

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 66 of 2011

1. Sarma Nag @ Gagda, S/o Gagruram, aged about 35 years, caste – Halba, resident of Patelpara, Narayanpur, District – Narayanpur (Chhattisgarh)
2. Suresh Gagda, S/o Gagruram, aged about 30 years, caste – Halba, resident of Patelpara, Narayanpur, District – Narayanpur (Chhattisgarh)

---- Appellants

Versus

- State of Chhattisgarh, Through Police Station Narayanpur, District – Narayanpur (C.G.)

---- Respondent

For Appellants	:	Mr. Avinash K. Mishra, Advocate.
For Respondent	:	Mr. Adil Minhaz, Panel Lawyer

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

Judgment dictated by Inder Singh Uboweja, J.

06/08/2015

1. By filing this appeal, appellants have challenged the legality and propriety of the judgment of conviction and order of sentence dated 22.09.2010 passed by the Additional Sessions Judge (FTC), Kondagaon, District – Bastar (C.G.) in Sessions Trial No. 14/2009, whereby and whereunder, the trial Court, after holding the appellants guilty for causing homicidal death amounting to murder of deceased Saradi Bai, in sharing common intention, convicted the appellants under Section 302/34 IPC and sentenced them to undergo imprisonment for life and to pay fine of Rs.100/- each, in default of payment of fine to further undergo R.I. for 3 months.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of prosecution, on the fateful day of 12.10.2008 at about 7.00 p.m., complainant Sundar (PW-1) after returning from the field went to the house of his elder brother Karmu. When he was sitting there, his daughter Madhulata (PW-2) came and informed him that while deceased Saradi Bai, her mother, was cooking food, at the spur of a moment, accused Suresh Gagda and Sarma Nag entered the house and assaulted her with wooden plank as a result of which she became unconscious. Before reaching of complainant to his house, his neighbours Suraj, Kedar and Laxman had taken injured Saradi Bai to Narayanpur hospital on their motorcycle, thereafter, he also rushed to hospital. During the course of treatment her wife Saradi Bai died.
4. Complainant Sundar (PW-1) lodged mereg intimation at police station, Narayanpur vide Ex.P-1, on the basis of which FIR (Ex.P-2) was registered against the accused / appellants under Section 302 read with Section 34 of the IPC. Investigating officer reached to the place of occurrence and after summoning the witnesses vide Ex.P-4, inquest over the dead body of the deceased was prepared vide Ex.P-15. Spot map was prepared vide Ex.P-3. Dead body of the deceased was sent for autopsy to

Community Health Centre, Narayanpur, where Dr. Prabhakar Ghote (PW-9) conducted autopsy on the dead body of the deceased vide Ex.P-18 and found the following injuries :-

- (i) Lacerated wound on left side of the head over left parietal region of 2 cm x 0.5 cm x deep upto skull bone;
- (ii) Lacerated wound 1 cm apart from 1st injury of 2 cm x 0.5 cm x deep to skull bone;
- (iii) Contusion of 5 cm x 5 cm just 5 cm above to lacerated wounds.

Injuries were ante-mortem in nature which might be caused by wooden plank. Cause of death was coma due to head injury and death was homicidal in nature.

5. During the course of investigation, accused Suresh Gagda was taken into custody; he made disclosure statement of wooden plank vide Ex.P-8, and the same was recovered at his instance vide Ex.P-11. Accused Sarma Nag was also taken into custody; he made disclosure statement of wooden plank vide Ex.P-9 and the same was recovered at his instance vide Ex.P-10. Bloodstained soil and plain soil were recovered from the spot vide Ex.P-12. One lungi & shirt were seized from accused Sarma Nag vide Ex.P-13 and one shirt and lungi were seized from accused Suresh Gagda vide Ex.p-14. Seized articles were sent for chemical examination to Assistant Surgeon, District Hospital, Narayanpur.

6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Narayanpur, who in turn committed the case to the Additional Sessions Judge (FTC), Kondagaon, where trial has been conducted.
7. In order to prove the guilt of the accused/appellants, the prosecution examined as many as nine witnesses. Accused persons were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.
8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge (FTC), Kondagaon has convicted and sentenced the appellants as aforementioned.
9. We have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.
10. Learned counsel appearing for the appellants vehemently argued that conviction of the appellants is substantially based on the evidence of Madhulata (PW-2), but her evidence does not inspire confidence and is not trustworthy. Even otherwise, on account of some witchcraft matter appellants got annoyed with the deceased, they picked up the wooden plank lying near the spot and caused injuries to the deceased. Learned counsel further submitted that deceased had not died instantly, after providing some medical

assistant she died in the hospital during her treatment, therefore, the act attributed to the appellants does not travel beyond the scope of Section 304 Part II of the IPC.

11. On the other hand, learned State counsel opposing the appeal submits that evidence of Madhulata (PW-2) is sufficient for drawing inference that the appellants have caused homicidal death amounting to murder of the deceased, therefore, by convicting and sentencing the appellants as above, the trial Court has not committed any illegality.
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 fatal injuries found over the body of deceased Saradi Bai has not been substantially disputed on behalf of the appellants. Even otherwise, from the evidence of Sundar (PW-1), Madhulata (PW-2), Ghenuram (PW-4), Kedar (PW-5), Laxman (PW-6), Injury Report (Ex.P-17), Merg Intimation (Ex.P-1), FIR (Ex.P-2), Dr. Prabhakar Ghote (PW-9) and autopsy report (Ex.P-18), it is also established that death of the deceased was homicidal in nature.
14. As regard the complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of Madhulata (PW-2), daughter of the deceased. As per her evidence, at the time of incident she was playing near her house,

she saw the accused / appellants entering her house, usually they came to their house. She also saw the accused/appellants coming out from her house. At that moment she heard sound of cries from her house, she and some neighbours entered the house and saw that her mother was in pool of blood and her head was on the grinding stone and one wooden plank was lying there, her mother was in unconscious condition. With the help of neighbours they shifted her mother to near by hospital where she died during the course of her treatment. Defence has cross-examined this witness at length, but has not been able to elicit anything to discredit her testimony to the extent that she has not seen the incident, but has seen entering and out going of the appellants at the time of incident and did not reach the spot quickly after the incident. In this case memorandums and seizures have been proved beyond reasonable doubt by the prosecution. Therefore, the aforesaid evidence is sufficient for drawing inference that appellants have caused homicidal death of deceased Saradi Bai.

15. As regards the question of motive, only aids in criminality and in case of direct evidence it loses importance, motive can be inferred on the basis of the weapon used, part of the body effected, nature of injury and other similar circumstances. The case of prosecution clearly shows that appellants were annoyed with

deceased on account of her witchcraft practising, therefore, it may be motive for causing death.

16. In the present case, as per case of prosecution, the appellants were annoyed with the deceased on account of her witchcraft practice, they entered the house of deceased, and no one has seen that they were holding any arm or weapon. Madhulata (PW-2), daughter of the deceased has clearly stated that while coming out from her house accused/appellants were open handed, but she has seen wooden plank on the spot, which was used by accused/appellants at the time of assaulting the deceased. They have caused one fatal injury over her head which resulted in fracture of parietal bone and other injuries were simple in nature and after sometime during the course of treatment deceased Saradi Bai died. Thus, it cannot be ruled out that after assaulting by wooden plank deceased had fallen down and her head might be dashed the grinding stone. It cannot also be ruled out that injury on parietal region may be caused by falling of the deceased on the grinding stone headlong.
17. Evidence adduced on behalf of the prosecution clearly revealed that the appellants have not caused injuries with intent to cause death of the deceased, but at the time of causing injuries that too over the head of the deceased, appellants were having opportunity to cause repeated blows on the body of the deceased,

but they have not done so. Appellants were having definite knowledge that by their act the deceased may die, but there was no intention to cause her death. Thus, conviction of the appellants squarely falls within the ambit of Section 304 Part II of the IPC. While convicting and sentencing the appellants under Section 302/34 of the IPC, the trial Court has not considered the aforesaid aspects of the matter and thereby committed illegality.

18. Consequently, the appeal is partly allowed. Conviction of the appellants under Section 302/34 of the IPC is altered to Section 304 Part II/34 of the IPC and they are sentenced to the period already undergone by them. They are in custody since 13.10.2008, they be released forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE