

(2) (4)

Division Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 220 /2012

APPELLANT:
(In Jail)

Mangal Ram, son of Shri Gunjan
Korwa, aged about 20 years,
resident of Village Harradeepa,
Police Station Sanna, District
Jashpur (CG)

R. No. 280/12

Presented by Shri S. S. Saini

Dated 10-07-12

Vs

RESPONDENT:

State of Chhattisgarh, through
the Station House Officer,
Police Station-Sanna, District
Jashpur.

CONVICTION (S)

U/s 302 of I.P.C.

SENTENCE (S)

Imprisonment for
life and to pay a fine
of Rs.1,000/-, in
default to undergo
additional R.I. for 3
months.

**APPEAL UNDER SECTION 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE, 1973.**



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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 280 of 2012

• MANGAL RAM

---- Appellant

In Jail

Versus

• STATE OF CHHATTISGARH

---- Respondent

Memo of Appeal Under Section 374 (2) of the Code of Criminal
Procedure, 1973

For appellant : Mrs. Shubha Shrivastava, Advocate.
For Respondent/State : Ms. Sangeeta Mishra, Advocate

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja, JJ.

JUDGMENT

Judgment dictated on Board by Hon'ble Mr. Justice T.P.Sharma

22.12.2014

Challenge in this appeal is to the judgment of conviction and order of sentence dated 17.01.2012 passed by the Sessions Judge, Jashpur, in Sessions Trial No.22 of 2010 whereby and whereunder the Court below, after holding the appellant guilty for causing homicidal death amounting to murder of his wife – Dilip Kumari, convicted the appellant under Section 302 of the I.P.C. and sentenced him to imprisonment for life with fine of Rs.1000/-, in default to further undergo RI for three months.



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2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforesaid and thereby committed illegality.

3. As per case of the prosecution, in the intervening night of 03.10.2009 and 04.10.2009, the appellant, who is husband of deceased Dilip Kumari, caused fatal injury by pick axe (गैती) to Dilip Kumar and caused her instantaneous death. P.W.7 Lakshmi Prasad Ram, brother of deceased, was informed about the incident by P.W.8 Arun Kumar, another brother of deceased. Then he informed the Police by telephone and the Police of Police Station, Sanna recorded the same in Rojnamchasanha vide Ex.P.13 and came to the spot where Dehati Nalishi was recorded vide Ex.P.10 and merged intimation vide Ex.P.11.

4. After summoning the witnesses, inquest over the dead body was prepared vide Ex.P.8 Bloodstained and plain soils and one bloodstained pick axe (गैती) were recovered from the spot vide Ex.P.9. Dead body was sent for autopsy to Primary Health Center, Sanna, vide Ex.P.2A. P.W.3 Dr.Anuranjan Kujur conducted autopsy vide Ex.P.2 and found following injuries and symptoms:

- 1 One chop wound over the right palm of 1 1/2" x 1/2" with multiple abrasions.
- 2 Penetrating depressed wound over right face of 1.25" x 1/2" x 1 1/2".
- 3 Depressed penetrating wound of 1" x 1/2" x 1" over right frontal region.
- 4 Penetrating wound over chest of 1" x 1/2" x 1 1/2".

- 5 Penetrating wound over navel of abdomen of 1.1" x 1/2" x 1 1/2"
- 6 Penetrating wound over left side of abdomen of 1.25" x 1/2" x 1".
- 7 Penetrating wound over the back of the head of 1.25" x 1/2" x 1 1/2".
- 8 Penetrating wound over below the neck of scapular region of 1" x 1/2" x 1".
- 9 Above the wound, one penetrating wound over right side of scapular region of 1.25 x 1/2" x 1 1/2".
- 10 Penetrating wound over below the neck of scapular region of 1.25" x .5" x and deep depth.
- 11 One penetrating wound over left vertebra column of middle back of 1.25" x 1/2" x deep depth.
- 12 Penetrating wound over right vertebra column of 1.1" x 1/2" x deep depth.
- 13 Penetrating wound over buttock region of 6" x 1/2".
- 14 Penetrating wound over left chest near nipple of 1.25 x 1/2" x depth 1 1/2".
- 15 On dissection, there was fracture of occipital bone of 1.25 cm x 2 x cm.
- 16 Blood clot over frontal region of heath of 3" x 2".
- 17 Hematoma over right frontal head near ear of 3 1/2" x 2".
- 18 Fracture over frontal region of head near eye brow of 1.25" x 3 cm.
- 19 Blood clot on frontal region of deep forehead of 3 1/2" x 2 1/2" and one penetrating wound over the place of this particular injury, its size is 1" x 2 cm x 1" deep.
- 20 Blood clot on left back of the brain of 2 1/2" x 2".
- 21 One penetrating wound over the above injury, its size is 2 cm x 1 1/2".
- 22 Fracture of right fourth rib towards chest.

- 23 Trachea was pale. Haematoma was found with full of froth.
- 24 One penetrating wound in right lung of 1.25" x 1 cm x 1 1/2"
- 25 Left lung was pale, upon which there was penetrating wound towards frontal region, its size is 1.25 x 1 cm x 1 1/2".
- 26 There was wound inside the abdomen of 1.25" x 2 cm.
- 27 Penetrating wound in liver, it is size 1.25" x 1 cm.
- 28 Spleen and kidneys were disturbed and fractured

Mode of death was due to respiratory arrest and death was homicidal in nature.

5. Cloths of deceased were sealed and seized vide Ex.P.1. Finally merg was recorded vide Ex.P.17 and F.I.R. was lodged vide Ex.P.18.

6. Statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code) were recorded.

7. After completion of investigation, charge sheet was filed before the J.M.F.C. Bagicha, who in turn committed the case to the Court of Sessions, Jashpur.

8. In order to prove the guilt of the appellant, prosecution examined as many as 11 witnesses. The accused person was examined under Section 313 of the Code in which he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed.

9. After providing an opportunity of hearing to the parties, the learned Sessions Judge convicted and sentenced the appellant as aforementioned.

10. We have heard the learned counsel for the parties and perused the record of trial Court and the judgment impugned.

11. Mrs. Shubha Shrivastava, learned counsel for the appellant, submits that conviction of the appellant is wholly based on P.W.7 Laxmi Prasad Ram and P.W.8 Arun Kuman, brother of deceased, but their evidence does not inspire confidence and trustworthy. They have not even witnessed the incident. Even they are not eye witnesses of any circumstance, therefore, conviction of the appellant on the basis of these witnesses, i.e., P.W.7 Laxmi Prasad Ram and P.W.8 Arun Kumar and any circumstance is not sustainable in law.

12. On the other hand, Ms. Sangeeta Mishra, learned counsel for the State, opposed the appeal and submitted that the evidence of P.W.7 Laxmi Prasad Ram and P.W.8 Arun Kumar couple with circumstances proved by the prosecution is sufficient to prove the guilt of the appellant.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, the homicidal death as a result of fatal injuries found over the body of deceased – Dilip Kumari has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.5 Ram Vilas, P.W.6 Sakhan Ram, P.W.7 Laxmi Prasad Ram, P.W.8 Arun Kumar and P.W.9 Nand Gopal Yadav as well as Dehati Nalishi Ex.P.10, merg intimation Ex.P.11, F.I.R. Ex.P.18, Rojnamchasanha Ex.P.13 and P.W.3 Anuranjan Kujur and



also autopsy report Ex.P.2 and death of Dilip Kumari was homicidal in nature.

14. As regards complicity of the appellant in crime in question, the conviction is substantially based on P.W.7 Laxmi Prasad Ram and P.W.8 Arun Kumar, brother of deceased – Dilip Kumari and circumstances that dead body was found in the house of deceased, offence committed in secrecy, appellant was under obligation to offer explanation as to who has caused homicidal death amounting to murder of Dilip Kumari but the appellant has failed to offer such explanation. As per evidence of P.W.7 Laxmi Prasad Ram, he was informed about the incident of murder by P.W.8 Arun Kumar. As per evidence P.W.8 Arun Kumar, he heard the sound from the house of the appellant that and at that he was present in the house of Nand Gopal Yadav and after hearing the sounds from the house of appellant, he along with Rajaram came to the spot where one neighbour Vrinda informed that the appellant has killed his sister (deceased – Dilip Kumari and fled from the house. P.W.9 Nand Gopal Yadav has also corroborated the evidence of P.W.8 Arun Kumar. Prosecution has not examined Vrinda. As per evidence of P.W.8 Arun Kumar and P.W.9 Nand Gopal, Arun Kumar was informed by Vrinda, they have heard the sounds of quarrel and they also rushed to the house of the appellant where they saw injured dead body. The appellant was not present in the house. The aforesaid evidence is sufficient to establish the fact that deceased Dilip Kumari died in the house of the appellant as a result of fatal injuries. Prosecution has failed to adduce any evidence to show that at the time of incident or on the date of incident at night, the



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appellant was present in his house. In absence of such proof, the appellant was not under obligation to offer any explanation that who has committed the offence in secrecy and who has caused the murder of his wife. The trial Court has convicted the appellant only on the ground that appellant has failed to offer any explanation but the trial Court has not considered the fact that the prosecution has failed to prove the presence of the appellant in his house in the intervening night of incident and thereby committed illegality. In absence of clinching and cogent evidence, conviction of the appellant under Section 302 of the I.P.C. is not sustainable in law.

15. Consequently, the appeal deserves to be and is hereby allowed. Conviction of the appellant under Section 302 of the I.P.C. and the sentence awarded thereunder are liable to be and hereby set aside. The appellant be set at liberty at once. He be released forthwith, if not required in any other case.

Sd/-
T.P. Sharma
Judge

Sd/-
Inder Singh Uboweja
Judge

Anjani

N A.F.R