

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr. Appeal No.167/2011

Jai Singh Sidar, S/o Dauaa Sidar, age about 40
years, R/o Village Bhaludera (Portha), Thana Sakti
Distt. Janjgir Champa (CG)

APPELLANT
(In Jail)

Vs

State of Chhattisgarh, through District Magistrate,
Sakti, District Janjgir-Champa (CG)

RESPONDENT

For the appellant: Shri Anup Mazumdar & Shri Basant Dewangan,
Advocates.

For the respondent: Shri Ashish Shukla, Government Advocate.

DB: Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice I.S. Uboweja

Judgment on Board by P. Diwaker, J

20.07.2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 10.01.2011 passed by the Additional Sessions Judge, Sakti, District Janjgir-Champa (CG) in S.T. No.76/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life & fine of Rs.500/-, in default to undergo additional R.I. for 02 months.
2. As per prosecution case, by profession accused/appellant was Mason and had worked in the house of deceased Phool Singh. On 17.4.2010 at about 4.30 a.m. in the morning, the accused/appellant entered the house of deceased and caused two blows on his head by bed-post (खटिया की पाटी) while he was sleeping. On hearing cries of deceased, his son Mahettar (PW-2) & daughter-in-law Pawantin Bai (PW-4), who were sleeping in other room, reached the place of occurrence and saw accused/appellant beating the deceased. On 17.4.2010 at 7.30 a.m. at

the instance of Mahettar (PW-2), Merg Intimation (Ex.P-8) was recorded and at about 7.40 a.m. FIR (Ex.P-7) was registered against the accused/appellant under Section 302 of the IPC. Post-mortem was conducted by Dr. Ajay Kumar Mirri (PW-6) who noticed following injuries;

- Lacerated wound on the right parieto occipital region of skull of 9cm x 2 cm x bone deep. Blood clot present.
- Lacerated wound of 4cm x 1cm x bone deep in the vertex region. Clotted blood present.
- Eyes were closed. Pupil dilated. Mouth closed.
- Rigor mortis present on both upper & lower limbs. Both the chambers of heart were empty.

As per post-mortem report, cause of death was head injury due to multiple fractures of skull bone and that the death was homicidal in nature. Based on the memorandum statement (Ex.P-2) of accused/appellant, certain articles were seized vide seizure memo of Ex.P-3 and from the record it appears that seized articles were also sent for chemical examination to the Forensic Science Laboratory, but no report is available on record.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed against him.
4. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused/appellant was 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.
5. The trial Court after hearing counsel for the respective parties and

considering the material available on record, by the impugned judgment, convicted & sentenced the accused/appellant as mentioned in para-1 of this judgment.

6. Learned counsel for the accused/appellant submits as under:

- (i) that the accused/appellant has been falsely implicated in crime in question.
- (ii) that statements of Mehattar (PW-2) & Pawantin Bai (PW-4), being the relatives & interested witnesses, are not reliable for basing conviction.
- (iii) that the incident had taken place in the night and as there was no light, the question of seeing the occurrence by two eyewitnesses does not arise.
- (iv) that even if the entire prosecution case is taken as it is, the accused/appellant cannot be convicted under Section 302 of the IPC because he had no intention to commit murder of the deceased and it appears that as certain payment was not made by the deceased, therefore, out of anger the accused/appellant had caused injuries on the head of the deceased which unfortunately resulted into his death.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that in the early morning at 4.30 a.m. the accused/appellant after full preparation had entered the house of deceased and committed his murder and therefore his conviction under Section 302 of IPC is fully justified. He further submits that there is no reason for this Court to disbelieve

statements of Mehattar (PW-2) & Pawantin Bai (PW-4), who are eyewitnesses of incident.

8. We have heard learned counsel for the parties and perused the material available on record.
9. Shiv Prasad (PW-1) appears to be neighbour of the deceased who immediately reached to the spot. He is witness of memorandum and seizure made from the accused/appellant.
10. Mehattar (PW-2), son of the deceased, while supporting the prosecution case has stated that on the date of incident he was sleeping in his room whereas his deceased father was sleeping in the verandah. At about 4.30 a.m. on hearing sound of beating someone when he reached to the verandah, he saw the accused/appellant causing injuries on the head of his father by bed-post (खटिया की पाटी). He has further stated that incident was also witnessed by his wife Pawantin Bai (PW-4). He has further stated that when he reached to the place of occurrence, the accused/ appellant chased him also. In the cross-examination this witness remained very firm and nothing could be elicited from him which may render his evidence untrustworthy or doubtful. Similar is the statement of Pawantin Bai (PW-4) who has categorically stated in her statement that she saw the accused/appellant assaulting her father-in-law.
11. Motelal (PW-3) is witness of memorandum and seizure made from the accused/appellant. Rameshwar Yadav (PW-5) has turned hostile and not supported the prosecution case.
12. Dr. Ajay Kumar Mirri (PW-6) is the autopsy surgeon who conducted post-mortem on the body of deceased and noticed injuries as stated above.

13. Smt. Kaushilya Sahu (PW-8) is the Investigating Officer and has duly supported the prosecution case. Bedram (PW-12) is witness of inquest (Ex.P-11) prepared on the body of deceased but this witness has turned hostile and not supported the prosecution case.
14. Close scrutiny of the evidence makes it clear that on 17.4.2010 at about 4.30 a.m. in the morning, accused/appellant entered the house of deceased, assaulted the deceased and injuries suffered by him led to his death. The incident was witnessed by Mehttar (PW-2), son of deceased, & Pawantin Bai (PW-4), daughter-in-law of deceased, and these witnesses have categorically stated that it is the accused/appellant who had assaulted the deceased on his head. Their evidence finds corroboration from the medical evidence also wherein it has been stated that cause of death is head injury due to multiple fractures of skull bone. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve the statements of eyewitnesses who have described the incident in a lucid manner.
15. We find no substance in the argument of the accused/appellant that act of the accused/appellant would fall under Section 304 Part-I of the IPC. Even if the deceased had not made certain payment to the accused/appellant, but from the facts it is apparent that early in the morning the accused/appellant entered the house of deceased, an old man aged about 75 years, and caused repeated assault from bed-post (खटिया की पाटी) on the vital part of his body i.e. head, while he was sleeping. Thus, having regard to the weapon of offence i.e. bed-post (खटिया की पाटी) by which assault was made, the part of the body i.e. head on which assault was made and the force with which the assault

was made causing multiple fractures in the skull, intention of the accused/appellant to cause death of the deceased is apparent. Therefore the act done by appellant cannot be said to be done in the heat of passion upon sudden quarrel without premeditation.

16. In the result, the appeal being without any substance is liable to be and is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-