

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.2132/2006

Appellant : Shankar Gadariya,
S/o Heera Gadariya,
Aged about 32 years,
R/o Village Amarpura, Police
Station Satai,
District Chhatarpur (MP).

-Vs-

Respondent : State of Madhya Pradesh, through
Police Station Satai, District-
Chhatarpur(M.P)

Present : **Hon. Shri Justice S.K. Gangele**
Hon. Shri Justice Anurag Shrivastava

None for the appellant.

Shri Sharad Singh Baghel is appointed as amicus curiae to appear on behalf of appellant.

Shri Prakash Gupta, Panel Lawyer for the respondent/State.

Whether approved for reporting : Yes/No

J U D G M E N T
(05.09.2017)

Per Anurag Shrivastava, J.

This appeal under Section 374(2) of Cr.P.C. has been preferred by the appellant/accused against the judgment and conviction dated 28.09.2006, passed by 6th Additional Sessions Judge (Fast Track) Court, Chhatarpur, in Sessions Trial No.121/2006, whereby the appellant has been convicted for commission of offence under Section 302 of IPC and sentenced to undergo R.I. for life and under Section 506-B of IPC and sentenced to undergo R.I. for six months.

2. The case of prosecution in brief is that on 01.04.2006, in the Village Amarpura, the complainant Dashrath Sen and his father Arjun came to their field in the night to guard the crop. Dashrath was sleeping near the well constructed in the field and his father Arjun was sleeping inside the hut constructed near the well. In the midnight at about 12:30 am Dashrath heard a cry of his father Arjun who was shouting that Shankar is beating me. Dashrath came inside the hut and saw the appellant Shankar assaulting his father by an axe. "Shankar was speaking loudly that Arjun had defamed him in the Village by telling everybody that Shankar had killed a cow. Therefore, he would kill him and if Dashrath try to intervene he would also assault him by axe." Dashrath tried to intervene but appellant continuously assaulted his father. Thereafter, Dashrath called the witness Komal who was present in nearby field. On seeing Dashrath and Komal coming towards him the appellant ran away from the spot. Dashrath and Komal ran after him to catch him but they did not succeed. There were multiple injuries found on person of body of deceased and he was died on the spot.

3. Next day, in the morning Dashrath went to police station Sadai and lodged the FIR Ex.P-1 and Merg intimation Ex.P-2. The police registered the offence and initiated the investigation. Investigating Officer T.K. Chhari (PW-11) prepared the spot map and panchnama of dead body of deceased and sent it for postmortem. The red earth, plain earth and pieces of wood cut from the door of hut, were seized. During investigation, the appellant was arrested and his memorandum Ex.P-9 was recorded, thereafter an axe was seized vide seizure memo Ex.P-10. The statements of

witnesses were recorded and after completion of investigation, the charge sheet has been filed.

4. The trial Court has framed the charges for the offence punishable under Sections 302 and 506-B of IPC. The appellant abjured guilt and pleaded innocence. The prosecution has examined 11 witnesses in its support whereas the appellant has not examined any witness in his defence.

5. Learned trial Court, on appreciation of evidence adduced by the parties, arrived at the conclusion that the appellant has killed the deceased and threatened the complainant to kill. The trial Court held the appellant guilty for commission of offence punishable under Sections 302 and 506-B of IPC and sentenced him as mentioned herein above.

6. Heard arguments of learned counsel for the parties and perused the record.

7. Dr. B.M. Khare (PW-6) deposed he had performed the postmortem of dead body of deceased and found the following injuries:-

1. Incised wound over the skull size 12x6x2 cms extended from occipital region to left frontal region, parietal bone and brain matter were cut.
2. Incised wound over the skull size 10x5x8 cms back side of occipital region, the bone and brain matter were cut.
3. Incised wound left side of the neck size 7x4x3 cms.
4. Incised wound over left shoulder size 7x3x4 cms.

5. Incised wound over right shoulder size 2x1/2x1/2 cms.
6. Incised wound over left side of lips size 3x1x1-1/2 cms.

The injuries were caused by hard and sharp object. The cause of death was coma due to injuries of brain. The defence is not challenged the findings and opinion given by the doctor in postmortem. The statement of doctor is duly corroborated by postmortem report. Thus, the trial Court has rightly arrived at the findings that the deceased was died due to injuries caused to him by hard and sharp object like axe. The death is homicidal.

8. Now the question arises whether the appellant had caused the death of deceased? The complainant Dashrath Sen (PW-1) deposed that he alongwith his father, the deceased Arjun Singh went to guard the crop, which was kept in the field. Dashrath was sleeping near the heap of crop and his father Arjun was sleeping in the hut. In the late hours of night, about 12-1:00 am Dashrath heard the cry of his father Arjun who was shouting that "Shankar is beating me." Dashrath went inside the hut and in the light of torch, he saw the appellant assaulting his father by axe. Dashrath tried to intervene and save his father, the appellant prevented to do so by threatening to kill him if he interferes. Thereafter, Dashrath called his neighbour Komal who was present in adjoining field. Komal and Dashrath again went inside the hut, they found the deceased Arjun injured and on seeing them, the appellant ran away from the spot. Dashrath and Komal tried to catch him but could not succeed. They stayed there during night and in the morning, they have informed the villagers and Dashrath went to police station

Sadai where he lodged the FIR Ex.P-1. The police has registered the offence and also recorded the Merg intimation Ex.P-2 and initiated the investigation.

9. In cross examination, Dashrath further deposed that the appellant was keeping enmity with the deceased. He blames the deceased that he had informed the people about the fact that the appellant had killed a cow and defamed him. The statement of Dashrath is duly corroborated by FIR Ex.P-1 and Merg intimation Ex.P-2. There is no material omission or contradiction found in his statement.

10. The testimony of Dashrath is duly corroborated by other eye-witness Komal Sen (PW-2). He deposed that in the intervening night of the incident, he was keeping the paddy husk in his house situated on his field. In the midnight, Dashrath called him, he was shouting that Shankar is assaulting my father. Hearing this, Komal went to the hut of Dashrath and saw the appellant armed with axe, assaulting the deceased. He asked the appellant as to why he was beating the deceased, the appellant told him that the deceased had defamed him by disclosing the fact that the appellant had killed a cow. Thereafter, the appellant ran away from the spot, threatening the witness to kill if he tried to restrain him. In cross examination, this witness had stated that he had seen the incident in the light of torch. He has not made any substantial contradictory statement in his cross examination. Although he is the son of deceased but merely on this ground his testimony cannot be doubted or disbelieved. The incident occurred in the late hours of night in the field of deceased. Except Dashrath no other person was present on the spot. The other witness Komal was called

by Dashrath to save his father. Therefore, we cannot expect the prosecution to produce any other independent witnesses in support of case.

11. Other witness Shivraj Kurmi (PW-4) has also corroborated the statement of Dashrath and Komal. He deposed that Komal had informed him that the appellant had killed the deceased.

12. The statement of Investigating Officer P.K. Chhari (PW-11) which is supported by witnesses Dashrath (PW-1) and Santosh Sen (PW-5) shows that during investigation, the Investigating Officer arrested the appellant on 03.04.2006 and recorded his memorandum Ex.P-9 and recovered an axe on the basis of information given by the appellant and seized it before the witnesses Dashrath and Santosh Sen.

13. Prosecution witnesses Jamuna Rajak (PW-3) and Shivraj (PW-4) deposed that the appellant was in enmical terms with the deceased and used to threaten him to kill on the ground that the deceased had defamed the appellant by telling the people that the appellant had killed a cow.

14. Thus, from the evidence adduced by the prosecution, it appears that the appellant had enmity with the deceased and he wanted to kill him. During the night, when the deceased was sleeping in his hut situated in his field, the appellant entered in the room by breaking open the door of hut and assaulted the deceased by giving blow of axe. When the son of deceased Dashrath and neighbour Komal tried to intervene the appellant had threatened them to kill and ran away. The statement of Dashrath is duly corroborated by Komal (PW-2)

and FIR Ex.P-1 recorded without any delay. The house of Komal is situated near the scene of occurrence. Therefore, it is quite natural that the complainant Dashrath had called him to save his father from the appellant. Thus, the presence of Komal on the spot is believable. He is independent witness and he has no enmity with the appellant. Therefore, his testimony inspires confidence. The statements of Dashrath and Komal appears to be cogent, trustworthy and reliable. It cannot be said that these witnesses are trying to falsely implicate the appellant. Therefore, relying upon the statements Dashrath and Komal, it is proved that the appellant had assaulted the deceased and committed his murder. The trial court, on proper appreciation of evidence, has recorded the finding of guilt against the appellant. There is no error or illegality committed by learned trial Court to hold the appellant guilty for commission of offence punishable under Section 302 and 506-B of IPC.

15. Thus, the appeal is devoid of merit and hereby **dismissed**.

(S.K. Gangele)
Judge

(Anurag Shrivastava)
Judge