

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. A. No. 407 of 2006**

**Decided on : 30<sup>th</sup> October, 2009**

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**Lachhi Ram**

**.. Appellant**

*Versus*

**State of H.P.**

**.. Respondent**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**The Hon'ble Mr. Justice Surinder Singh, Judge.**

**Whether approved for reporting?<sup>1</sup> Yes**

**For the Appellant : Mr. Lalit Sharma, Advocate.**

**For the respondent: Mr. Ramesh Thakur, Assistant  
Advocate General.**

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**Surjit Singh, Judge** (Oral)

Appellant has challenged the judgment dated 3.11.2006 of learned Sessions Court, whereby he has been convicted of offence, under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/-; in default of payment of fine to undergo simple imprisonment for a further period of four years.

**2.** Case of the prosecution may be stated thus. Deceased Jai Devi was the wife of the appellant. Their marriage had taken place long back. Three daughters and a son were born from the wedlock. PW-1 Neetu Kumari is the youngest daughter of the deceased and the appellant.

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**Whether reporters of the local papers may be allowed to see the judgment?**

Appellant is a native of village Tarmair in Baijnath Tehsil of Kangra District. However, in search of his livelihood, he shifted to a village in Barsar Tehsil of Hamirpur District. He worked there for 15-16 years as a woodcutter and lumberer. A few days prior to the occurrence (occurrence took place on 8.3.2006), he went back to the area of Baijnath, because he was without any work in the area of Barsar. He approached PW-5 Roshan Lal, who is a Lumbering Contractor, for providing some work to him. PW-5 Roshan Lal took him to PW-3 Mukesh Kumar, who engaged him for sawing a Tuni tree, which had already been felled.

**3.** On 8.3.2006, appellant went to the site where the tree was to be sawn. Around 10 a.m., his wife Jai Devi (deceased) and his daughter PW-1 Neetu Kumari went to the site, where the appellant was working, with meals. They all took their meals between 11 a.m. and 11.30 a.m. After taking her meals, PW-1 Neetu Kumari, who was taking final examination of matriculation, during those days, sat on one side at a distance of 7-8 feet and started preparing for her next paper. Appellant started cutting the tree into pieces with axe Ext. P-2. Deceased started removing the bark of logs with a saw. After sometime the deceased went to a nearby site, where a jug of drinking water had been kept. She consumed a very small quantity of water.

...3...

Appellant picked up a quarrel with her, accusing her of having got him imprisoned earlier and attacked her with an axe. He dealt a blow of axe on her mouth, which led to severance of frontal part of upper jaw. Deceased signalled to PW-1 Neetu Kumari, who was sitting at a distance of only 7-8 feet, to run away to escape the fury of the appellant. In the meanwhile, the appellant dealt another blow on the neck of the deceased. PW-1 Neetu Kumari ran away from the spot. When she was going towards the village, PW-5 Roshan Lal met her. She narrated the incident to him. Then she returned to the spot to see the plight of her mother. PW-5 Roshan Lal went to PW-6 Vijay Kumar, his cousin, in the village and narrated to him what had been disclosed by PW-1 Neetu Kumari. PW-6 Vijay Kumar and PW-5 Roshan Lal then went to the spot. They saw the appellant sitting on the spot near the dead body, which was lying covered with the shirt of the appellant. PW-1 Neetu Kumari was also present nearby.

**4.** PW-6 Vijay Kumar telephonically informed the police. Police reached there and after inspecting the spot recorded statement Ext. PW1/A of PW-1 Neetu Kumari, under Section 154 Cr. P.C. It was sent to the Police Station, for formal registration of the case. Inquest was conducted. Inquest Forms Ext. PW12/B and PW12/C were filled in. Photographs of the dead body and the scene were taken.

Dead body was sent to Regional Hospital, Hamirpur, where postmortem examination was conducted by PW-4 Dr. Rajesh Sharma. Postmortem report is Ext. PW4/B. Doctor noticed the following three external injuries:-

- "1. A large clean cut wound running through nose anterior part of hard palate part of right maxillae, Ant. Middle teeth including through the middle ant. Teeth of lower jaw posterior nares are visible. The wound measures 4 inches vertical and 6 inches horizontal.
2. A large clean cut wound left lower side of neck extending backward and downward upto 203 inches to the right of middle line of back and including most of the major muscles of back and neck. The wound measures 10 inches in length and 4 inches deep and 4 inches at the widest diameter. The wound had also sliced through the 6<sup>th</sup> vertebra completely.
3. 1.2 cm wound on forehead above nose."

**5.** On opening the skull, 6<sup>th</sup> vertebra was found completely lost alongwith perivertebral muscle. Spinal cord was found cut through and through. The doctor opined that the cause of death was complete section of the spinal cord (cervical). Death was opined to have taken place immediately on infliction of the injuries and the time lag between the death and the postmortem was opined to be less than 36 hours. Postmortem examination was

conducted on 9.3.2006 at 11 a.m. The doctor also gave the opinion that the injuries could have been caused by means of axe Ext. P2.

**6.** Blood stained earth lifted from the spot and the steel jug, axe Ext. P2, shirt of appellant Lachhi Ram and Salwar of deceased Jai Devi were sent to Chemical Examiner, who reported, vide report Ext. PX, that all the aforesaid objects bore stains of human blood of group B. The Chemical Examiner also reported that the sample hair of deceased Jai Devi and the hair lifted from axe Ext. P2 were identical.

**7.** On completion of investigation, appellant was challaned. Learned Magistrate, to whom the Challan was presented, committed the case to the Sessions Court, after complying with the requirement of Section 207 Cr. P.C. Learned Sessions Court charged the appellant with offence, under Section 302 IPC. Appellant pleaded not guilty and was, therefore, put on trial.

**8.** Prosecution mainly relied upon the testimony of PW-1 Neetu Kumari, daughter of the appellant and the deceased, who claimed to have witnessed the occurrence and the testimony of PW-5 Roshan Lal, to bring the charge home to the appellant.

**9.** Defence plea was that someone else came to the spot, when the appellant had gone to urinate and that

someone, using the axe Ext. P-2, killed Jai Devi. PW-1 Neetu Kumari was stated to have been studying at some distant place, from where the place of occurrence was not visible. She was alleged to have made a false statement, because the appellant objected to her indulging in immoral activities, similar to those elder sister PW-2 Reena Kumari was indulging in.

**10.** Learned trial Court believed the prosecution version. It rejected the defence plea. Consequently, the appellant was convicted and sentenced, as aforesaid.

**11.** We have heard the learned counsel for the appellant as also the learned Assistant Advocate General and gone through the evidence.

**12.** PW-1 Neetu Kumari, while in the witness box, stated, in no uncertain terms, that she had accompanied her mother deceased Jai Devi to the site, where her father had been sawing a felled tree and that she (the witness), her mother deceased Jai Devi and her father Lachhi Ram (appellant) took their meals at the site of work and after that she sat close to the site where her parents were working and started preparing for her next paper. She also stated that after some time, when her mother was taking water from a steel jug, kept nearby, her father started quarreling with her and accused her of having got him imprisoned earlier and then he attacked her with axe Ext.

P-2 and inflicted blows on her mouth and neck. No suggestion was put to her that she had been leading immoral life, like her elder sister PW-2 Reena Kumari, though it was specifically suggested that PW-2 Reena, who was running a Beauty Parlour, used to stay away from home, for days together, at the place of a man she wanted to marry, against the wishes of her parents, which she not only did not deny but admitted. There was not even a whisper in her cross-examination that she too was following into the footprints of her elder sister PW-2 Reena Kumari or that she did not obey her parents, especially the father (appellant). It was only in his statement, under Section 313 Cr. P.C, that the appellant came out with the plea that the witness alongwith PW-2 Reena Devi was out of control and that she had made false statement, because he used to prevent her from indulging in immoral activities. Thus, we see no reason to disbelieve PW-1 Neetu Kumari. She being the daughter of the appellant cannot be disbelieved unless there are strong reasons, indicating that she has made false statement.

**13.** Again, no suggestion was thrown to PW-1 Neetu Kumari that some other person appeared on the spot, when the appellant had gone to urinate and that that other person, using axe Ext. P-2, inflicted fatal injuries on the face and the neck of her mother. Such a suggestion was

put to PW-5 Roshan Lal. To him, it was suggested that when he reached the spot alongwith PW-6 Vijay Kumar, the appellant told that when he had gone for urination, someone came there and killed his wife with his axe. He denied the suggestion. There is no reason for disbelieving the testimony of PW-5 Roshan Lal. There is no enmity between him and the appellant. Also, there is no other reason for this witness falsely testifying against the appellant. As a matter of fact, the witness appears to be a well-wisher of the appellant, because on the latter's approaching him, on the very day of occurrence, he got him allotted the work of lumbering a tree from PW-3 Mukesh Kumar.

**14.** Learned counsel for the appellant submits that this is not a case of murder, but only of culpable homicide not amounting to murder. According to him, the appellant and the deceased had an altercation, as testified by PW-1 and in the heat of passion, the appellant happened to kill the deceased. We find no merit in the submission. PW-1 Neetu Kumari very categorically stated that the appellant himself started an altercation, by accusing the deceased of having got him imprisoned. There is nothing on the record, indicating that the deceased was, in any way, responsible for the alleged altercation. No suggestion was put to PW-1



Neetu Kumari that the deceased had used any provoking or abusive language.

**15.** In view of the above stated position, we hold that the appeal is without merit. However, we do find that the amount of fine, imposed by the trial Court, is disproportionate to the financial status of the appellant, who is only a labourer/woodcutter. So, we reduce the amount of fine to Rs.2000/- only; in default of payment of fine, the appellant shall undergo simple imprisonment for a further period of one year. With this modification only, in the judgment of the trial Court, appeal is dismissed.

**(Surjit Singh), J**

October 30, 2009<sub>(ss)</sub>

**(Surinder Singh), J.**