

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.837 of 2009

Tula Ram S/o Shri Chatur Singh Gond, aged about 35 years, R/o Village Amlipadar, Baidpara, Police Station Deobhog, District Raipur (C.G.)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Deobhog, District Raipur (C.G.)

---- Respondent

For Appellant: Mr. C.R. Sahu, Advocate.

For Respondent/State: Mr. Ramakant Pandey, Panel Lawyer.

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

Judgment

24/03/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 26-10-2009 passed by the Additional Sessions Judge, Gariyaband in Sessions Trial No.19/2009, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of Senduka Bai, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.100/-, in default of payment of fine to further undergo SI for ten days.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby an committed illegality.
3. As per case of the prosecution, on the fateful day of 20-3-2009 at about 3 p.m., unfortunate deceased Senduka Bai was carrying the business of selling illicit liquor, she was present in her house, the appellant came and demanded liquor which was refused then the appellant cased multiple injuries to her by bindhana, a weapon for making hole on wood, and caused fatal injuries. She fell down. Smt. Parmila Bai (PW-1), neighbour of the deceased, heard the sound of fall on which she came out from her house and saw that the appellant after coming out from the house of the deceased, rushed from the spot. Immediately, she went to the house of the

deceased where she saw the deceased who was agonizing, she provided water to the deceased and thereafter, the deceased died. She informed the incident to her husband Jai Singh (PW-3) who has also seen the appellant running from the house of the deceased. Some persons telephoned to the police by telephone about the incident which was recorded in roznamcha vide Ex.P-19. Police reached to the spot where Smt. Parmila Bai (PW-1) lodged dehati nalishi vide Ex.P-2 and morgue vide Ex.P-3. After summoning the witnesses vide Ex.P-9, the investigating officer prepared inquest over the dead body of the deceased vide Ex.P-4. Bloodstained and plain soil were recovered from the spot vide Ex.P-10.

4. Dead body was sent for autopsy to the Government Hospital, Deobhog. Dr. Anju Sonwani (PW-8) conducted autopsy vide Ex.P-14 and found following injuries: -

1. Stitched abrasion over right lumber region reddish brown colour 8 c.m. long.
2. Stitched abrasion over right breast reddish brown colour 4 c.m. long.
3. Stitched abrasion on right side of neck reddish brown colour 4 c.m. long.
4. Bluish discolouration on right side of neck dorsal spine 10 c.m. long x 10 c.m. broad.
5. Lacerated wound over left lumber region 4 c.m. long x ½ c.m. broad x ½ c.m. deep.
6. Lacerated wounds (two) over right supra scapular region.
(1) 5 c.m. long x ½ c.m. broad x ½ c.m. deep.
(2) 5 c.m. long x ½ c.m. broad x ½ c.m. deep.
7. Lacerated wound on back side of neck 2 c.m. long x ½ c.m. broad x ½ c.m. deep.
8. Lacerated wound over occipital region 2 c.m. long x 1 c.m. broad x 1 c.m. deep.
9. Lacerated wound on left side temporal region 3 c.m. long x 2 c.m. broad x 1 c.m. deep.

Mode of death was as a result of multiple injuries and death was homicidal in nature.

5. Clothes of the deceased were sealed and seized vide Ex.P-8. During the course of investigation, the appellant was taken into custody, he made disclosure statement of bindhana vide Ex.P-5 and same was recovered at his instance vide Ex.P-6. Clothes of the appellant were seized vide Ex.P-7. Finally, numbered morgue was recorded vide Ex.P-20 and numbered FIR was registered vide Ex.P-21. Patwari prepared spot map vide Ex.P-13. Seized articles were sent for chemical examination to the Forensic Science Laboratory and presence of blood has been confirmed vide Ex.P-23. Statements of the witnesses were recorded under Section 161 of the CrPC.
6. After completion of investigation, charge sheet was filed before the Court of Judicial

Magistrate First Class, Deobhog, who committed the case to the Court of Additional Sessions Judge, Gariyaband where trial of the case was conducted.

7. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 11 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted & sentenced the appellant as aforementioned.
9. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
10. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Smt. Parmila Bai (PW-1), Jai Singh (PW-3) and Kum Singh (PW-4), but their evidence does not inspire confidence and are trustworthy. Their evidence are not sufficient for conviction of the appellant. They have not seen the incident and their evidence is based on presumption and hypothesis, which is not sufficient for drawing definite conclusion against the appellant. Even otherwise, the appellant has caused injuries upon back part of the body of the deceased which shows that he has not caused injury with intent to cause the death of the deceased. Therefore, the act attributed to the appellant does not travel beyond the scope of Section 304 Part-II of the IPC.
11. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Smt. Parmila Bai (PW-1), Jai Singh (PW-3) and Kum Singh (PW-4) are sufficient for drawing inference that the appellant was the author of the crime. Number and nature of injuries found over the body of the deceased reveal that the accused has caused death of the deceased amounting to murder.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death as a result of multiple injuries found over the body of deceased Senduka Bai has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Smt. Parmila Bai (PW-1), Seven Singh Pujari (PW-2), Jai Singh (PW-3), Kum Singh (PW-4), dehati nalishi Ex.P-2, morgue Exs.P-3 & P-20, FIR Ex.P-21, evidence of Dr. Anju Sonwani (PW-8) and autopsy report Ex.P-14, that death of deceased Senduka Bai was homicidal in nature.
14. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Smt. Parmila Bai (PW-1), Jai Singh (PW-3) and Kum Singh (PW-4).

15. As per evidence of Smt. Parmila Bai (PW-1), neighbour of the deceased, she heard some sound of falling something at about 3 p.m. during the course of storm-heat, on which she came out from her house and saw that the appellant was coming out from the house of the deceased and running from the spot. She immediately rushed to the house of Senduka Bai, she was lying on the floor and agonizing. She noticed injury upon back of head and abdomen. She provided water to Senduka Bai and she died after some time.
16. Jai Singh (PW-3), husband of Smt. Parmila Bai (PW-1), has also deposed in his evidence that after hearing the sound of fall, he came out from his house and saw that the appellant was running from the house of the deceased, he was hiding some thing in his hand. Kum Singh (PW-4) has also deposed same thing in his evidence.
17. Defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to show that they have not seen the appellant coming out of the house of the deceased and running from the spot, and that the deceased, who died after the incident, was not badly injured. This shows that at the time of incident only two persons, the appellant and the deceased, were present, the appellant came out from the house of the deceased and rushed from the spot and the deceased died after some time. In these circumstances, the only inference would be possible that the appellant after causing homicidal death of the deceased came out from the house of the deceased and fled away from the spot. This evidence is sufficient for drawing inference that the appellant has caused homicidal death of the deceased amounting to murder.
18. As regards the question of motive, motive only aids in criminality and in case of direct evidence it loses its importance. Motive can be inferred on the basis of the weapon used, part of the body effected, nature of injury and other similar circumstances. Although individual injury is not fatal to life, but multiple injuries show that the appellant has acted in an inhuman manner and has brutally and mercilessly assaulted the deceased who was a woman, and thereby committed homicidal death amounting to murder of the deceased .
19. After appreciating the evidence available on record, learned Additional Sessions Judge has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
20. Consequently, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

JUDGE

JUDGE