant that too with a dangerous weapon like farsa (axe). Not only that, the appellant chose no other part of the body but the neck of the deceased. The force with which the assault was given was so much so that side carotid artery got ruptured which resulted in excessive bleeding. The aforesaid circumstantial evidence taken together leave no iota of doubt that whatever was done by the appellant was with intention to cause death or at least with intention to cause such injury which was sufficient in ordinary course of nature to cause death. Once it is held that there was intention to cause death or the intention to cause such bodily injury which, in ordinary course of nature, sufficient to cause death, the appellant would be guilty of murder

punishable under Section 302 IPC unless any of the exceptions carved out in Section 300 IPC are attracted in the given situation.

16. Argument of learned counsel for the appellant is built only on two aspects. Firstly that on a very trivial incident, the appellant assaulted and secondly he gave only single blow. The appellant by using a deadly weapon like axe on the vital part of another person with whom appellant had no dispute or quarrel at the spot only shows brutal act committed in anger for which no exception under Section 300 IPC can be attracted. Merely because the injury was single one, no inference of there being no intention to cause death can be drawn. In the case of **Gurmukh Singh Vs. State of Haryana** (2009) AIR SCW 6710, it was observed as under-

“23. Before we part with the case, we would like to clearly observe that we are not laying down that in no case of single blow or injury, the accused cannot be convicted under section 302 IPC. In cases of single injury, the facts and circumstances of each case has to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted under section 302 IPC or under section 304 Part II IPC.”

17. Therefore, in the present case, we do not consider that any of the exception much less Exception 'fourthly' to Section 300 IPC would be attracted. Therefore, it is a case of murder.

18. Consequently, there is no merit in the appeal and the appeal is dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Sd/-
(**Vimla Singh Kapoor**)
Judge