

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 21 of 2011

- Hiralal Nishad S/o Bhagatram Nishad Aged About 21 Years R/o Village Haldighat, P.S. Lalbagh, Distt. Rajnandgaon Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through - P.S. Lalbagh, Distt. Rajnandgaon Chhattisgarh

---- Respondent

For appellant : Shri PKC Tiwari, Sr.Advocate with Shri Shashibhushan Tiwari, Advocate.

For Respondent/State : Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board by Justice Pritinker Diwaker

10/09/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 30.8.2010 passed by the Sessions Judge, Rajnandgaon in S.T.No.58/09 convicting the accused/appellant under Sections 302 of IPC and sentencing him to undergo imprisonment for life, to pay a fine of Rs.1000/-, in default thereof to undergo additional RI for six months.

02. In the present case, name of the deceased is Shantibai, aunt of the accused/appellant. It is alleged that house of the accused/appellant was adjacent to the house of the deceased and on or around the date of incident some construction was raised by the deceased in her house. On the fateful day i.e. 11.4.2009 when she was curing the

rooftop it was objected by the accused/appellant and his family members. After some altercation the accused/appellant jumped from his rooftop to the rooftop of the deceased, took out a knife from his waist and caused her as many as 13 stab wounds as a result of which she died on the spot itself. After receiving information the police reached the spot and recorded Dehati Merg Intimation (Ex.P/5) and thereafter, Dehati Nalishi (Ex.P/3) was recorded and then merg intimation (Ex.P/4) was also registered on 11.4.2009. On 11.4.2009 itself FIR (Ex.P/19) was registered on the basis of Dehati Nalishi against the accused/appellant under Section 302 of IPC. Inquest over the body of the deceased was prepared vide Ex.P/2 and thereafter, the dead body was sent for postmortem examination. On 12.4.2009 postmortem was conducted on the deceased by Dr.C.S. Mahobe (PW-13) vide Ex.P/15A wherein he noticed as many as 13 stab wounds on the body of the deceased and opined that her cause of death was shock due to hemorrhage and injuries to vital organ. After investigation charge sheet was filed against the accused/appellant and accordingly charge under Section 302 of IPC was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence he examined Sudershan Prasad as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the trial Court has erred in law while convicting the accused/appellant on the basis of statements of PW-2 Ku. Devika Nishad and PW-9 Ku. Ramkumari Nishad as both these witnesses are interested witnesses and therefore, they have falsely implicated the accused/appellant.

(ii) that from the evidence of PW-2 Ku. Devika Nishad it is evident that she was not an eyewitness and that PW-9 Ku. Ramkumari Nishadl is a child witness, therefore, the possibility of she being a tutored witness cannot be ruled out.

(iii) alternatively it has been submitted that present is a case of private defence of property and even if the appellant has exceeded the said right, he cannot be convicted under Section 302 of IPC and at best he can be held guilty under Section 304 Part-I or II of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that a very prompt report was lodged by PW-2 Ku. Devika Prasad based on which Dehati Merg Intimation, Dehati Nalishi and Merg Intimation were recorded. He submits that on the basis of merg enquiry, FIR was was registered against the accused/appellant on the date of incident itself. He further argues that as many as 13 stab wounds have been brutally caused by the accused/appellant to the deceased and therefore, looking to the manner in which the accused/appellant assaulted the deceased, he

has rightly been convicted under Section 302 of IPC by the trial Court. Lastly he submits that at the instance of accused/appellant the weapon of offence i.e. knife and his clothes were seized and the FSL report (Ex.P/22) in this regard is positive.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Manoj Kumar Nishad who is a witness to inquest (Ex.P/2) has duly supported the prosecution case. PW-2 Ku. Devika Nishad, daughter of the deceased, though in examination-in-chief has alleged that it is the accused/appellant who caused injuries to the deceased and when she tried to prevent him from making assault, she too was pushed, however, in cross-examination she has stated that when she reached the place of occurrence her mother had already expired and that she was told by her sister that it is the accused/appellant who killed the deceased. In para-12 on question being put to her by the Court, she has again stated that even after her mother had expired the accused/appellant was inflicting knife injuries on the deceased. PW-9 Ku. Ramkumari Nishad, another daughter of the deceased, aged about 11 years, while supporting the prosecution case has categorically stated that at the time of incident her mother/deceased was on the rooftop of her house along with her, they were curing the rooftop, at that time the accused/appellant came there and having quarreled with her mother assaulted her with knife. When she (PW-9) called her sister (PW-2 Devika Nishad), Devika Nishad reached there and tried to save her mother, but she was also pushed by the accused/appellant. In cross-examination this witness remained very firm and nothing could

be elicited by the defence to make her evidence untrustworthy or doubtful.

09. PW-3 Santram, husband of the deceased, has stated that 7-8 days prior to the date of incident, slab of his house was laid and on the date of incident he was not in his house. However, on being called by his daughters when he reached his house he found his wife dead on the rooftop. He has stated that the accused/appellant is his nephew, partition in the family had already taken place but there exists dispute between the two families over partition of agricultural property and the house. PW-4 Rajeev Shrivastava, Patwari, prepared the spot map (Ex.P/8). PW-5 Ku. Roopabai is a hearsay witness and reached the spot after the incident had already taken place. PW-6 Baratu Ram Sahu is a witness to seizure of knife (Ex.P/9), clothes (Ex.P/10), plain & bloodstained soil (Ex.P/11), has admitted his signature on the documents. PW-7 Domar Singh Sahu is a witness to inquest Ex.P/2. PW-8 Tejram Patel, who is a witness to seizure (Ex.P/9 & P/10) and arrest memo of the accused/appellant (Ex.p/12), has admitted his signature on the documents. PW-14 Sachin Dev Shukla, investigating officer, has duly supported the prosecution case.

10. PW-13 Dr.C.S. Mahobe conducted postmortem on the body of the deceased on 12.4.2009 vide Ex.P/15A and noticed following injuries:

(i) incised wound on the right side of chest, 13 cm x 5 cm x intestine deep.

(ii) incised wound on the right chest, 4 cm x 2 cm x 3 cm.

(iii) incised wound on left side rib, 4 x 2 x 3 cm, puncture of lung, cutting of blood cells.

(iv) incised wound below nipple at left side, 4 x 2 x 5 cm, injury on right side chamber with puncture.

(v) incised wound below injury No.(iv), 4 x 2 x 1 cm.

(vi) incised wound on left side of abdomen, 4 x 2 x 1 cm, spleen puncture.

(vii) beside injury No.(vi) another injury, 4 x 2 x 10 cm.

(viii) injury over umbilical region, 4 x 2 x 4 cm, omentum and intestine punctured.

(ix) incised wound 6 cm left of injury No.(viii), 4 x 2 x 4 cm.

(x) incised wound, 4 x 2 x 3 cm, neck veins cut.

(xi) incised wound on back of neck in the middle, 4 x 2 x 2 cm.

(xii) incised wound on middle of nose, 4 x 2 x 2 cm, nose divided into two part.

(xiii) incised wound on left side of back, 4 x 2 x 8 cm.

All the injuries were antemortem in nature, due to injuries heart, lungs, intestines and spleen were ruptured. All the injuries were caused by sharp and hard object. In his opinion, the cause of death was shock due to hemorrhage and injuries to vital organ.

11. DW-1 Sudershan Prasad has stated that brother of the appellant had lodged a complaint on 15.6.2008 in relation to property dispute which was registered in the Rojnamchasanha.

12. Close scrutiny of the evidence makes it clear that there was dispute between the family of the deceased and that of the accused/appellant over partition of the house and agricultural land. House of the accused/appellant and that of the deceased are adjacent. On the date

of incident while the deceased along with her family members was curing the rooftop of her house, the accused/appellant objected to the same and when the deceased continued curing, the accused/appellant jumped over her rooftop from his rooftop and opened assault on her with knife. PW-2 Ku. Devika Nishad and PW-9 Ku. Ramkumari Nishad, daughters of the deceased, have duly supported the prosecution case and stated as to the manner in which the deceased was done to death by the accused/appellant. Their testimonies remained intact during cross-examination and nothing could be brought out on record by the defence to make the same unreliable or doubtful. Further, their version finds due support from the medical evidence according to which as many as 13 injuries including 11 incised wounds were found on the body of the deceased. This apart, at the instance of accused/appellant weapon of offence knife and his clothes were seized, which were subsequently found to be stained with blood as per FSL report Ex.P/22. As regards the argument of the appellant that he assaulted the deceased in exercise of right of private defence of property, in the facts and circumstances of the case, the said plea appears to be out of place. Considering the ocular and medical evidence on record, the manner in which the appellant assaulted the deceased with a deadly weapon knife repeatedly on her vital organs leading to her instantaneous death despite being prevented by the witnesses, it is quite evident that he assaulted the deceased with intention to cause her death and had every knowledge that the injuries being inflicted by him on the deceased were sure to result in her death. The prosecution has successfully proved guilt of the accused/appellant on the basis of evidence adduced by it beyond all reasonable doubt and therefore, we

have no hesitation in saying that the trial Court was fully justified in holding the accused/appellant guilty under Section 302 of IPC.

13. For the reasons stated above, we are of the considered opinion that conviction of the accused/appellant under Section 302 of IPC suffers from no illegality and there is no scope for interfering with the judgment impugned. Accordingly, the appeal being sans merits warrants dismissal and it is dismissed as such.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge

Khan